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

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

FARM CREDIT ADMINISTRATION

12 CFR Part 618

RIN 3052–AC66

General Provisions; Operating and Strategic Business Planning

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) amends its regulation requiring the board of directors of each Farm Credit System (FCS or System) institution to adopt an operational and strategic business plan (business plan or plan) to include, among other things, outreach toward diversity and inclusion. Each business plan must contain a human capital plan that describes the institution's workforce and management and assesses their strengths and weaknesses; describes succession programs; and includes strategies and actions to strive for diversity and inclusion within the institution's workforce and management. In addition, the business plan of each direct lender institution must include a marketing plan that discusses how the institution will further the objective that the FCS be responsive to the credit needs of all eligible and creditworthy agricultural producers and other eligible persons, with specific outreach toward diversity and inclusion. Further, the regulation requires including skills and diversity as part of the required assessment of the needs of the board of directors and establishes annual reporting requirements to the board.

DATES: *Effective Date:* This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

Compliance Date: System institutions must comply with this regulation no later than January 30, 2013.

FOR FURTHER INFORMATION CONTACT:

Jacqueline R. Melvin, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434, or

Jennifer A. Cohn, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this amendment are to ensure that:

- Each System institution promotes diversity and inclusion as critical to its success in the long term and incorporates diversity and inclusion as a vital component of its corporate culture;
- Skills and diversity are explicitly included in the assessment of the needs of the board of directors;
- Each System institution assesses the strengths and weaknesses of its current workforce and management; addresses succession planning; and develops strategies and actions to strive for diversity and inclusion within its workforce and management;
- Each System institution considers how it will further the objective of being responsive to the credit needs of all eligible and creditworthy agricultural producers and other eligible persons with specific outreach toward diversity and inclusion; and
- Each System institution's board of directors receives reports on the institution's progress in accomplishing the strategies and actions in its human capital and marketing plans, which will help the board establish accountability and plan new strategies and actions.

II. Background and Overview of Comments

On May 25, 2011, the FCA published a proposed rule to amend § 618.8440, which requires the board of directors of each System institution to adopt a business plan.[1] The proposed rule required, among other things, human capital and marketing plans that include outreach toward diversity and inclusion.

We received approximately 75 comment letters from 48 System institutions. We also received two letters from the Farm Credit Council (Council), the trade association for the System.[2] Of the System letters, approximately eight opposed our proposed rule entirely and requested complete withdrawal of the proposal. Most of the remainder of the System commenters supported the premise of the proposed rule to consider human capital and marketing outreach, including diversity and inclusion, in the business plan, but they requested extensive revisions to the final rule or to the explanatory preamble to reduce what they viewed as undue burden. As discussed below, we are making a number of changes in the final rule in response to many of these comments. Many System commenters appeared to misunderstand some of the intended requirements of the proposed rule, because they opposed requirements that the rule would not have imposed. Throughout this preamble, we clarify the requirements of the final rule.

We received approximately 325 comments from non-System commenters, including sustainable agriculture advocacy and assistance groups, academics in the field of sustainable agriculture, small farmers, consumers, and others. The vast majority of these commenters supported the proposed rule. Many of these commenters requested that FCA include a number of specific requirements in the marketing plan provision that would, among other things, require institutions to train potential customers in business planning and financing; develop infrastructure such as cooperatives and farmers' markets; partner with governmental and non-governmental entities and investors for funding local and regional food systems (LRFS); set numerical investment goals for lending to LRFS; and make their marketing goals and progress assessments public.

We also received approximately 40 electronically submitted comment letters that contained the names and

[1] *See* 76 FR 30280.

[2] One Council letter was submitted on behalf of its membership, after soliciting input from all System institutions. The other Council letter was submitted on behalf of its President and CEO, with the endorsement and support of the Council Board of Directors.

addresses of the commenters but were otherwise blank.

III. Requirements of the Final Rule

The final rule requires each institution to:

- Determine the skills and diversity needs of its board of directors;
- Study and know its workforce, labor market, and management succession plans;
- Reach out to potential employees within its labor market who may not have previously been considered for reasons other than merit;
- Study and know its marketplace, as applicable;
- Reach out to potential borrowers who may not have previously been considered for reasons other than eligibility or creditworthiness; and
- Report annually to its board of directors on the progress the institution has made in accomplishing planned outreach strategies and actions, as applicable.

The rule does not require an institution to:

- Establish quotas—it does not require specific outcomes in employment or lending;
- Complete redundant plans or actions—an institution may use existing documents to satisfy these new planning requirements, provided the existing documents are approved annually by the board;
- Disclose confidential or sensitive information in public documents;
- Hire persons who are not the best qualified for the position for which they are applying;
- Extend credit to any persons who are not eligible, creditworthy, or within the scope of financing rules;
- Favor any type or group of agricultural producers in its underwriting of credit;
- Gather or record data on customer or employee characteristics not currently legally gathered or recorded;
- Implement strategies or actions that extend beyond its marketplace and labor market;
- Develop marketing plans unless it is exercising title III lending authorities or is a direct lender association; or
- Implement strategies or actions inconsistent with existing lending and employment laws and rules or with safety and soundness standards.

IV. What is diversity and inclusion?

For purposes of this rule, we consider diversity and inclusion in employment to mean seeking out and using the talents of people of different backgrounds, experiences, and perspectives to improve the workforce environment and productivity. These differences have a strong influence on how individuals approach challenges and solve problems, make decisions, and identify opportunities.

For purposes of this rule, we consider diversity and inclusion in lending to mean looking beyond the traditional customer base to ensure that all eligible and creditworthy persons have access to credit and related financial services. Where a particular institution needs to focus its outreach depends on the nature of its territory and what groups have traditionally been underrepresented or underserved.

A diverse workforce could aid the System in gaining new customers. A diverse range of employees may more effectively reach a broader and more diverse base of producers, thereby widening the pool of potential customers. Moreover, diverse employees bring different perspectives to an organization and may influence the development of more creative and innovative products and services, which can also increase the customer base.

V. Why Outreach Toward Diversity and Inclusion Is Necessary

As discussed in the preamble to the proposed rule, agriculture in America is becoming increasingly diverse. However, some non-System commenters believe that the System is not serving diverse agricultural producers. For example, the Rural Coalition, an alliance of more than 70 rural community-based organizations of African-American, Asian-American, American-Indian, Euro-American, Latino and women farmers, farmworkers and rural communities in the United States, commented that among its members who were contacted, ''there exists a universal perception that the Farm Credit System institutions are not accessible to the underserved farmer and have failed to conduct outreach to these communities to educate them regarding the institutions' programs and services.''

Section 1.1(b) of the Farm Credit Act of 1971, as amended (Act), requires the System to be inclusionary in its lending. Section 1.1(b) provides that the System was established as a ''permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit. * * *'' If some producers, including those who would bring diversity to an institution's customer base, have a perception that the System is not available to serve them, then greater outreach is needed. While not every farmer is creditworthy (under any reasonable standard), has credit needs that are within FCA's scope of financing regulations, or is interested in financing his or her operations with debt, unless System institutions reach out to underserved farmers there is no way to know whether they might become customers.

As strong and vibrant supporters of agriculture in America, System direct lender institutions must develop specific marketing plans to reach all potential customers, including those in diverse market segments that may currently be underserved. Institutions must ensure that there are no unnecessary barriers in place, such as lack of employee training, lack of appropriate loan products, or lack of appropriate creditworthiness standards. They must consider programs such as grassroots outreach activities and education efforts that market to diverse and underserved populations regarding business and financial planning and leadership and loan programs for persons who are eligible and creditworthy. In addition, to more effectively reach and serve these potential customers, institutions must continue to strive for diversity and inclusion among their employees, management, and boards of directors, because diverse perspectives within institutions can help increase diversity among customers. Unless System institutions commit to embracing diversity and inclusion in lending, employment, and governance, they may not be able, or understand how, to provide sufficient access to the System's products for all potential eligible and creditworthy customers, and they may risk losing market share and relevance in the marketplace in the long run.

VI. Comments on Proposed Rule and FCA's Responses

A. Premise of Rule

The Council, as well as many System institutions that submitted their own comments, generally endorsed the premise of the proposed rule. Specifically, they recognized that human capital and marketplace outreach, along with diversity and inclusion, are important and appropriate topics to address in business plans.

Several System institutions, as well as one non-System commenter, disagreed with our premise that diversity and inclusion are beneficial for the System and the nation as a whole. These commenters stated that mandating diversity will inevitably result in decisions based on race, sex, and other inappropriate characteristics and toward quotas or measurable results, which the

commenters state are illegal, divisive, unfair, and inefficient; these commenters state that the System's focus should simply be on ''nondiscriminatory inclusion''—that is, on equal opportunity and on decision-making unbiased by race, sex, or other inappropriate characteristics; that favoring certain groups over other groups is discriminatory and will make the former feel entitled and the latter feel aggrieved; and that demographic imbalances often result from factors other than overt or covert discrimination.

As discussed throughout this preamble and as evident in the regulation language itself, this rule does not mandate particular hiring or lending decisions or specific results. We do not require institutions to make employment or lending decisions based on any factors other than qualifications and creditworthiness. We will not examine for quotas or specific results in employment or lending, and we do not require institutions to establish quotas. We do not require institutions to favor any groups over any other groups. We recognize that to do so would be illegal.

We agree with the commenters that demographic imbalances often result from factors other than overt or covert discrimination. A lack of diversity in a System institution could occur for a whole host of non-discriminatory reasons, many of which are beyond the control of the institution. We do want to be sure, however, that institutions do not have barriers in place that could contribute to such imbalances, even if these barriers are in place for non-discriminatory reasons. Such barriers could include, for example, a lack of employee training, lack of appropriate loan products, lack of appropriate creditworthiness standards, or lack of outreach toward certain populations.

For this reason, we disagree that it is sufficient for System institutions to focus only on ''nondiscriminatory inclusion'' and equal opportunity. This rule requires institutions to reach out to potential employees within their labor markets who may not have previously been aware of the opportunities to work for the System or whom institutions may not have considered for reasons other than merit. It also requires institutions to reach out to potential customers who may not have been previously aware of the System's services or whom institutions may not have considered for reasons other than eligibility and creditworthiness. This outreach is necessary even if an institution's previous failure to consider these potential customers is not due to discrimination.

B. FCA Authority, Burden, and Relationship With Other Legal Requirements

A number of System commenters questioned the legal authority of FCA to impose human capital and marketing plan requirements. Some stated that FCA has authority only over safety and soundness matters. Some stated that the regulation is inconsistent with a 1996 congressional mandate that FCA must eliminate regulations that are ''unnecessary, unduly burdensome or costly, or not based on law.'' And some stated that because Congress has imposed diversity requirements on the housing Government-sponsored enterprises (GSEs) but not on the System, there is no authority for FCA to impose such requirements on the System.

FCA is not limited to regulating safety and soundness matters. FCA has broad authority over all matters relating to the System and the Act. As part of implementing the Act and for safety and soundness reasons, FCA has authority to adopt regulations governing the business planning of System institutions. Moreover, section 1.1(b) of the Act states that the FCS was established as a ''permanent System of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit. * * *'' While this provision does not expressly mention diversity and inclusion, it does state Congress' desire that the FCS be responsive to all types of creditworthy agricultural producers. Moreover, the passage of a law imposing diversity requirements on the housing GSEs does not limit FCA's authority to impose business planning requirements, including in the area of diversity and inclusion, on System institutions.

Regarding the 1996 congressional mandate to review and eliminate unnecessary regulations, we have discussed above why this regulation is necessary. With the clarifications we have made to the regulation text and throughout this preamble, we believe compliance with the rule will not be unduly burdensome or costly.

Several System commenters requested that we modify proposed § 618.8440(b)(7) and (b)(8) to each be one-sentence requirements. They suggested that § 618.8440(b)(7) should simply require that the business plan include a summary of the human capital plan that addresses diversity, inclusion, affirmative action, and management succession. And they suggested that § 618.8440(b)(8) should simply require that the business plan include a summary of the marketing plan that addresses diversity, inclusion, and marketplace outreach.

We believe, in order to fulfill the objectives of this rule, the human capital and marketing plans must include all the items that we have required. We do not believe a requirement that the human capital plan simply address diversity, inclusion, affirmative action, and management succession, or that the marketing plan simply address diversity, inclusion, and marketplace outreach, is sufficient.

To eliminate unnecessary burden, we have revised § 618.8440(b)(7) and (b)(8) to provide that items required to be included in the human capital plan and marketing plan may be contained in other documents that are approved by the board and adopted annually, as long as those items are summarized in, and incorporated by reference into, the human capital plan and marketing plan, respectively.

Accordingly, if an institution has separate documents (such as section 4.38 affirmative action program (AAP) plans or Young, Beginning, and Small (YBS) farmer and rancher program documents) that contain the items that are required to be included in the human capital plan or marketing plan component of the business plan, the institution can use those other documents to satisfy the business plan requirements, as long as the other documents are approved by the board annually (as the business plan itself is) and the items are summarized in, and incorporated by reference into, the human capital plan or marketing plan components of the business plan. If the separate documents do not include these items, however, or if the board does not approve these separate documents, then the board will have to include the required items in the human capital plan and marketing plan components of the business plan.

Additionally, to further address concerns about burden, we have made a number of changes to the regulation in response to specific requests made by commenters. For example, among other changes, we have revised language that was viewed as requiring redundant plans or actions. We have removed language that was viewed as requiring quotas or quantifiable results. We have added language allowing confidential or sensitive information to be contained in non-public documents. And we have limited the marketing plan requirements to System institutions in their exercise of title III lending authorities and to direct lender associations.

In addition, we clarify in this preamble other areas where commenters

were concerned about burden. For example, among other clarifications, we have explained what we mean by the term ''diversity.'' We have made clear that institutions are not required to: Hire persons who are not considered the best qualified for the position for which they are applying; extend credit to persons who are not eligible, creditworthy, or within the scope of financing rules; favor any type or group of agricultural producers in their credit underwriting; gather or record data on customer or employee characteristics not currently legally gathered or recorded; or implement strategies or actions inconsistent with existing lending and employment rules and laws or with safety and soundness standards.

A number of System commenters stated that they would be at legal risk if they were required to ask potential job applicants or potential customers about demographic information. Because the rule does not require institutions to collect this information, the rule does not create this legal risk.

A number of System commenters also questioned how the requirements of this rule fit in with other requirements, including AAP planning, YBS activities, the various equal employment laws, the Equal Credit Opportunity Act (ECOA), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[3] As we now explain, this rule should not be interpreted to impose requirements that are redundant or inconsistent with any other laws.

System commenters expressed concern that this rule imposes requirements that are already included among AAP planning and YBS program requirements. As we explained in the preamble to the proposed rule,[4] there may be some overlap between the information that is contained in existing AAP plans and YBS programs and the information that is required to be in the human capital and marketing plans.

To eliminate this redundancy, as discussed above, we have revised § 618.8440(b)(7) and (b)(8) to provide that items required to be included in the human capital plan and marketing plan may be contained in other documents that are approved by the board and adopted annually, as long as those items are summarized in, and incorporated by reference into, the human capital plan and marketing plan, respectively. These other documents could include an AAP plan or YBS program documents.

System commenters also expressed concern that compliance with this regulation would require violation of the equal employment laws and the ECOA, and they pointed out that the Dodd-Frank Act does not yet have implementing regulations authorizing activity they believe the proposed rule would require. These commenters were primarily focused on what they believed was a requirement to collect demographic data from job applicants/employees and credit applicants/borrowers.

As discussed throughout this preamble, the rule does not require institutions to collect any data on employee or customer characteristics. Therefore, the rule does not conflict with any prohibition on data gathering in the equal employment laws or the ECOA. Moreover, these laws actually require the collection of data in some situations. Consistent with these laws, an institution can choose to use the data collected as required to assess its employment of diverse employees, the diversity needs of its board of directors, and its lending to diverse borrowers.

In addition, as discussed in the preamble to the proposed rule, once the Consumer Financial Protection Bureau (CFPB) issues implementing regulations,[5] the Dodd-Frank Act will require financial institutions to ask all business applicants applying for credit whether they are women-owned, minority-owned, or small businesses. While applicants may choose to withhold this information, institutions can choose to use any information received to assess their lending to diverse borrowers.

C. Meaning of ''Diversity''

The proposed regulation itself did not define diversity. In the preamble to the proposed rule, we stated that diversity is best thought of as the inclusion of *all* individuals rather than as simply a list of demographic criteria, and we listed several characteristics that might indicate diversity.

We did not intend to limit diversity to these characteristics or to suggest that these characteristics are more important than any others. Instead, our intent was to demonstrate that diversity is all-inclusive and is broader than the characteristics protected by the various equal employment and fair lending laws.[6]

Many System commenters questioned this definition. They wondered whether and how we expected them to determine the listed characteristics and whether we expected them to make employment or lending decisions on the basis of those characteristics. They stated that asking this information of potential employees or borrowers or making decisions on these bases is, in many cases, offensive or even illegal.

As stated above, our intent was to show that diversity is broad and all-inclusive, not to create a list of characteristics to be given special focus. Also, the rule does not require the gathering or recording of data on employee or borrower characteristics that are not currently legally gathered or recorded and does not require specific outcomes or the favoring of particular persons in employment or lending. What the rule does require institutions to do, in pertinent part, is to strive for diversity and inclusion within their workforce and management and to market their products and services to all eligible and creditworthy persons, with specific outreach toward diversity and inclusion.

Like the proposed rule, the final rule itself does not define diversity. As discussed above, for purposes of this rule, we consider diversity and inclusion in employment to mean seeking out and using the talents of people of different backgrounds, experiences, and perspectives to improve the workforce environment and productivity. We consider diversity and inclusion in lending, for purposes of this rule, to mean looking beyond the existing customer base to ensure that all eligible and creditworthy persons have access to System credit and related financial services.

Accordingly, each institution must ensure that it has plans to reach out to all potential employees and customers as is appropriate for its territory. Institutions are not required to gather data that is not legal to gather, favor persons in particular groups, or satisfy quotas in employment or lending.

[3] Public Law 111–203.

[4] 76 FR 30282, May 25, 2011.

[5] The CFPB is an independent bureau in the Federal Reserve System that regulates the offering and provision of consumer financial products or services under the Federal consumer finance laws. *See* section 1011(a) of the Dodd-Frank Act.

[6] Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination because of race, color, religion, national origin, or sex; the Age Discrimination in Employment Act of 1967 prohibits employment discrimination because of age; the Americans with Disabilities Act of 1990, as amended, prohibits employment discrimination because of disability; and the Genetic Information Nondiscrimination Act of 2008 prohibits employment discrimination because of genetic information. The ECOA prohibits discrimination in the extension of credit on the bases of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract). The ECOA also prohibits discrimination because all or part of an applicant's income derives from a public assistance program or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act.

D. Flexibility in Implementation

A number of System commenters requested that FCA allow institutions to exercise flexibility and discretion in how they implement the requirements of the rule. Institutions differ in terms of size, employment needs, demographics in their territory, and nature of farming in their territory. Therefore, diversity will not look the same across the System.

A number of System commenters were also concerned that FCA and its examiners would impose requirements that are not found in the rule or would use FCA's suggestions in the preamble to the proposed rule regarding tools institutions could use to assist in complying with their planning requirements as a checklist for determining compliance.

Moreover, a number of commenters stated that some of FCA's suggestions are not relevant to the System or are too rigid. Commenters stated, for example, that data from the Census of Agriculture, which FCA had suggested as a possible source of information about potential customers, does not accurately represent the System's relevant markets because it includes data pertaining to ineligible persons, non-creditworthy persons, persons who would be disqualified based on scope of financing regulations, and persons who do not use debt to finance their operations.

As another example, several System commenters objected to some of FCA's specific suggestions for how to overcome barriers for advancing diversity and inclusion within the corporate culture, such as including diversity and inclusion in the mission statement.

FCA recognizes that System institutions vary widely in their size, needs, and demographics, among other areas of difference. A one-size-fits-all approach to compliance with this rule is not appropriate either for System institutions or for FCA.[7] The rule requires institutions to engage in business planning in the specified areas. Accordingly, FCA examiners will determine whether institutions have engaged in this planning and will evaluate institutions' good faith efforts in implementing the strategies and actions identified in the plans. Nevertheless, the rule permits institutions to engage in the required business planning in any reasonable manner, and we will not examine for specific outcomes or results in employment or lending.

In addition, our suggestions in the preamble to the proposed rule regarding tools institutions can use to assist with their compliance are not requirements. We included them in our preamble to the proposed rule to provide ideas and to share actions that other institutions have taken. We encourage institutions to use the suggestions that are appropriate, to set aside the suggestions that are not, and to come up with their own approaches to fit their own characteristics.

Finally, as discussed throughout this preamble, it is important to keep in mind that this rule does not require specific goals or quantifiable results, and our compliance examination will be qualitative rather than quantitative. We suggested the use of the Census of Agriculture data not so institutions could compare their lending against that data but so they could know and would be able to describe the characteristics of their chartered territories by market segment, including the characteristics of demography, geography, and types of agriculture practiced, as the regulation requires. With this information, institutions can determine whether there may be potential eligible customers who may be better reached with a different type of marketing strategy. If institutions believe other reliable data would better provide this information, they may use that data instead.

E. Local Food Systems

In the preamble to our proposed rule, we noted that the pool of potential eligible and creditworthy FCS customers is becoming increasingly diverse. We observed that agriculture today consists of men and women, the old and the young, and a variety of racial and ethnic backgrounds. We urged institutions to look to all kinds of farming operations—from large farmers, to small farmers, to farmers who operate within local food systems—to find potential eligible and creditworthy borrowers who may not be part of the institution's customer base and who may be underserved.

We received a number of comments responding specifically to our reference to local food systems, from both System and non-System commenters. Commenters identified four major areas of concern.

First, many System commenters were concerned that the term ''local food systems'' was undefined. A number of non-System commenters suggested that we should adopt the definition of ''local and regional food producers'' from the 2008 Farm Bill. In the preamble to the proposed rule, we stated that local food systems typically involve small farmers producing heterogeneous organic or specialty crops, and short supply chains in which farmers also perform marketing functions, including storage, packaging, transportation, distribution, and advertising.[8] In the context of this rule, however, it is unnecessary to specifically define ''local food systems,'' because this rule does not require specific marketing targeted toward local food systems. Rather, the rule requires strategies and actions to market to all eligible and creditworthy persons, with specific outreach toward diversity and inclusion. Our reference to local food systems was to provide an example of a potentially underserved market segment where diversity in farming may be found. Reaching out to persons who operate in local food systems is one of many potential approaches to finding new eligible and creditworthy customers. Consistent with this effort, FCA's regulatory performance plan specifically includes a project to consider changes to our policy guidance for providing credit and related services to all eligible and creditworthy agricultural producers, including identifying any barriers to efficiently and cost-effectively providing credit for newer products or marketing systems such as local foods and organic agriculture.[9]

Second, many System commenters stated that FCA should not favor a particular type of agriculture and should not suggest that lending to a particular type of agricultural practice increases diversity. They commented that FCA should not distinguish between types of crops produced or the methods or location of production. As just discussed, the rule requires institutions to develop plans as to how they reach out to and serve all eligible and creditworthy persons in their territories. This means outreach and service to all market segments and to all persons within those segments, looking at characteristics that include demography, geography, and types of agriculture practiced. Our use of the term ''local food systems'' was meant to

[7] For example, we recognize that approximately 10 percent of associations have fewer than 20 employees and, therefore, are not required to engage in the AAP planning requirements of section 4.38 of the Act. While, as discussed above, an institution that is subject to section 4.38 may be able to use its AAP plan to satisfy the human capital plan requirement, institutions can also satisfy this requirement without relying on section 4.38-compliant plans.

[8] 76 FR 30281, May 25, 2011.

[9] FCA's Spring 2012 Regulatory Performance Plan, approved February 9, 2012 (available on FCA's Web site at *www.fca.gov/law/perf_plan.html*).

illustrate an example of a potentially underserved market segment where diversity in farming may be found. There may be diverse, eligible, and creditworthy persons operating within local food systems—as well as within other types of agricultural operations—who are not currently being served.

Third, many System commenters stated that many persons who are involved in local food systems may not be eligible for System credit, or that much of their credit needs may not be within FCA's scope of financing regulations, because they may not be full-time, bona fide agricultural producers. Farmers who produce agricultural products for sale directly to consumers or local intermediaries (restaurants, schools, hospitals, etc.) comply with the definition of bona fide farmer in § 613.3000(a)(1) by virtue of growing an agricultural product, and they need not be full-time producers to be considered bona fide.[10] System institutions are authorized to serve only persons who are eligible, and this rule does not require marketing plans to address service toward persons who are not eligible.

The scope of financing that a System institution can provide to a particular borrower is governed by § 613.3005. Under that provision, all bona fide farmers and ranchers may receive full credit, to the extent of creditworthiness, for agricultural needs. The degree of a borrower's involvement in agricultural production determines the amount of non-agricultural credit (also referred to as ''other credit needs'') that a System institution may extend to the borrower. FCA has previously addressed the issue of scope of financing in Examination Bulletin: FCA 2006–2 [11] and Revised Bookletter BL–040 (interpreting ''sound and constructive credit'' for YBS farmers).[12] We encourage System institutions to review these documents for guidance in determining the scope of financing for all types of agricultural producers.

There may be loans that an institution cannot practically make because of FCA's scope of lending regulations. Institutions should, however, evaluate their lending practices to ensure that there are no unnecessary barriers in place, such as lack of employee training or lack of appropriate loan products. As discussed above, FCA's regulatory performance plan specifically includes a project to consider changes to our policy guidance for providing credit and related services to all eligible and creditworthy agricultural producers, including identifying any barriers to efficiently and cost-effectively providing credit for newer products or marketing systems such as local foods.

Finally, many System commenters stated that certain potential customers, including some involved in local food systems, are not creditworthy and that loans to them could create safety and soundness concerns. FCA recognizes that, as with farmers practicing other types of agriculture, some farmers involved in the local food system may not be creditworthy. The rule does not impose any lending requirements, and institutions are not required to make loans that pose safety and soundness risks. Other farmers in the local food system may well be creditworthy based on their background and experience. Institutions should ensure that their credit standards are appropriate and do not impose unnecessary barriers to producers in the local food system.

Some farmers who operate within the local food system are also YBS farmers. The methods suggested in § 614.4165(c)(4), as further explained in BL–040, to ensure that credit and services offered to YBS farmers are provided in a safe and sound manner and within an institution's risk-bearing capacity could benefit YBS borrowers within the local food system.

We received hundreds of comments from non-System commenters supporting small- and mid-sized farmers and ranchers producing for local and regional food markets, farmers' markets, organic markets, and community-supported agriculture. These commenters stated that these farmers—many of whom are socially disadvantaged, are nontraditional producers, or are from non-farming backgrounds—promote healthy farming and eating and environmental responsibility. These commenters stated that these producers are crucial for both public health and national security. Traditional lending models may not fit these producers, however, and limited access to capital is a crucial barrier to their success.

These commenters suggested that FCA include a number of specific requirements in our marketing plan regulation that would require institutions to do the following:

- Train potential borrowers on how to obtain funding;
- Develop and refer potential borrowers to programs to assist them with business planning;
- Develop infrastructure such as cooperatives, farmers' markets, and training programs;
- Increase their knowledge of sustainable agriculture and LRFS;
- Partner with governmental and non-governmental entities and investors to fund LRFS;
- Examine their policies to identify areas where rules may be unnecessarily shutting out potential borrowers;
- Analyze the characteristics of current borrowers to provide baseline data for assessments of achieving diversity and inclusion of LRFS and socially disadvantaged producers;
- Set minimum investment goals for LRFS;
- Make marketing goals and progress assessments public; and
- Add LRFS producers to their boards.

We are not imposing these specific requirements in our regulation. Consideration of requirements such as these is beyond the scope of this regulation project. System institutions may choose to implement these measures as appropriate for the types of agriculture in their territories. Moreover, as discussed above, we are committed to studying these ideas further and to considering future guidance for System institutions.

F. Outreach Efforts or Quotas and Quantifiable Results

Many System commenters urged FCA to clarify the final rule to ensure it promotes efforts toward outreach rather than requiring quotas or quantifiable results in employment and lending. On the other hand, many non-System commenters urged FCA to require institutions to collect and quantify baseline data and, among other things, to evaluate to what extent their borrower base reflects their marketplace and to set minimum investment goals for lending to certain groups. As discussed throughout this preamble, this final rule does not contemplate quotas or quantifiable results in either employment or lending. We agree with the System commenters that this is inappropriate because it is legally problematic and may be difficult both to achieve and to measure.[13]

[10] Section 613.3000(a)(1) of our regulations defines a bona fide farmer or rancher as ''a person owning agricultural land or engaged in the production of agricultural products, including aquatic products under controlled conditions.''

[11] ''Lending Programs for Farmers' Other Credit Needs,'' dated October 2006. This document is available on FCA's Web site. From our home page at *www.fca.gov,* click on the Exam Guidance tab; then click on Examination Bulletins.

[12] ''Providing Sound and Constructive Credit to Young, Beginning, and Small Farmers, Ranchers, and Producers or Harvesters of Aquatic Products,'' dated August 10, 2007. This document is available on FCA's Web site. From our home page at *www.fca.gov,* click on Bookletters from the Quick Links menu.

[13] We note, however, that section 4.38 of the Act requires all System institutions with more than 20 employees to establish and maintain an AAP plan

What the final rule does require, in pertinent part, is outreach to potential employees who may not have previously been aware of the opportunities or considered for reasons other than merit, and to potential customers who may not have previously been aware of the System's services or considered for reasons other than eligibility and creditworthiness. We are revising the language in the final rule to clarify what it does and does not require.

Proposed § 618.8440(b)(7)(i) would have required the human capital plan to include, in relevant part, ''strategies and actions to achieve diversity and inclusion within the institution's workforce [and] management and an assessment of the progress the institution has made in accomplishing these strategies and actions. * * *'' A number of System institutions requested that we replace ''achieve'' with ''strive for.'' They expressed concern that the word ''achieve'' implies quotas or quantifiable results. They stated that a requirement that they ''strive for'' diversity and inclusion is more appropriate, because it would require institutions to seek qualified, diverse candidates for employment through appropriate recruiting and communications driven by market conditions and current hiring needs but would not require them to achieve specific, quantifiable results in hiring.

We agree with this comment and make the requested change. The relevant provision (which we have renumbered as § 618.8440(b)(7)(iii)) requires human capital plans to include ''strategies and actions to strive for diversity and inclusion within the institution's workforce and management.''

A number of System commenters also expressed concern that the word ''assessment'' in proposed § 618.8440(b)(7)(i), which would have required the human capital plan to include ''an assessment of the progress the institution has made in accomplishing these strategies and actions,'' also implied that the rule contemplated data-driven results. We did not mean data-driven results with our use of the word ''assessment''. Nevertheless, to avoid confusion, the final rule does not use that word. Instead, § 618.8440(c) requires a report on the progress the institution has made in accomplishing the required strategies and actions.[14]

Section 618.8440(b)(8)(ii) of the proposed rule would have required the marketing plan to include, in relevant part, ''strategies and actions to provide the institution's products and services to all eligible and creditworthy persons with specific attention toward diversity and inclusion within each market segment, and an assessment of the progress the institution has made in accomplishing these strategies and actions.'' A number of System commenters stated that this requirement could lead to quotas or quantifiable expectations on the lending side.

First, System commenters questioned the requirement to have strategies and actions to ''provide'' the institution's products and services to all eligible and creditworthy persons. They stated that requiring them to have strategies and actions to ''provide'' their products and services, combined with the requirement that they must assess their progress in accomplishing these strategies and actions, suggests that they must quantify their progress in providing their products and services. To clarify this requirement, we replace ''provide'' with ''market,'' thus requiring institutions to have strategies and actions to market their products and services and, to ensure accountability, to report on their marketing progress.

Second, System commenters expressed concern with requiring ''specific attention'' toward diversity and inclusion. To reflect that this rule is intended to address outreach, these commenters suggested that we require ''specific outreach'' rather than ''specific attention'' toward diversity and inclusion. We agree with this comment and make this change in the final rule.

Finally, as on the human capital side, a number of System commenters expressed concern that the word ''assessment'' in proposed § 618.8440(b)(8)(ii), which would have required the marketing plan to include ''an assessment of the progress the institution has made in accomplishing these strategies and actions,'' implied that the rule contemplated data-driven results. We did not mean data-driven results with our use of the word assessment. Nevertheless, to avoid confusion, the final rule does not use that term. Instead, § 618.8440(c) requires a report on the progress the institution has made in accomplishing the required strategies and actions to ensure accountability.[15]

G. Governance

The proposed rule would have required the human capital plan to include strategies and actions to achieve diversity and inclusion within the institution's workforce, management, and governance structure, and an assessment of the progress the institution has made in accomplishing these strategies and actions. It would also have required the human capital plan to include a description of the institution's current workforce, management, and governance structure and an assessment of their strengths and weaknesses.

In the preamble to the proposed rule, we noted that FCA Revised Bookletter BL–009[16] states that bank and association boards of directors may appoint directors—both outside directors and ''other appointed directors'' (stockholders who are appointed)—for specific public policy purposes, such as facilitating diversity, and we encouraged all institutions to consider appointing directors for this purpose when feasible.[17] We also noted that § 611.325(d)(1) of FCA regulations, which implements a specific requirement of section 4.15 of the Act, directs institution nominating committees, which submit slates of eligible borrowers wishing to run for stockholder-elected director positions, to ''endeavor to ensure representation from all areas of [an institution's territory] and as nearly as possible, all types of agriculture practiced within the territory.'' As an institution's borrower base becomes more diverse, we encouraged nominating committees to consider seeking out qualified and representative borrowers of diverse backgrounds.

Some System commenters objected to including governance requirements in their human capital planning. They stated that board diversity and inclusion is a different issue than diversity and inclusion within their workforce. They

that applies the affirmative action standards otherwise applied to contractors of the Federal government. These standards, which are established by the U.S. Department of Labor (DOL), are always changing and may impose hiring goals. For example, in December 2011, the DOL proposed a rule that would require Government contractors to establish a 7-percent utilization goal for hiring employees with disabilities. *See* 76 FR 77056 (Dec. 7, 2011). Because the Act requires compliance with applicable affirmative action standards, FCA examines for compliance with these standards.

[14] As discussed in the section-by-section analysis, the final rule requires that the institution report to its board on its progress rather than requiring the human capital plan to include an assessment of its progress, as the proposed rule would have provided.

[15] As discussed in the section-by-section analysis, the final rule requires that the institution report to its board on its progress rather than requiring the marketing plan to include an assessment of its progress, as the proposed rule would have provided.

[16] ''Farm Credit Bank and Association Appointed Directors,'' dated December 15, 2006. This document is available on FCA's Web site. From our home page at *www.fca.gov,* click on Bookletters under the Quick Links menu.

[17] 76 FR 30284, May 25, 2011.

stated that boards of directors are responsible for governance and therefore should ''own'' the issue, which should not be integrated into a human capital plan that focuses on the workforce and is developed by the institution's leadership. These commenters urged FCA to remove the governance references from human capital planning and instead incorporate these references into existing § 618.8440(b)(2)(ii), as part of the existing requirement that the board's business plan must include an assessment of the needs of the board, based on the annual self-evaluation of the board's performance.

We agree with this comment and suggestion. Accordingly, we are removing all references to governance in the human capital plan requirements in new § 618.8440(b)(7), and we are revising existing § 618.8440(b)(2)(ii) to require that the board specifically must assess whether its needs include improved diversity, as well as the addition of particular skills. This revision clarifies the existing requirement that the board must assess its needs to specifically include diversity as one of its potential needs.

Some System commenters stated that the Act gives nominating committees the responsibility for determining the candidates for director elections and that it would be challenging to provide the nominating committee with information on potential candidates in an attempt to make the board more diverse. System commenters were also concerned that the rule would require institutions to improperly influence the nominating committee in violation of the existing requirement that management must remain impartial in governance matters.

If a board determines, based on its assessment, that it needs to increase its diversity, it may do so directly, without involving the nominating committee, by appointing diverse directors—either outside directors or other appointed (stockholder) directors. Moreover, FCA regulations permit directors or other institution personnel to provide the names of qualified, diverse persons for consideration by the nominating committee. FCA Revised Bookletter BL–043 [18] contains substantial discussion of the extensive assistance institution boards, officers, employees, and agents may provide to nominating committees without violating FCA regulations. This assistance includes, but is not limited to, providing lists of qualified persons from which nominating committees may identify potential candidates.[19] Assistance of this nature does not constitute improper interference with the work of the nominating committee.

Some System commenters stated that there is little diversity in their territory [20] or that stockholders have not elected diverse boards even when candidates were nominated who would have contributed to diversity. We understand that some institution boards may find it difficult to increase diversity among their elected board members. However, if a board determines that it needs additional diversity, and diverse members are not being elected, it should consider appointing qualified directors, either as outside directors or as other appointed (stockholder) directors.

Some System commenters stated that FCA should not suggest that boards should appoint additional directors, whether or not they are qualified, only to achieve board diversity. We are not suggesting this. We note that BL–009 states that institution boards may appoint directors for specific public policy purposes, such as facilitating diversity or acquiring needed skills. This regulation complements that Bookletter by requiring boards to assess whether their needs include additional skills or increased diversity.

A number of System commenters stated that FCA already has enough regulations in the area of governance, that the process is working well, and that any more regulation in this area would pose an undue burden. System commenters also stated that FCA has no authority over governance because the Act provides that board qualifications are set forth in institution bylaws and FCA has no authority, whether direct or indirect, to approve bylaws.

This rule does not specify board qualifications, nor does it impose board composition requirements. The existing rule required boards to assess their needs, and the new requirements specify that diversity is among the needs that must be assessed. Requiring boards to assess a need for diversity does not constitute approval of bylaws. And, since boards are already required to assess all of their needs, whether or not those needs are itemized, expressly identifying certain needs in the regulation does not pose an extra burden.

A number of non-System commenters urged FCA to require System boards to include members of historically underserved farming communities, community-based organizations that serve socially disadvantaged or limited resource farmers, and local and regional farmers and producers. They stated that in order to bring about transformative change toward diversity and inclusion in the corporate culture of System institutions, boards must actively incorporate the unique perspective of these markets.

Consideration of this requirement is beyond the scope of this rulemaking. Institutions may choose to seek out such potential directors, as appropriate.

H. Redundancy in Requirement To Assess Management Capabilities

A number of System commenters stated that the preamble to the proposed rule specified that institutions must perform a SWOT analysis (strengths, weaknesses, opportunities, threats) as part of their human capital and marketing planning. They stated that this requirement was redundant because they believe that existing § 618.8440(b)(2), which requires the business plan to include an annual review of the internal and external factors likely to affect the institution, already requires a SWOT analysis.[21]

However, neither the preamble to the proposed rule nor the proposed rule itself required an overall analysis in either the human capital or marketing plans. The proposed rule, therefore, is not redundant in this respect, and we make no change in the final rule in that regard.[22]

We agree, however, that proposed § 618.8440(b)(7)(ii), which would have required the human capital plan to include a description of the institution's workforce and management and an assessment of their strengths and weaknesses, was redundant; existing § 618.8440(b)(2)(i), which requires the business plan to include an annual review of the internal and external

[18] ''Farm Credit Bank and Association Nominating Committees,'' issued March 8, 2007. This document is available on FCA's Web site. From our home page at *www.fca.gov,* click on Bookletters from the Quick Links menu.

[19] Directors, officers, employees, and agents must avoid any activity that could be construed as influencing the nominating committee's vote on its slate of candidates.

[20] We note that large numbers of women are present even in areas that may lack other characteristics of diversity.

[21] FCA regulations do not use the term ''SWOT analysis.''

[22] In both § 618.8440(b)(7) and (b)(8), however, we revise the language in the final rule to provide that the items required in the human capital plan and the marketing plan may be contained in other board-approved documents that are adopted annually, provided the items are summarized in, and incorporated by reference into, the human capital plan and the marketing plan, respectively. Therefore, if an institution believes that an analysis it is conducting under the existing rule satisfies the requirements of the final rule, it does not need to conduct another, redundant analysis, as long as the analysis is approved by the board, adopted annually, and summarized in and incorporated into the human capital plan and marketing plan, as appropriate.

factors likely to affect the institution, already includes an assessment of management capabilities.

We are finalizing the proposed human capital plan requirement, which we are renumbering as § 618.8440(b)(7)(i), without any changes in the management assessment requirement.[23] To eliminate the redundancy, however, in the final rule we revise the existing business plan requirement at § 618.8440(b)(2)(i). The existing provision requires the business plan to include an assessment of management capabilities, while the revised provision requires the business plan to incorporate the description and assessment of workforce and management strengths and weaknesses required by § 618.8440(b)(7)(i). The existing business plan requirement as revised, therefore, no longer requires an assessment of management capabilities; instead, it requires incorporation of the description and assessment of workforce and management strengths and weaknesses required by the human capital plan requirement.

I. Confidentiality

A number of System commenters stated they should not be required to include sensitive and confidential information pertaining to human capital and marketing planning in their business plans, because business plans are not privileged and may be disseminated to a broader audience. These commenters requested that the regulation require that business plans must incorporate a high-level summary of this information. Many non-System commenters, on the other hand, suggested that FCA should require institutions to make their marketing goals and progress reports public.

The objectives of this rule are, in pertinent part, to ensure that institution boards consider diversity and inclusion in their human capital and marketing planning. These requirements are intended to provide information for boards to consider candidly as they engage in planning, not for public disclosure. Accordingly, both § 618.8440(b)(7), governing human capital planning, and § 618.8440(b)(8), governing marketing planning, provide that the items that are to be included in the plans may be contained in other board-approved documents that are adopted annually, provided the items are summarized in, and incorporated by reference into, the plans. This will enable boards to address sensitive and confidential information in more confidential documents while still ensuring that summaries are included in business plans.

J. Marketing Plan Requirements for Banks and Service Corporations

Several System commenters stated that requiring marketing outreach is problematic for Farm Credit Banks (FCBs), which do not engage in direct lending operations but instead provide loan funds to the direct lender associations. Moreover, service corporations chartered under section 4.25 of the Act typically also do not engage directly with retail customers. We agree with these comments and revise § 618.8440(b)(8) to apply to System institutions in their exercise of title III lending authorities[24] as well as to direct lender associations.

Although FCBs and service corporations are not subject to the marketing plan requirements of § 618.8440(b)(8), they should ensure that they do not do anything to impede the objectives of this regulation nor the ability of subject System institutions to comply with the regulation.

K. Compliance Date for Requirements

Several System commenters requested that FCA not require compliance with these requirements in the middle of the planning year. We agree with this request. Accordingly, we will require compliance beginning with the 2013 business plan.[25]

VII. Section-by-Section Analysis

A. Section 618.8440(a)

For clarity and ease of reference, we are adding a heading, ''Business Plan Requirement,'' to this paragraph. Also for clarity, we are changing ''shall'' to ''must.''

B. Section 618.8440(b)

For clarity and ease of reference, we are adding a heading, ''Content of Business Plan,'' to this paragraph.

1. Section 618.8440(b)(2)

Existing § 618.8440(b)(2) provides that the business plan must include an annual review of the internal and external factors likely to affect the institution during the planning period; this provision is unchanged in the revised rule.

As discussed above in our response to comments, we revise § 618.8440(b)(2)(i) to eliminate the redundancy created by the new human capital plan provision. Existing § 618.8440(b)(2)(i) provides that the required review must include an assessment of management capabilities. The new human capital plan provision (discussed below) requires a description of the institution's workforce and management and an assessment of their strengths and weaknesses. We revise § 618.8440(b)(2)(i) to provide that the review must incorporate the description and assessment of workforce and management strengths and weaknesses required in the human capital plan.

Also, as discussed above in our response to comments, we revise § 618.8440(b)(2)(ii) to explicitly require that the assessment of board needs included in the business plan must specifically include skills and diversity. Existing § 618.8440(b)(2)(ii) provides that the required review must include an assessment of the needs of the board, based on the annual self-evaluation of the board's performance. This revision clarifies that the board's assessment must specifically include diversity and skills as potential needs.

We are making several minor grammatical changes to this provision that are necessary because of the revisions we have discussed.

2. Section 618.8440(b)(6)

We are correcting an erroneous citation in this section.

3. Section 618.8440(b)(7)

New § 618.8440(b)(7) requires each institution to include a human capital plan, which must include specified items, in its business plan. As explained above, the specified items may be contained in other board-approved documents that are adopted annually, provided the items are summarized in, and incorporated by reference into, the human capital plan. Accordingly, if an institution has a separate human capital plan, AAP plan, or other document that contains the items that are required to be included in the human capital plan component of the business plan, the institution can use that other document to satisfy the business plan requirement, as long as the other document is approved by the board annually, as the business plan itself is, and the items are summarized in, and incorporated by reference into, the human capital plan component of the business plan. If the other document does not include these items, however, or if the board does not approve the other document, then the board will have to include the required

[23] We are making an unrelated change to this provision, which we discuss elsewhere in this preamble.

[24] Currently, there is one agricultural credit bank, which has the authority of an FCB and also the title III authority of a bank for cooperatives; in addition to providing loan funds to direct lender associations, it makes loans to agricultural, aquatic, and public utility cooperatives.

[25] Under § 618.8440(a), each institution board must adopt a business plan no later than 30 days after the commencement of each calendar year.

items in the human capital plan component of the business plan.

New § 618.8440(b)(7)(i) requires the human capital plan to include a description of the institution's workforce and management and an assessment of their strengths and weaknesses. New § 618.8440(b)(7)(ii) requires the human capital plan to include a description of the institution's workforce and management succession programs. New § 618.8440(b)(7)(iii) requires the human capital plan to include strategies and actions to strive for diversity and inclusion within the institution's workforce and management. In consideration of comments that we received, these provisions contain several changes from what was proposed. We discuss the reasons for these changes above, in our response to comments.

4. Section 618.8440(b)(8)

New § 618.8440(b)(8) requires each institution in its exercise of title III lending authorities [26] and direct lender association to include a marketing plan, which must include specified items, in its business plan. The requirement does not apply to FCBs, which do not engage in direct lending operations but instead provide loan funds to the direct lender associations, or to service corporations chartered under section 4.25 of the Act, which typically also do not engage directly with retail customers. However, FCBs and service corporations should ensure that they do not do anything to impede the objectives of this regulation nor the ability of subject System institutions to comply with this regulation.

As explained above, the specified items that must be included in the marketing plan may be contained in other board-approved documents that are adopted annually, provided the items are summarized in, and incorporated by reference into, the marketing plan. Accordingly, if an institution has a separate marketing plan, YBS plan, or other document that contains the items that are required to be included in the marketing plan component of the business plan, the institution can use that other document to satisfy the business plan requirement, as long as the other document is approved by the board annually, as the business plan itself is, and the items are summarized in, and incorporated by reference into, the marketing plan component of the business plan. If the other document does not include these items, however, or if the board does not approve the other document, then the board will have to include the required items in the marketing plan component of the business plan.

The marketing plan must strategically address how the institution will further the objective of the Act, set forth in section 1.1(b), that the System be responsive to the credit needs of all types of agricultural producers having a basis for credit. The marketing plan must include, at a minimum, the following:

- A description of the institution's chartered territory by market segment, including the characteristics of demography, geography, and types of agriculture practiced; and
- Strategies and actions to market the institution's products and services to all eligible persons, with specific outreach toward diversity and inclusion within each market segment.

To be able to describe its chartered territory, and to understand whom it should be striving to reach, an institution must know the market segmentation of its territory. Market segmentation is the identification of portions of the market that are different from one another and can include, but is not limited to, characteristics such as demography, geography, and types of agriculture practiced. Market segmentation allows a business to better satisfy the needs of its potential customers.

A vast amount of demographic information, down to the county level, is available on the Web sites of the Census of Agriculture,[27] the U.S. Census Bureau,[28] and the U.S. Department of Agriculture's Economic Research Service.[29] As discussed above, because this rule does not require specific outcomes or quantifiable results, an institution should not compare its lending against this demographic data. Rather, the institution should use this data to gain knowledge of the characteristics of its chartered territory. With this knowledge, the institution can determine whether there may be potential eligible borrowers it can reach out to through better marketing and outreach methods. If an institution believes other reliable data would better provide this information, it may use that data instead.

In consideration of comments we received on these provisions, the revised rule contains several changes from what was proposed. We discuss the reasons for these changes above in our response to comments.

We are also making several minor, nonsubstantive changes to this provision for clarity.

C. Section 618.8440(c)

Section 618.8440(c) is titled ''Board Reporting Requirements.'' This provision requires each institution to report annually to its board of directors on the progress the institution has made in accomplishing the strategies and actions in the human capital plan and, as applicable, the marketing plan.

This provision was not in the proposed rule. Instead, the proposed rule would have required the human capital and marketing plans to include an assessment of the progress the institution had made in accomplishing the strategies and actions in the plans. We made this change for several reasons. First, as discussed above in our response to comments, a number of System commenters were concerned that the word ''assessment'' implied data-driven results. We did not mean data-driven results with our use of the term assessment; therefore, to avoid confusion, we do not use that term here. Second, we believe it is more appropriate for the institution to provide progress reports to the board rather than for the board to include progress reports in its human capital and marketing plans. Although it is not stated explicitly in the rule, we expect that boards will use the information in the progress reports they receive to establish accountability and to formulate the strategies and actions contained in their human capital and marketing plans for the following year.

VIII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, part 618 of chapter VI, title 12

[26] Currently, there is one agricultural credit bank which, in pertinent part, exercises title III authority by making loans to agricultural, aquatic, and public utility cooperatives.

[27] *www.agcensus.usda.gov.*

[28] *www.census.gov.*

[29] *www.ersusda.gov/data/ruralatlas.*

of the Code of Federal Regulations is amended as follows:

PART 618—GENERAL PROVISIONS

■ 1. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, and 2252).

Subpart J—Internal Controls

■ 2. Section 618.8440 is revised to read as follows:

§ 618.8440 Planning.

(a) *Business plan requirement.* No later than 30 days after the commencement of each calendar year, the board of directors of each Farm Credit System institution must adopt an operational and strategic business plan for at least the succeeding 3 years.

(b) *Content of business plan.* The plan must include, at a minimum, the following:

(1) A mission statement.

(2) An annual review of the internal and external factors likely to affect the institution during the planning period. The review must:

(i) Incorporate the description and assessment of workforce and management strengths and weaknesses required by paragraph (b)(7)(i) of this section;

(ii) Include an assessment of the needs of the board, including skills and diversity, based on the annual self-evaluation of the board's performance; and

(iii) Include strategies for correcting identified weaknesses.

(3) Quantifiable goals and objectives.

(4) Pro forma financial statements for each year of the plan.

(5) A detailed operating budget for the first year of the plan.

(6) The capital adequacy plan adopted pursuant to § 615.5200(b) of this chapter.

(7) A human capital plan that includes, at a minimum, the items specified in this paragraph (b)(7). These items may be contained in other board-approved documents that are adopted annually, provided the items are summarized in, and incorporated by reference into, the human capital plan.

(i) A description of the institution's workforce and management and an assessment of their strengths and weaknesses;

(ii) A description of the institution's workforce and management succession programs; and

(iii) Strategies and actions to strive for diversity and inclusion within the institution's workforce and management.

(8) For each Farm Credit System institution in its exercise of title III lending authorities and direct lender association, a marketing plan that strategically addresses how the institution will further the objective of the Act, set forth in section 1.1(b) of the Act, that the System be responsive to the credit needs of all types of agricultural producers having a basis for credit. The marketing plan must include, at a minimum, the items specified in this paragraph (b)(8). These items may be contained in other board-approved documents that are adopted annually, provided the items are summarized in, and incorporated by reference into, the marketing plan.

(i) A description of the institution's chartered territory by market segment, including the characteristics of demography, geography, and types of agriculture practiced; and

(ii) Strategies and actions to market the institution's products and services to all eligible and creditworthy persons, with specific outreach toward diversity and inclusion within each market segment.

(c) *Board reporting requirements.*

(1) Each institution must report annually to its board of directors on the progress the institution has made in accomplishing the strategies and actions required by paragraph (b)(7)(iii) of this section.

(2) Each institution subject to paragraph (b)(8) of this section must report annually to its board of directors on the progress the institution has made in accomplishing the strategies and actions required by paragraph (b)(8)(ii) of this section.

Dated: April 19, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–10356 Filed 4–30–12; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[USCG–2011–0231]

RIN 1625–AA01

Anchorage Regulations; Wells, ME

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; request for comments.

SUMMARY: On January 6, 2012, we established three special anchorage areas in Wells Harbor, Wells, Maine, through a published final rule. The Marine Chart Division of the National Oceanographic and Atmospheric Administration (NOAA) advised the Coast Guard that the coordinates in the final rule for the three special anchorage areas were out of sequence and formed an hourglass shaped anchorage. This direct final rule corrects the sequence of the coordinates so that the anchorage area forms a box-like shaped anchorage.

DATES: This rule is effective July 30, 2012, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via *http://www.regulations.gov* on or before July 2, 2012 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by July 2, 2012, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0231 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. John J. Mauro, Waterways Management Branch Chief, First Coast Guard District; telephone 617–223–8355, email *John.J.Mauro@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0231), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2011–0231) in the ''Search'' box and click ''Search.'' Then click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2011–0231) in the ''Search'' box and click ''Search.'' Then click ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But, you may submit a request for a public meeting using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

We are publishing this direct final rule under 33 CFR 1.05–55 because we do not expect an adverse comment. If no adverse comment or notice of intent to submit an adverse comment is received by July 2, 2012, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (*e.g.,* to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered ''adverse'' if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

Basis and Purpose

The legal basis for this rule is: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

This rule is intended to reduce the risk of vessel collisions by creating three special anchorage areas in the western, central and eastern portions of Wells Harbor creating anchorage for approximately 150 vessels.

Discussion of Rule

On January 6, 2012, we established three special anchorage areas in Wells Harbor, Wells, Maine through a published final rule (76 FR 76295). This action was necessary to facilitate safe navigation in that area and provide safe and secure anchorages for vessels not more than 20 meters in length. The Coast Guard received no comments on this published final rule during the rulemaking process for it.

The Marine Chart Division of the National Oceanographic and Atmospheric Administration (NOAA) advised the Coast Guard that the coordinates in the final rule for the three special anchorage areas were out of sequence. When plotted individually and then connected, the coordinates are correct. However, in this case, the Coast Guard directed the mariner to plot the coordinates in a clockwise direction. When the mariner plots the anchorage as directed, the lines will cross and an hour-glass shaped anchorage area is formed instead of a more typical box shaped anchorage area. This is caused because the last two positions in each anchorage area are out of sequence. As a result, the mariner may become confused about what is the proper anchorage area. This rule is intended to put the coordinates for the three special anchorage areas in the proper clockwise sequence and to form a box shaped anchorage area.

All coordinates are North American Datum 1983 (NAD 83).

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.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This determination is based in part upon the fact that Coast Guard received no comments on the published final rule that established the anchorage in this area with the out of sequence coordinates. The Coast Guard expects minimal additional cost impacts on fishing, or recreational boats anchoring because this rule would not affect normal surface navigation. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: Normal surface navigation will not be affected as this area has been historically used as a mooring field by the Town of Wells and the number of vessels using the anchorage is limited due to depth (less than or equal to 18 feet).

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 would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of recreational and small fishing vessels intending to anchor in Wells Harbor.

The rule would not have a significant economic impact on a substantial number of small entities for the following reasons: normal surface navigation will not be affected as this area has been historically used as a mooring field by the Town of Wells and the number of vessels using the anchorage is limited due to depth (less than or equal to 18 feet).

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions 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)(a) of the Instruction because it involves an editorial procedure for these special anchorage grounds. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 110.9 to subpart A to read as follows:

§ 110.9 Wells Harbor, Maine.

(a) *Anchorage ''A''.* All of the waters enclosed by a line beginning at latitude 43°19′15.7″ N, longitude 070°33′42.1″ W; thence to latitude 43°19′15.7″ N, longitude 070°33′40.3″ W; thence to latitude 43°19′3.7″ N, longitude 070°33′42.6″ W; thence to latitude 43°19′2.6″ N, longitude 70°33′45.7″ W; thence to the point of beginning. This area is approximately 5,800 sq. yards, encompassing the central portion of Wells Harbor.

(b) *Anchorage ''B''.* All of the waters enclosed by a line beginning at latitude 43°19′11.1″ N, longitude 070°33′49.8″ W; thence to latitude 43°19′10.5″ N, longitude 070°33′47.3″ W; thence to latitude 43°19′8.3″ N, longitude 070°33′47.3″ W; thence to latitude 43°19′8.7″ N, longitude 070°33′50.6″ W; thence to the point of beginning. This area is approximately 25,000 sq. yards, encompassing the western portion of Wells Harbor.

(c) *Anchorage ''C''.* All of the waters enclosed by a line beginning at latitude 43°19′17.7″ N, longitude 070°33′34.0″ W; thence to latitude 43°19′18.4″ N, longitude 070°33′32.9″ W; thence to latitude 43°19′13.8″ N, longitude 070°33′25.5″ W; thence to latitude 43°19′13.0″ N, longitude 070°33′26.2″ W; thence to the point of beginning. This area is approximately 8,200 sq. yards, encompassing the eastern portion of Wells Harbor.

* * * * *

Dated: April 19, 2012.

James B. McPherson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2012–10429 Filed 4–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0362]

Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs University Bridge across the Lake Washington Ship Canal, mile 4.3, at Seattle, WA. This deviation is necessary to accommodate the Beat the Bridge charity foot race scheduled for Sunday, May 20, 2012. This deviation allows the bridge to remain in the closed position to allow safe movement of event participants.

DATES: This deviation is effective from 8 a.m. on May 20, 2012 through 9:30 a.m. May 20, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0362 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0362 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email *randall.d.overton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Washington State Department of Transportation has requested that University Bridge remain closed to vessel traffic to facilitate safe passage of participants of the Beat the Bridge charity event. Beat the Bridge is an annual foot race held in Seattle, WA to benefit diabetes research. The race course passes over University Bridge. University Bridge crosses the Lake Washington Ship Canal at mile 4.3 and while in the closed position provides 30 feet of vertical clearance throughout the navigation channel and 45 feet of vertical clearance through the center of the bridge; vertical clearance referenced to the Mean Water Level of Lake Washington. Vessels which do not require a bridge opening may continue to transit beneath the bridge during this closure period. Under normal conditions this bridge operates in accordance with 33 CFR 117.1051(d) which requires the bridge to open on signal, except that the bridge need not open for vessels less than 1,000 gross tons from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday. This deviation period is from 8 a.m. on Sunday, May 20, 2012 through 9:30 a.m. on Sunday, May 20, 2012. The deviation allows the bascule span of the University Bridge to remain in the closed position and need not open for maritime traffic from 8 a.m. through 9:30 a.m. on May 20, 2012. The bridge shall operate in accordance to 33 CFR 117.1051(d) at all other times. Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The draw span will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

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

Dated: April 19, 2012.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2012–10411 Filed 4–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0330]

Drawbridge Operation Regulation; Intracoastal Waterway, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Norfolk Southern #7 Railroad Bridge, across the Intracoastal Waterway, mile 5.8, in Chesapeake, VA. The deviation is necessary to facilitate replacing the lift joints of the drawbridge. This deviation restricts operation of the draw span, allowing it to remain in the closed position for three days.

DATES: This deviation is effective 6 a.m. May 8, 2012, until 8 p.m. May 10, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0330 and are available online by going to *www.regulations.gov,* inserting USCG–2012–0330 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at telephone 757–398–6587, email *Terrance.A.Knowles@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Corporation, who owns and operates this single-leaf bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.997(d) to facilitate mechanical repairs.

The Norfolk Southern #7 Bridge, at AIWW mile 5.8, across the Elizabeth River (Southern Branch) in Chesapeake, VA, has a vertical clearance in the closed position to vessels of 7 feet above mean high water.

Under the regular schedule set out at 33 CFR 117.997(d)(2), the Norfolk Southern #7 Bridge, at AIWW mile 5.8, across the Elizabeth River (Southern Branch) in Chesapeake, VA, shall be left in the open position to vessels and will only be closed for the passage of trains and to perform periodic maintenance.

To facilitate replacement of the lift joints of the draw span, the bridge will be maintained in the closed-to-navigation position each day from 6 a.m. to 8 p.m. on May 8, 2012 through May 10, 2012.

Vessels that can pass under the bridge without a bridge opening may do so at all times. The bridge normally operates in the open position with several vessels transiting a week. There are no alternate routes for vessels transiting this section of the Elizabeth River.

Normal users of the waterway in the month of May are primarily recreational boats along with tug and barge traffic in the daytime. The bridge will be unable to open for emergencies.

To ensure that waterway users are aware of the closure, the Coast Guard will issue a Local and Broadcast Notices to Mariners to allow mariners to schedule their transits accordingly.

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

Dated: April 16, 2012.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2012–10416 Filed 4–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2012–0226]

Drawbridge Operation Regulation; St. Croix River, Stillwater, MN

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Stillwater Highway Drawbridge across the St. Croix River, mile 23.4, at Stillwater, Minnesota. The deviation is necessary to enable completion of repairs to the bridge. This deviation allows the bridge to be operated on a restricted opening schedule.

DATES: This deviation is effective from 8:00 a.m. on October 15, 2012 to 7:59 a.m. on December 31, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0226 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0226 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: The Minnesota Department of Transportation requested a temporary deviation for the Stillwater Highway Drawbridge, across the St. Croix River, mile 23.4, at Stillwater, Minnesota to be operated on a restricted opening schedule from October 15, 2012 until December 31, 2012; as follows:

From 8:00 a.m. October 15, 2012 through 7:59 a.m. October 20, 2012, lift span will remain in the closed-to-navigation position.

From 8:00 a.m. October 20, 2012, through 5:59 p.m. October 21, 2012, lift span will open with 24-hour advance notice.

From 6:00 p.m. October 21, 2012, through 7:59 a.m. October 27, 2012, lift span will remain in the closed-to-navigation position.

From 8:00 a.m. October 27, 2012, through 5:59 p.m. October 28, 2012, lift span will open with 24-hour advance notice.

From 6:00 p.m. October 28, 2012, through 7:59 a.m. November 3, 2012, lift span will remain in the closed-to-navigation position.

From 8:00 a.m. November 3, 2012, through 5:59 p.m. November 4, 2012, lift span will open with 24-hour advance notice.

From 6:00 p.m. November 4, 2012, through 7:59 a.m. December 31, 2012, lift span will remain in the closed-to-navigation position.

The Stillwater Highway Drawbridge currently operates in accordance with 33 CFR 117.667(b), which states specific seasonal and commuter hours operating requirements.

There are no alternate routes for vessels transiting this section of the St. Croix River. For emergency vessels, there will be a contingency plan in place.

The Stillwater Highway Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 10.9 feet above normal pool. Navigation on the waterway primarily consists of commercial sightseeing/dinner cruise boats and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

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

Dated: March 27, 2012.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2012–10432 Filed 4–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0292]

Drawbridge Operation Regulations; James River, Hopewell, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the SR 156/Benjamin Harrison Memorial Bridge, at mile 65.0, across the James River, at Hopewell, VA. This deviation is necessary to facilitate mechanical repairs to the vertical lift span. The deviation allows the drawbridge to remain in the closed to navigation position.

DATES: This deviation is effective from 8 a.m. to 4 p.m. on May 8, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket USCG–2012–0292 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0292 in the ''Keywords'' box, and then clicking ''Search''. This material is also available for inspection or copying the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6422, email *Bill.H.Brazier@uscg.mil.* If you have questions on reviewing the docket, call Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Virginia Department of Transportation, who owns and operates this vertical-lift type bridge, has requested a temporary deviation from the current operating regulations to facilitate structural repairs.

Under the regular operating schedule, the SR 156/Benjamin Harrison Memorial Bridge, at mile 65.0, across the James River, at Hopewell, VA opens on signal as required by 33 CFR 117.5 and has vertical clearances in the full open and closed positions of 145 feet and 50 feet above mean high water, respectively.

Under this temporary deviation, the drawbridge will be maintained in the closed to navigation position to facilitate repairs to the skew couplings that keep the vertical lift portion of the bridge balanced. The lift span will be closed to vessels from 8 a.m. to 4 p.m., on Tuesday, May 8, 2012. The bridge will be unable to open for emergencies.

The James River caters to a variety of vessels from freighters to tug and barge traffic to recreational vessels. The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users. Additionally, the Coast Guard will inform unexpected users of the waterway through our Local and Broadcast Notice to Mariners of the closure period for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

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

Dated: April 18, 2012.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2012–10418 Filed 4–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0101]

RIN 1625–AA00

Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor during the movement of the historic sloop-of-war USS CONSTELLATION on May 24, 2012. This action is necessary to provide for the safety of life on navigable waters during the tow of the vessel from its berth at the Inner Harbor in Baltimore, Maryland, to a point on the Patapsco River near the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland, and its return. This action will restrict vessel traffic in portions of the Patapsco River, Northwest Harbor, and Inner Harbor during the event.

DATES: This rule is effective from May 24, 2012 through May 31, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2012–0101 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0101 in the ''Keyword'' box, and then clicking ''Search.'' Click on Open Docket Folder on the line associated with this rulemaking. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 27, 2012, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD'' in the **Federal Register** (77 FR 11434). We received one comment on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

Background and Purpose

Historic Ships in Baltimore is planning to conduct a ''turn-around'' ceremony involving the sloop-of-war USS CONSTELLATION in Baltimore, Maryland on May 24, 2012. Planned events include a three-hour, round-trip tow of the USS CONSTELLATION in the Port of Baltimore, consisting of an onboard salute with navy pattern cannon while the historic vessel is positioned off the Fort McHenry National Monument and Historic Site. Beginning at 3 p.m., the historic Sloop-of-War USS CONSTELLATION will be towed ''dead ship,'' which means that the vessel will be underway without the benefit of mechanical or sail propulsion. The return dead ship tow of the USS CONSTELLATION to its berth in the Inner Harbor is expected to occur immediately upon execution of a tug-assisted turn-around of the USS CONSTELLATION on the Patapsco River near Fort McHenry. The Coast Guard anticipates a large recreational boating fleet during this event, scheduled on a late Thursday afternoon before the Memorial Day Holiday weekend in Baltimore, Maryland. Operators should expect significant vessel congestion along the planned route. In the event of inclement weather, the ''turn-around'' will be rescheduled for May 31, 2012.

To address safety concerns during the event, the Captain of the Port Baltimore will establish a safety zone upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor. The safety zone will help the Coast Guard provide a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. Due to the need to promote maritime safety and protect participants and the boating public in the Port of Baltimore immediately prior to, during, and after the scheduled event, a safety zone is prudent.

Discussion of Comments and Changes

The Coast Guard received one comment in response to the NPRM. No public meeting was requested and none was held. What follows is a review of, and the Coast Guard's response to, the issue that was presented by the commenter concerning the proposed regulations.

The commenter, Mr. Christopher Rowsom of Historic Ships in Baltimore, who is the event organizer, stated that the date for the USS Constellation Turn-around Cruise was posted incorrectly as May 25, the actual date for the event is Thursday, May 24, 2012, and all event times remain the same.

We are adjusting the timing accordingly. We believe that changing the effective date in the rule as suggested by the commenter, from May 25 to May 24, will not adversely affect waterway users in the Patapsco River, Northwest Harbor and Inner Harbor on May 24, 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. Although this safety zone restricts vessel traffic through the affected area, the effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or transit through or within the safety zone during the enforcement period. The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is of limited size and duration. Smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the safety zone. Maritime advisories will be widely available to the maritime community before the effective period.

Assistance for Small Entities

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

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

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T05–0101 to read as follows:

§ 165.T05–0101 Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD.

(a) *Regulated area.* The following location is a safety zone:

(1) All waters within 200 yards ahead of and 100 yards outboard or aft of the historic Sloop-of-War USS CONSTELLATION while operating in the Inner Harbor, the Northwest Harbor and the Patapsco River.

(2) [Reserved]

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

(1) ''Captain of the Port Baltimore'' means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

(2) ''Designated representative'' means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(3) ''USS CONSTELLATION ''turn-around'' participants'' means the USS CONSTELLATION, its support craft and the accompanying towing vessels.

(c) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0101.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) With the exception of USS CONSTELLATION ''turn-around'' participants, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the safety zone is implemented do not have to depart the safety zone. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first request

authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing lights, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Enforcement period.* This section will be enforced from 2 p.m. through 7 p.m. on May 24, 2012, and, if necessary due to inclement weather, from 2 p.m. through 7 p.m. on May 31, 2012.

Dated: April 11, 2012.

Mark P. O'Malley,

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

[FR Doc. 2012–10484 Filed 4–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0309]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier East, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier East Safety Zone in Chicago Harbor at various times from May 20, 2012 through July 15, 2012. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after a fireworks display and several match boat race events. This rule will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after Chicago Match Race events. During the enforcement period, no person or vessel may enter the safety zone without the permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.933 will be enforced at various times between 9:00 p.m. on May 20, 2012 through 8:00 p.m. on July 15, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7154, email *Adam.D.Kraft@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone; 33 CFR 165.933—Chicago Harbor, Navy Pier East, Chicago, IL for the following events:

(1) *Navy Pier Fireworks;* on May 20, 2012 from 9:00 p.m. through 11:00 p.m.

(2) *Chicago Match Race;* on June 1, 2012 from 8:00 a.m. through 8:00 p.m.; on June 2, 2012 from 8:00 a.m. through 8:00 p.m.; on June 3, 2012 from 8:00 a.m. through 8:00 p.m.; on July 11, 2012 from 8:00 a.m. through 8:00 p.m.; on July 12, 2012 from 8:00 a.m. through 8:00 p.m.; on July 13, 2012 from 8:00 a.m. through 8:00 p.m.; and on July 14, 2012 from 8:00 a.m. through 8:00 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.933 Safety Zone, Chicago Harbor, Navy Pier East, Chicago IL 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 these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: April 9, 2012.

C.W. Tenney,

Commander, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan, Acting.

[FR Doc. 2012–10478 Filed 4–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at various times from June 14, 2012 until June 22, 2012. This action is necessary to protect the waterways, waterway users, and vessels from hazards associated with the U.S. Army Corps of Engineers' post-maintenance testing of Barrier IIA and IIB.

During the enforcement period, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced from 7:00 a.m. to 11:00 a.m. and from 1:00 p.m. to 5:00 p.m. on June 14 and 15, and again on June 21 and 22, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email CWO Jon Grob, Prevention Department, Coast Guard Sector Lake Michigan, telephone 414–747–7188, email address *Jon.K.Grob@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and

Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone between Mile Marker 296.1 to Mile Marker 296.7 on all waters of the Chicago Sanitary and Ship Canal. Enforcement will occur from 7:00 a.m. until 11:00 a.m. and 1:00 p.m. until 5:00 p.m. on:

(1) On June 14–15, 2012

(2) On June 21–22, 2012

This enforcement action is necessary because the Captain of the Port, Sector Lake Michigan has determined that the U.S. Army Corps of Engineers' post-maintenance testing of Barriers IIA and IIB pose risks to life and property. The combination of vessel traffic and the testing operations in the water makes the controlling of vessels through the impacted portion of the Chicago Sanitary and Ship Canal necessary to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Sector Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice. Additionally, the Captain of the Port, Sector Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: April 23, 2012.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2012–10479 Filed 4–30–12; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 233

Inspection Service Authority; Seizure and Forfeiture

AGENCY: Postal Service ™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising its regulations with regard to forfeiture authority and proceedings. These new provisions implement specific requirements in compliance with the Civil Asset Forfeiture Reform Act (CAFRA) of 2000.

DATES: *Effective date:* May 31, 2012.

FOR FURTHER INFORMATION CONTACT: R. Emmett Mattes III, Chief Counsel, U.S. Postal Inspection Service, 202–268–7732.

SUPPLEMENTARY INFORMATION: On February 27, 2012, the Postal Service published with a request for comments a proposed revision of its regulations with regard to forfeiture authority and proceedings (77 FR 11437–52). As explained in that notice, the proposed revision was intended to implement specific requirements in compliance with the Civil Asset Forfeiture Reform Act (CAFRA) of 2000, consistent with the following goals:

(1) Consolidate the Postal Service's rules and regulations regarding the seizure and forfeiture of property from four sections into three, and include provisions governing remission or mitigation of administrative, civil, and criminal forfeitures.

(2) Identify the scope of authority available to the Postal Service to seize property for forfeiture, update definitions, and provide procedures governing practical issues regarding the seizure, custody, inventory, appraisal, settlement, and release of property subject to forfeiture.

(3) Conform the seizure and forfeiture regulations of the Postal Service to address procedural changes necessitated by CAFRA, and incorporate CAFRA's innocent owner defense into the remission regulations.

(4) Update the regulations to conform with other authorities and current forfeiture practice.

(5) Modify the procedures governing petitions for remission or mitigation of forfeiture, clarify the existing regulations pertaining to victims, and make remission available to third parties who reimburse victims under an indemnification agreement.

No comments were received in response to the publication of the proposed rule, and the Postal Service has accordingly determined to adopt the proposed revision to Part 233 without change.

List of Subjects in 39 CFR Part 233

Administrative practice and procedure, Crime, Law enforcement, Penalties, Privacy.

Accordingly, for the reasons stated, the Postal Service amends 39 CFR Part 233 as follows:

PART 233—INSPECTION SERVICE AUTHORITY

■ 1. The authority citation for 39 CFR part 233 is revised to read as follows:

Authority: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 983, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Omnibus Budget Reconciliation Act of 1996, sec. 662 (Pub. L. 104–208).

■ 2. Section 233.7 is revised to read as follows:

§ 233.7 Forfeiture authority and procedures.

(a) *Scope of regulations.* (1) The regulations in this section apply to all forfeitures administered by the United States Postal Service with the exception of seizures and forfeitures under the statutes listed in 18 U.S.C. 983(i). The authority to conduct administrative forfeitures derives from the procedural provisions of the Customs laws (19 U.S.C. 1602–1618) where those provisions are incorporated by reference in the substantive forfeiture statutes.

(2) The regulations in this section will apply to all forfeiture actions commenced on or after May 31, 2012.

(b) *Designation of officials having administrative forfeiture authority.* (1) *Administrative forfeiture authority.* The Chief Postal Inspector is authorized to conduct administrative forfeitures under the statutes identified in paragraph (b)(2) of this section, following, where applicable, the procedures provided by the customs laws of the United States (19 U.S.C. 1602–1618) and to pay valid liens and mortgages against property that has been so forfeited.

(2) *Authority of the Chief Postal Inspector.* The Chief Postal Inspector is authorized to perform all duties and responsibilities necessary on behalf of the Postal Service and the Office of Inspector General to enforce 18 U.S.C. 981, 983, 2254; 21 U.S.C. 863(c), 881; and 31 U.S.C. 5317; following, where applicable, the procedures provided by the Customs laws of the United States (19 U.S.C. 1602–1618), and to pay valid liens and mortgages against property that has been so forfeited. The Chief Postal Inspector is authorized to delegate all or any part of this authority to Deputy Chief Inspectors, Inspectors in Charge, and Inspectors of the Postal Inspection Service, and to issue such instructions as may be necessary to carry out this authority.

(3) *State adoption.* The seizure of property by a state or local law

enforcement agency or other entity or individual may be adopted for forfeiture by the Postal Inspection Service, as appropriate under its seizure authority pursuant to paragraphs (b)(1) and (2) of this section.

(c) *Definitions.* As used in this section, the following terms shall have the meanings specified:

(1) *Administrative forfeiture* means the process by which property may be forfeited by the Postal Inspection Service rather than through judicial proceedings. Administrative forfeiture has the same meaning as nonjudicial forfeiture, as that term is used in 18 U.S.C. 983.

(2) *Appraised value* means the estimated market value of property at the time and place of seizure if such or similar property was freely offered for sale between a willing seller and a willing buyer.

(3) *Appropriate official* means the Chief Postal Inspector or that person's designee, or where the term ''appropriate official'' means the office or official identified in the notice published or personal written notice in accordance with paragraph (j) of this section.

(4) *Contraband* means:

(i) Any controlled substance, hazardous raw material, equipment or container, plants, or other property subject to summary forfeiture pursuant to sections 511(f) or (g) of the Controlled Substances Act (21 U.S.C. 881(f) or (g)); or

(ii) Any controlled substance imported into the United States, or exported out of the United States, in violation of law.

(5) *Civil forfeiture proceeding* means a civil judicial forfeiture action as that term is used in 18 U.S.C. 983.

(6) *Domestic value* means the same as the term *appraised value* as defined in paragraph (c)(2) of this section.

(7) *Expense* means all costs incurred to detain, inventory, safeguard, maintain, advertise, sell, or dispose of property under seizure, detained, or forfeited pursuant to any law.

(8) *File or filed* has the following meanings:

(i) A claim or any other document submitted in an administrative forfeiture proceeding is not deemed filed until actually received by the appropriate official identified in the personal written notice and the published notice specified in paragraph (i) of this section. A claim is not considered filed if it is received by any other office or official. In addition, a claim in an administrative forfeiture proceeding is not considered filed if received only by an electronic or facsimile transmission.

(ii) For purposes of computing the start of the 90-day period set forth in 18 U.S.C. 983(a)(3), an administrative forfeiture claim is filed on the date when the claim is received by the designated official, even if the claim is received from an incarcerated *pro se* prisoner.

(9) *Interested party* means any person who reasonably appears to have an interest in the property, based on the facts known to the Postal Inspection Service before a declaration of forfeiture is entered.

(10) *Judicial forfeiture* means either a civil or a criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

(11) *Mail* includes regular or certified U.S. mail, and mail and package transportation and delivery services provided by other private or commercial interstate carriers.

(12) *Nonjudicial forfeiture* has the same meaning as administrative forfeiture. See paragraph (b)(1) of this section.

(13) *Person* means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

(14) *Property subject to administrative forfeiture* means any personal property of the kinds described in 19 U.S.C. 1607(a)(1)(4).

(15) *Property subject to forfeiture* refers to all property that Federal law authorizes to be forfeited to the United States of America in any administrative forfeiture proceeding, in any civil judicial forfeiture proceeding, or in any criminal forfeiture proceeding.

(d) *Seizing property subject to forfeiture*—(1) *Authority to seize property.* Postal Inspectors may seize assets under any Federal statute over which the Postal Inspection Service has investigative or forfeiture jurisdiction.

(2) *Turnover of assets seized by state and local agencies.* (i) Property that is seized by a state or local law enforcement agency and transferred to the Postal Inspection Service for administrative or civil forfeiture may be adopted for administrative forfeiture without the issuance of any Federal seizure warrant or other Federal judicial process.

(ii) Where a state or local law enforcement agency maintains custody of property pursuant to process issued by a state or local judicial authority, and notifies the Postal Inspection Service of the impending release of such property, the Postal Inspection Service may seek and obtain a Federal seizure warrant in anticipation of a state or local judicial authority releasing the asset from state process for purposes of Federal seizure, and may execute such seizure warrant when the state or local law enforcement agency releases the property as allowed or directed by its judicial authority.

(e) *Inventory.* The Postal Inspection Service shall prepare an inventory of any seized property.

(f) *Custody.* (1) All property seized by Postal Inspectors for forfeiture shall be delivered to the custody of the U.S. Marshals Service, or custodian approved by the U.S. Marshals Service, as soon as possible after seizure, unless it is retained as evidence.

(2) Seized U.S. currency (and to the extent practicable seized foreign currency and negotiable instruments) must be deposited promptly in the Holding Account—Seizure and Forfeiture under the control of the Postal Inspection Service pending forfeiture. Provisional exceptions to this requirement may be granted as follows:

(i) If the seized currency has a value less than $5,000, and a supervisory official within the U.S. Attorney's Office determines in writing that the currency is reasonably likely to serve a significant, independent, tangible, evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise, or

(ii) The seized currency has a value greater than $5,000, and the Chief, Asset Forfeiture Money Laundering Section (AFMLS) determines in writing that the currency is reasonably likely to serve a significant, independent, tangible, evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise.

(3) Seized currency has a *significant independent, evidentiary purpose* as those terms are used in paragraphs (f)(2)(i) and (f)(2)(ii) of this section if, for example, it bears fingerprint evidence, is packaged in an incriminating fashion, or contains a traceable amount of narcotic residue or some other substance of evidentiary significance. If only a portion of the seized currency has evidentiary value, only that portion should be retained; the balance should be deposited.

(g) *Appraisal.* The Postal Inspection Service shall determine the domestic value of the seized property as soon as practicable following seizure.

(h) *Release before claim.* (1) After seizure for forfeiture and prior to the filing of any claim, the appropriate

official is authorized to release property seized for forfeiture provided:

(i) The property is not contraband, evidence of a violation of law, or any property, the possession of which by the claimant, petitioner, or the person from whom it was seized is prohibited by state or Federal law, and does not have a design or other characteristic that particularly suits it for use in illegal activities; and

(ii) The appropriate official determines within 10 days of seizure that there is an innocent party with the right to immediate possession of the property or that the release would be in the best interest of justice or the Government.

(2) Further, at any time after seizure and before any claim is filed, such seized property may be released if the appropriate official determines that there is an innocent party with the right to immediate possession of the property or that the release would be in the best interest of justice or the Government.

(i) *Commencing an administrative forfeiture.* An administrative forfeiture proceeding begins when notice is first published in accordance with paragraph 233.7(i)(1), or the first personal written notice is sent in accordance with paragraph 233.7(i)(2), whichever occurs first.

(j) *Notice of administrative forfeiture*—(1) *Notice by publication.* (i) After seizing property subject to administrative forfeiture, the Appropriate Official shall select from the following options a means of publication reasonably calculated to notify potential claimants of the seizure and intent to forfeit and sell or otherwise dispose of the property:

(A) Publication once each week for at least three successive weeks in a newspaper generally circulated in the judicial district where the property was seized; or

(B) Posting a notice on an official Government Internet site for at least 30 consecutive days.

(ii) The published notice shall:

(A) Describe the seized property;

(B) State the date, statutory basis, and place of seizure;

(C) State the deadline for filing a claim when personal written notice has not been received, at least 30 days after the date of final publication of the notice of seizure; and

(D) State the identity of the appropriate official of the Postal Inspection Service and address where the claim must be filed.

(2) *Personal written notice*—(i) *Manner of providing notice.* After seizing property subject to administrative forfeiture, the Postal Inspection Service, in addition to publishing notice, shall send personal written notice of the seizure to each interested party in a manner reasonably calculated to reach such parties.

(ii) *Content of personal written notice.* The personal written notice sent by the Postal Inspection Service shall:

(A) State the date when the personal written notice is sent;

(B) State the deadline for filing a claim, at least 35 days after the personal written notice is sent;

(C) State the date, statutory basis, and place of seizure;

(D) State the identity of the appropriate official of the Postal Inspection Service and the address where the claim must be filed; and

(E) Describe the seized property.

(3) *Timing of notice*—(i) *Date of personal notice.* Personal written notice is sent on the date when the Postal Inspection Service causes it to be placed in the mail, or otherwise sent by means reasonably calculated to reach the interested party. The personal written notice required by paragraph (i)(2) of this section shall be sent as soon as practicable, and in no case more than 60 days after the date of seizure (or 90 days after the date of seizure by a state or local law enforcement agency if the property was turned over to the Postal Inspection Service for the purpose of forfeiture under Federal law).

(ii) *Civil judicial forfeiture.* If, before the time period for sending notice expires, the Government files a civil judicial forfeiture action against the seized property and provides notice of such action as required by law, personal notice of administrative forfeiture is not required under this paragraph.

(iii) *Criminal indictment.* If, before the time period for sending notice under this paragraph expires, no civil judicial forfeiture action is filed, but a criminal indictment or information is obtained containing an allegation that the property is subject to forfeiture, the seizing agency shall either:

(A) Send timely personal written notice and continue the administrative forfeiture proceeding; or

(B) After consulting with the U.S. Attorney, terminate the administrative forfeiture proceeding and notify the custodian to return the property to the person having the right to immediate possession unless the U.S. Attorney takes steps necessary to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(4) *Subsequent Federal seizure.* If property is seized by a state or local law enforcement agency, but personal written notice is not sent to the person from whom the property is seized within the time period for providing notice under paragraph (j)(3)(i) of this section, then any administrative forfeiture proceeding against the property may commence if:

(i) The property is subsequently seized or restrained by the Postal Inspection Service pursuant to a Federal seizure warrant or restraining order and the Postal Inspection Service sends notice as soon as practicable, and in no case more than 60 days after the date of the Federal seizure; or

(ii) The owner of the property consents to forfeiture of the property.

(5) *Tolling.* (i) In states or localities where orders are obtained from a state court authorizing the turnover of seized assets to the Postal Inspection Service, the period from the date an application or motion is presented to the state court for the turnover order through the date when such order is issued by the court shall not be included in the time period for providing notice under paragraph (j)(3)(i) of this section.

(ii) If property is detained at an international border or port of entry for the purpose of examination, testing, inspection, obtaining documentation, or other investigation relating to the importation of the property into, or the exportation of the property from the United States, such period of detention shall not be included in the period described in paragraph (j)(3)(i) of this section. In such cases, the 60-day period shall begin to run when the period of detention ends, if a seizing agency seizes the property for the purpose of forfeiture to the United States.

(6) *Identity of interested party.* If the Postal Inspection Service determines the identity or interest of an interested party after the seizure or adoption of the property, but before entering a declaration of forfeiture, the Postal Inspection Service shall send written notice to such interested party under paragraph 3(i) not later than 60 days after determining the identity of the interested party or the interested party's interest.

(7) *Extending deadline for notice.* The Chief Counsel for the Postal Inspection Service may extend the period for sending personal written notice under these regulations in a particular case for a period not to exceed 30 days (which period may not be further extended except by a court pursuant to 18 U.S.C. 983(a)(1)(C), (D)), if the Chief Counsel for the Postal Inspection Service determines, and states in writing, that there is reason to believe that notice may have an adverse result, including: Endangering the life or physical safety of an individual; flight from

prosecution; destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation, or unduly delaying a trial.

(8) *Certification.* The Chief Counsel for the Postal Inspection Service shall provide the written certification required under 18 U.S.C. 983(a)(1)(C) when the Government requests it and the conditions described in 18 U.S.C. 983(a)(1)(D) are present.

(k) *Claims*—(1) *Filing.* In order to contest the forfeiture of seized property in Federal court, any person asserting an interest in seized property subject to an administrative forfeiture proceeding under these regulations must file a claim with the appropriate official, after the commencement of the administrative forfeiture proceeding as defined in paragraph (h) of this section, and not later than the deadline set forth in a personal notice letter sent pursuant to paragraph (i)(2) of this section. If personal written notice is sent but not received, then the intended recipient must file a claim with the appropriate official not later than 30 days after the date of the final publication of the notice of seizure.

(2) *Contents of claim.* A claim shall:

(i) Identify the specific property being claimed;

(ii) Identify the claimant and state the claimant's interest in the property; and

(iii) Be made under oath by the claimant, not counsel for the claimant, and recite that it is made under the penalty of perjury, consistent with the requirements of 28 U.S.C. 1746. An acknowledgement, attestation, or certification by a notary public alone is insufficient.

(3) *Availability of claim forms.* The claim need not be made in any particular form. However, the Postal Inspection Service will make claim forms generally available on request. Such forms shall be written in easily understandable language. A request for a claim form does not extend the deadline for filing a claim. Any person may obtain a claim form by requesting one in writing from the appropriate official.

(4) *Cost bond not required.* Any person may file a claim under paragraph 233.7(k)(1) without posting bond, except in forfeitures under statutes listed in 18 U.S.C. 983(i).

(5) *Referral of claim.* Upon receipt of a claim that meets the requirements of paragraphs (k)(1) and (2) of this section, the Postal Inspection Service shall return the property or suspend the administrative forfeiture proceeding and promptly transmit the claim, together with a description of the property and a complete statement of the facts and circumstances surrounding the seizure, to the appropriate U.S. Attorney for commencement of judicial forfeiture proceedings. Upon making the determination that the seized property will be released, the Postal Inspection Service shall promptly notify the person with a right to immediate possession of the property, informing that person to contact the property custodian within a specified period for release of the property, and further informing that person that failure to contact the property custodian within the specified period for release of the property will result in abandonment of the property pursuant to applicable regulations. The Postal Inspection Service shall notify the property custodian of the identity of the person to whom the property should be released. The property custodian shall have the right to require presentation of proper identification and/or to take other steps to verify the identity of the person who seeks the release of property, or both.

(6) *Premature filing.* If a claim is filed with the appropriate official after the seizure of the property, but before the commencement of the administrative forfeiture proceeding as defined in paragraph (i) of this section, the claim shall be deemed filed on the 30th day after the commencement of the administrative forfeiture proceeding. If such claim meets the requirements of paragraph (k)(2) of this section, the Postal Inspection Service shall suspend the administrative forfeiture proceedings and promptly transmit the claim, together with a description of the property and a complete statement of the facts and circumstances surrounding the seizure to the appropriate U.S. Attorney for commencement of judicial forfeiture proceedings.

(7) *Defective claims.* If the Postal Inspection Service determines that an otherwise timely claim does not meet the requirements of paragraph (k)(2) of this section, the Postal Inspection Service may notify the claimant of this determination and allow the claimant a reasonable time to cure the defect(s) in the claim. If, within the time allowed by the Postal Inspection Service, the requirements of paragraph (k)(2) of this section are not met, the claim shall be void and the forfeiture proceedings shall proceed as if no claim had been submitted. If the claimant timely cures the deficiency, then the claim shall be deemed filed on the date when the appropriate official receives the cured claim.

(l) *Interplay of administrative and criminal judicial forfeiture proceedings.* An administrative forfeiture proceeding pending against seized or restrained property does not bar the Government from alleging that the same property is forfeitable in a criminal case. Notwithstanding the fact that an allegation of forfeiture has been included in a criminal indictment or information, the property may be administratively forfeited in a parallel proceeding.

(m) *Requests for hardship release of seized property.* (1) Under certain circumstances, a claimant may be entitled to immediate release of seized property on the basis of hardship.

(2) Any person filing a request for hardship release must also file a claim to the seized property pursuant to paragraph (k) of this section and as defined in 18 U.S.C. 983(a).

(3) The timely filing of a valid claim pursuant to paragraph (k) of this section does not entitle the claimant to possession of the seized property, but a claimant may request immediate release of the property while forfeiture is pending, based on hardship.

(4) A claimant seeking release of property under 18 U.S.C. 983(f) and these regulations must file a written request with the appropriate official. The request must establish that:

(i) The claimant has a possessory interest in the property;

(ii) The claimant has sufficient ties to the community to provide assurance that the property will be available at the time of trial;

(iii) The continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

(iv) The claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

(v) The property is not:

(A) Contraband, any property, the possession of which by the claimant, petitioner, or person from whom it was seized is prohibited by state or Federal law, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

(B) Intended to be used as evidence of a violation of law;

(C) By reason of design or other characteristic, particularly suited for use in illegal activities; or

(D) Likely to be used to commit additional criminal acts if returned to the claimant.

(5) A hardship release request pursuant to this paragraph shall be deemed to have been made on the date when it is received by the appropriate official as defined in paragraph (c)(3) of this section, or the date the claim was deemed filed under paragraph (k) of this section. If the request is ruled on and denied by the appropriate official or the property has not been released within the 15-day time limit period, the claimant may file a petition in Federal district court pursuant to 18 U.S.C. 983(f)(3). If a petition is filed in Federal district court, the claimant must send a copy of the petition to the appropriate official to whom the hardship petition was originally submitted and to the U.S. Attorney in the judicial district where the judicial petition was filed.

(6) If a civil forfeiture complaint is filed on property and the claimant files a claim with the court pursuant to 18 U.S.C. 983(a)(4)(A) and Rule G(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims, a hardship petition may be submitted to the individual identified in the public or personal notice of the civil forfeiture action.

(n) *Disposition of property before forfeiture.* (1) Whenever it appears to the Postal Inspection Service that any seized property is liable to perish or to waste, or to be greatly reduced in value during its detention for forfeiture, or that the expense of keeping the property is or will be disproportionate to its value, the Chief Counsel for the Postal Inspection Service may order destruction, sale, or other disposition of such property prior to forfeiture. In addition, the owner may obtain release of the property by posting a substitute monetary amount with the Postal Inspection Service to be held subject to forfeiture proceedings in place of the seized property to be released. Upon approval by the Chief Counsel for the Postal Inspection Service, the property will be released to the owner upon the payment of an amount equal to the Government appraised value of the property if the property is not evidence of a violation of law, is not contraband, and has no design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a money order, an official bank check, or a cashier's check made payable to the Postal Inspection Service. A bond in the form of a cashier's check or official bank check will be considered as paid once the check has been accepted for payment by the financial institution that issued the check. If a substitute amount is posted and the property is administratively forfeited, the Postal Inspection Service will forfeit the substitute amount in lieu of the property. The pre-forfeiture destruction, sale, or other disposition of seized property pursuant to this subsection shall not extinguish any person's rights to the value of the property under applicable law. The authority vested in the Chief Counsel for the Postal Inspection Service under this subsection may not be delegated.

(2) The Postal Inspection Service shall commence forfeiture proceedings, regardless of the disposition of the property under this paragraph. A person with an interest in the property that was destroyed or otherwise disposed of under this paragraph may file a claim to contest the forfeiture of the property or a petition for remission or mitigation of the forfeiture. No employee of the Postal Inspection Service shall be liable for the destruction or other disposition of property made pursuant to this paragraph. The destruction or other disposition of the property does not impair *in rem* jurisdiction.

(o) *Declaration of administrative forfeiture.* If the Postal Inspection Service commences a timely proceeding against property subject to administrative forfeiture, and no valid and timely claim is filed, the appropriate official shall declare the property forfeited. The declaration of forfeiture shall have the same force and effect as a final decree and order of forfeiture in a Federal judicial forfeiture proceeding.

(p) *Return of property.* (1) If, under 18 U.S.C. 983(a)(3), the Postal Inspection Service is notified by the U.S. Attorney in charge of the matter that the 90-day deadline was not met, the Postal Inspection Service is required to release the seized property. Under this subsection, the Postal Inspection Service is not required to return property for which it has an independent basis for continued custody including, but not limited to, contraband or evidence of a violation of law.

(2) Upon becoming aware that the seized property must be released, the Postal Inspection Service shall promptly notify the person with a right to immediate possession of the property, informing that person to contact the property custodian within a specified period for release of the property, and further informing that person that failure to contact the property custodian within the specified period for release of the property may result in the initiation of abandonment proceedings against the property pursuant to 39 CFR part 946. The property custodian will be notified of the identity of the person to whom the property should be released.

(3) The property custodian shall have the right to require presentation of proper identification or to verify the identity of the person who seeks the release of property.

(q) *Disposition of forfeited property.* (1) Whenever property is forfeited administratively, the Postal Inspection Service may:

(i) Retain the property for official use;

(ii) Transfer ownership of the property to any Federal, state or local law enforcement agency that participated in the investigation leading to the forfeiture;

(iii) Sell any property that is not required to be destroyed by law and that is not harmful to the public;

(iv) Destroy the property; or

(v) Dispose of the property as otherwise permitted by law.

(2) If the laws of a state in which an article of forfeited property is located prohibit the sale or possession of such property, or if the Postal Service and the Marshals Service are of the opinion that it would be more advantageous to sell the forfeited property in another district, the property may be moved to and sold in such other district.

(r) *Attorney fees and costs.* The Postal Inspection Service is not liable for attorney fees or costs in any administrative forfeiture proceeding, including such proceedings in which a claim is filed, the matter is referred to the U.S. Attorney, and the U.S. Attorney declines to commence judicial forfeiture proceedings.

■ 3. Section 233.8 is revised to read as follows:

§ 233.8 Expedited forfeiture proceedings for property seizures based on violations involving the possession of personal use quantities of a controlled substance.

(a) *Purpose and scope.* (1) The following definitions, regulations, and criteria are designed to establish and implement procedures required by section 6079 of the Anti-Drug Abuse Act of 1988, Public Law 100–690, 102 Stat. 4181. They are intended to supplement existing law and procedures relative to the forfeiture of property under the identified statutory authority. These regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and

responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact on those entitled to legal or equitable relief occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving personal use quantities of controlled substances. The definition of personal use quantities of a controlled substance as contained herein is intended to distinguish between those small quantities, which are generally considered to be possessed for personal consumption and not for further distribution, and those larger quantities generally considered to be subject to further distribution.

(2) In this regard, for violations involving the possession of personal use quantities of a controlled substance, section 6079(b)(2) requires either that administrative forfeiture be completed within 21 days of the seizure of the property, or alternatively, that procedures are established that provide a means by which an individual entitled to relief may initiate an expedited administrative review of the legal and factual basis of the seizure for forfeiture. Should an individual request relief pursuant to these regulations and be entitled to the return of the seized property, such property shall be returned immediately following that determination, but not later than 20 days after filing of a petition for expedited release by an owner, and the administrative forfeiture process shall cease. Should the individual not be entitled to the return of the seized property, however, the administrative forfeiture of that property shall proceed. The owner may, in any event, obtain release of property pending the administrative forfeiture by submitting to the agency making the determination property sufficient to preserve the Government's vested interest for purposes of the administrative forfeiture.

(b) *Definitions.* As used in this section, the following terms shall have the meanings specified:

(1) *Commercial fishing industry vessel* means a vessel that:

(i) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(ii) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling; or

(iii) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

(2) *Controlled substance* has the meaning given in 21 U.S.C. 802(6).

(3) *Normal and customary manner* means that inquiry suggested by particular facts and circumstances that would customarily be undertaken by a reasonably prudent individual in a like or similar situation. Actual knowledge of such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether an owner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property. The failure to act in a normal and customary manner as defined herein will result in the denial of a petition for expedited release of the property and is intended to have the desirable effect of inducing owners of the property to exercise greater care in transferring possession of their property.

(4) *Owner* means one having a legal and possessory interest in the property seized for forfeiture. Even though one may hold primary and direct title to the property seized, such person may not have sufficient actual beneficial interest in the property to support a petition as owner if the facts indicate that another person had dominion and control over the property.

(5) *Personal use quantities* means those amounts of controlled substances in possession in circumstances where there is no other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting of any controlled substance.

(i) Evidence that possession of quantities of a controlled substance is for other than personal use may include, for example:

(A) Evidence, such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug ''cutting'' agents and other equipment, that indicates an intent to process, package, or distribute a controlled substance;

(B) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(C) The arrest or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, state, or local law that indicates an intent to distribute a controlled substance;

(D) Circumstances or reliable information indicating that the controlled substance is related to large amounts of cash or any amount of prerecorded Government funds;

(E) Circumstances or reliable information indicating that the controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery;

(F) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute; or

(G) The fact that the controlled substance was recovered from sweepings.

(ii) Possession of a controlled substance shall be presumed to be for personal use when there are no indicia of illicit drug trafficking or distribution —such as, but not limited to, the factors listed above—and the amounts do not exceed the following quantities:

(A) One gram of a mixture or substance containing a detectable amount of heroin;

(B) One gram of a mixture or substance containing a detectable amount of the following:

(*1*) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(*2*) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(*3*) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(*4*) Any compound, mixture, or preparation that contains any quantity of any of the substances referred to in (ii)(B)(1) through (ii)(B)(3) of this definition;

(C) One-tenth gram of a mixture or substance described in (ii)(B) of this definition that contains cocaine base;

(D) One-tenth gram of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(E) Five hundred micrograms of lysergic acid diethylamide (LSD);

(F) One ounce of a mixture or substance containing a detectable amount of marijuana;

(G) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(iii) The possession of a narcotic, a depressant, a stimulant, a hallucinogen or a cannabis-controlled substance will be considered in excess of personal use

quantities if the dosage unit amount possessed provides the same or greater equivalent efficacy as described in (ii)(B) of this definition.

(6) *Property* means property subject to forfeiture under 21 U.S.C. 881(a)(4), (6), or (7); 19 U.S.C. 1595a; or 49 U.S.C. 80303.

(7) *Seizing agency* means the Federal agency that has seized the property or adopted the seizure of another agency and has the responsibility for administratively forfeiting the property;

(8) *Statutory rights or defenses to the forfeiture* means all legal and equitable rights and remedies available to a claimant of property seized for forfeiture.

(c) *Petition for expedited release in an administrative forfeiture proceeding.* (1) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may petition the Postal Inspection Service for expedited release of the property.

(2) Where property described in paragraph (c)(1) of this section is a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations, which would be subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port designated in the summons. The Postal Inspection Service shall be authorized to effect administrative forfeiture as if the vessel had been physically seized. Upon answering the summons to appear on or prior to the last reporting date specified in the summons, the owner of the vessel may file a petition for expedited release pursuant to paragraph (c)(1) of this section, and the provisions of paragraph (c)(1) and other provisions in this section pertaining to a petition for expedited release shall apply as if the vessel had been physically seized.

(3) The owner filing the petition for expedited release shall establish the following:

(i) The owner has a valid, good faith interest in the seized property as owner or otherwise;

(ii) The owner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(iii) The owner did not know of or consent to the illegal use of the property, or in the event that the owner knew or should have known of the illegal use, the owner did what reasonably could be expected to prevent the violation.

(4) In addition to those factors listed in paragraph (c)(3) of this section, if an owner can demonstrate that the owner has other statutory rights or defenses that would cause the owner to prevail on the issue of forfeiture, such factors shall also be considered in ruling on the petition for expedited release.

(5) A petition for expedited release must be received by the Postal Inspection Service within 20 days from the date of the first publication of the notice of seizure in ordered to be considered by the Postal Inspection Service. The petition must be executed and sworn to by the owner, and both the envelope and the request must be clearly marked ''PETITION FOR EXPEDITED RELEASE.'' Such petition shall be filed with the appropriate office or official identified in the personal written notice and the publication notice.

(6) The petition shall include the following:

(i) A complete description of the property, including identification numbers, if any, and the date and place of seizure;

(ii) The petitioner's interest in the property, which shall be supported by title documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(iii) A statement of the facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify expedited release of the seized property.

(d) *Ruling on petition for expedited release in an administrative forfeiture proceeding.* (1) If a final administrative determination of the case, without regard to the provisions of this section, is made within 21 days of the seizure, the Postal Inspection Service need take no further action under this section on a petition for expedited release received pursuant to paragraph (c) of this section.

(2) If no such final administrative determination is made within 21 days of the seizure, the following procedure shall apply. The Postal Inspection Service shall, within 20 days after the receipt of the petition for expedited release, determine whether the petition filed by the owner has established the factors listed in paragraph (c)(3) of this section and:

(i) If the Postal Inspection Service determines that those factors have been established, it shall terminate the administrative proceedings and return the property to the owner (or in the case of a commercial fishing industry vessel for which a summons has been issued shall dismiss the summons), except where it is evidence of a violation of law; or

(ii) If the Postal Inspection Service determines that those factors have not been established, the agency shall proceed with the administrative forfeiture.

(e) *Posting of substitute monetary amount in an administrative forfeiture proceeding.* (1) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may obtain release of the property by posting a substitute monetary amount with the Postal Inspection Service to be held subject to forfeiture proceedings in place of the seized property to be released. The property will be released to the owner upon the payment of an amount equal to the Government-appraised value of the property if the property is not evidence of a violation of law and has no design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a traveler's check, a money order, a cashier's check, or an irrevocable letter of credit made payable to the Postal Inspection Service. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution that issued the check.

(2) If a substitute monetary amount is posted and the property is administratively forfeited, the Postal Inspection Service will forfeit the substitute amount in lieu of the property.

(f) *Notice provisions.* At the time of seizure of property defined in paragraph (b)(6) of this section for violations involving the possession of personal use quantities of a controlled substance, the Postal Inspection Service must provide written notice to the possessor of the property specifying the procedures for filing of a petition for expedited release and for the posting of a substitute monetary bond as set forth in section 6079 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

■ 4. Section 233.9 is revised to read as follows:

§ 233.9 Regulations governing remission or mitigation of administrative, civil, and criminal forfeitures.

(a) *Purpose, authority, and scope*—(1) *Purpose.* This section sets forth the procedures for Postal Inspection Service officials to follow when considering remission or mitigation of administrative forfeitures under the jurisdiction of the Postal Inspection Service. The purpose of these regulations is to provide a basis for the partial or total remission of forfeiture for individuals who have an interest in the

forfeited property but who did not participate in, or have knowledge of, the conduct that resulted in the property being subject to forfeiture and, where required, took all reasonable steps under the circumstances to ensure that such property would not be used, acquired, or disposed of contrary to law. Additionally, the regulations provide for partial or total mitigation of the forfeiture and imposition of alternative conditions in appropriate circumstances.

(2) *Authority to grant remission and mitigation.* (i) Remission and mitigation functions in administrative forfeitures under the jurisdiction of the Postal Inspection Service are performed by the Chief Counsel.

(ii) Remission and mitigation functions in judicial cases are performed by the Criminal Division of the Department of Justice. Within the Criminal Division, authority to grant remission and mitigation is delegated to the Chief, Asset Forfeiture and Money Laundering Section.

(iii) The powers and responsibilities delegated by the regulations in this section may be re-delegated to attorneys or managers working under the supervision of the Chief Counsel.

(3) *Scope.* This section governs any petition for remission filed with the Postal Inspection Service and supersedes any Postal Service regulation governing petitions for remission, to the extent such regulation is inconsistent with this section.

(4) *Applicability.* The time periods and internal requirements established in this section are designed to guide the orderly administration of the remission and mitigation process and are not intended to create rights or entitlements in favor of individuals seeking remission or mitigation. The regulations will apply to all forfeiture actions commenced on or after May 1, 2012.

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

(1) *Administrative forfeiture* means the process by which property may be forfeited by the Postal Inspection Service rather than through judicial proceedings. Administrative forfeiture has the same meaning as ''nonjudicial forfeiture,'' as that term is used in 18 U.S.C. 983.

(2) *Appraised value* means the estimated market value of an asset at the time and place of seizure if such or similar property was freely offered for sale between a willing seller and a willing buyer.

(3) *Assets Forfeiture Fund* means the Department of Justice Assets Forfeiture Fund, Department of the Treasury Assets Forfeiture Fund, or the Postal Service's Assets Forfeiture Fund, depending upon the identity of the seizing agency.

(4) *Attorney General* means the Attorney General of the United States or that official's designee.

(5) *Beneficial owner* means a person with actual use of, as well as an interest in, the property subject to forfeiture.

(6) *Chief, Asset Forfeiture and Money Laundering Section,* and *Chief,* refer to the Chief of the Asset Forfeiture and Money Laundering Section, Criminal Division, United States Department of Justice.

(7) *General creditor* means one whose claim or debt is not secured by a specific right to obtain satisfaction against the particular property subject to forfeiture.

(8) *Judgment creditor* means one who has obtained a judgment against the debtor but has not yet received full satisfaction of the judgment.

(9) *Judicial forfeiture* means either a civil or a criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

(10) *Lienholder* means a creditor whose claim or debt is secured by a specific right to obtain satisfaction against the particular property subject to forfeiture. A lien creditor qualifies as a lienholder if the lien:

(i) Was established by operation of law or contract;

(ii) Was created as a result of an exchange of money, goods, or services; and

(iii) Is perfected against the specific property forfeited for which remission or mitigation is sought (e.g., a real estate mortgage; a mechanic's lien).

(11) *Net equity* means the amount of a lienholder's monetary interest in the property subject to forfeiture. Net equity shall be computed by determining the amount of unpaid principal and unpaid interest at the time of seizure, and by adding to that sum unpaid interest calculated from the date of seizure through the last full month prior to the date of the decision on the petition. Where a rate of interest is set forth in a security agreement, the rate of interest to be used in this computation will be the annual percentage rate so specified in the security agreement that is the basis of the lienholder's interest. In this computation, however, there shall be no allowances for attorneys' fees, accelerated or enhanced interest charges, amounts set by contract as damages, unearned extended warranty fees, insurance, service contract charges incurred after the date of seizure, allowances for dealer's reserve, or any other similar charges.

(12) *Nonjudicial forfeiture* has the same meaning as *administrative forfeiture* as defined in this section.

(13) *Owner* means the person in who primary title is vested or whose interest is manifested by the actual and beneficial use of the property, even though the title is vested in another. A victim of an offense, as defined in paragraph (b)(22) of this section, may also be an owner if that person has a present legally cognizable ownership interest in the property forfeited. A nominal owner of property will not be treated as its true owner if that person is not its beneficial owner.

(14) *Person* means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

(15) *Petition* means a petition for remission or mitigation of forfeiture under the regulations in this part. This definition includes a petition for restoration of the proceeds of sale of forfeited property and a petition for the value of the forfeited property placed into official use.

(16) *Petitioner* means the person applying for remission, mitigation, restoration of the proceeds of sale, or for the appraised value of forfeited property, under this part. A petitioner may be an owner as defined in paragraph (b)(13) of this section, a lienholder as defined in paragraph (b)(10), or a victim as defined in paragraph (b)(22), subject to the limitations of paragraph (h) of this section.

(17) *Property* means real or personal property of any kind capable of being owned or possessed.

(18) *Record* means a series of arrests for related crimes, unless the arrestee was acquitted or the charges were dismissed for lack of evidence, a conviction for a related crime or completion of sentence within 10 years of the acquisition of the property subject to forfeiture, or two convictions for a related crime at any time in the past.

(19) *Related crime* as used in paragraphs (b)(18) and (f) of this section means any crime similar in nature to that which gives rise to the seizure of property for forfeiture. For example, where property is seized for a violation of the Federal laws relating to drugs, a related crime would be any offense involving a violation of the Federal laws relating to drugs, or the laws of any state or political subdivision thereof relating to drugs.

(20) *Related offense* as used in paragraph (h) of this section means:

(i) Any predicate offense charged in a Federal Racketeer Influenced and

Corrupt Organizations Act (RICO) count for which forfeiture was ordered; or

(ii) An offense committed as part of the same scheme or design, or pursuant to the same conspiracy, as was involved in the offense for which forfeiture was ordered.

(21) *Ruling Official* means any official to whom decision making authority has been delegated pursuant to paragraph (a)(2) of this section.

(22) *Seizing agency* means any Federal agency that seized the property or adopted the seizure of another agency for Federal forfeiture.

(23) *Victim* means a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture. A drug user is not considered a victim of a drug trafficking offense under this definition. A victim does not include one who acquires a right to sue the perpetrator of the criminal offense for any loss by assignment, subrogation, inheritance, or otherwise from the actual victim, unless that person has acquired an actual ownership interest in the forfeited property; provided however, that if a victim has received compensation from insurance or any other source with respect to a pecuniary loss, remission may be granted to the third party who provided compensation, up to the amount of the victim's pecuniary loss as defined in paragraph (h)(3) of this section.

(24) *Violator* means the person whose use or acquisition of the property in violation of the law subjected such property to seizure for forfeiture.

(c) *Petitions in administrative forfeiture cases.* (1) *Notice of seizure.* The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within 30 days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until the property has been forfeited, except in cases involving petitions to restore the proceeds from the sale of forfeited property. A notice of seizure shall include the Ruling Official, the mailing and street address of the official to whom petitions should be sent, and an asset identifier number.

(2) *Persons who may file.* (i) A petition for remission or mitigation must be filed by a petitioner as defined in paragraph (b)(16) of this section, or as prescribed in paragraph (i)(7) and (8) of this section. A person or person acting on their behalf may not file a petition if, after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution the person:

(A) Purposely leaves the jurisdiction of the United States;

(B) Declines to enter or reenter the United States to submit to its jurisdiction; or

(C) Otherwise evades the jurisdiction of the court in which a criminal matter is pending against the person.

(ii) Paragraph (c)(2)(i)(A) of this section applies to a petition filed by a corporation if any majority shareholder, or individual filing the claim on behalf of the corporation:

(A) Purposely leaves the jurisdiction of the United States;

(B) Declines to enter or reenter the United States to submit to its jurisdiction; or

(C) Otherwise evades the jurisdiction of the court in which a criminal case is pending against the person.

(3) *Contents of petition.* (i) All petitions must include the following information in clear and concise terms:

(A) The name, address, and social security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;

(B) The name of the seizing agency, the asset identifier number, and the date and place of seizure;

(C) A complete description of the property, including make, model, and serial numbers, if any; and

(D) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, deeds, mortgages, or other documentary evidence. Such documentation includes evidence establishing the source of funds for seized currency or the source of funds used to purchase the seized asset.

(ii) Any factual recitation or documentation of any type in a petition must be supported by a declaration under penalty of perjury that meets the requirements of 28 U.S.C. 1746.

(4) *Releases.* In addition to the contents of the petition for remission or mitigation set forth in paragraph (c)(3) of this section, upon request, the petitioner shall also furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing interest in such property.

(5) *Filing a petition.* (i) A petition for remission or mitigation subject to administrative forfeiture is to be sent to the official address provided in the notice of seizure and shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set out in paragraph (i)(7).

(ii) If the notice of seizure does not provide an official address, the petition shall be addressed to the Asset Forfeiture Unit at the following address: Asset Forfeiture Unit, Criminal Investigations, U.S. Postal Inspection Service, P.O. Box 44373, Washington, DC 20026–4373.

(iii) Submission by facsimile or other electronic means will not be accepted.

(6) *Agency investigation.* Upon receipt of a petition, the Postal Inspection Service shall investigate the merits of the petition and prepare a written report containing the results of that investigation. This report shall be submitted to the Ruling Official for review and consideration.

(7) *Ruling.* Upon receipt of the petition and the agency report, the Ruling Official for the Postal Inspection Service shall review the petition and the report, if any, and shall rule on the merits of the petition. No hearing shall be held.

(8) *Petitions granted.* If the Ruling Official grants a remission or mitigation of the forfeiture, a copy of the decision shall be mailed to the petitioner or, if represented by an attorney, to the petitioner's attorney. A copy shall also be sent to the U.S. Marshals Service, or other property custodian. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted, and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein.

(9) *Petitions denied.* If the Ruling Official denies a petition, a copy of the decision shall be mailed to the petitioner or, if represented by an attorney, to the petitioner's attorney of record. A copy of the decision shall also be sent to the U.S. Marshals Service, or other property custodian. The decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Ruling Official in accordance with paragraph (c)(10) of this section.

(10) *Request for reconsideration.* (i) A request for reconsideration of the denial of the petition shall be considered if:

(A) It is postmarked or received by the office of the Ruling Official within 10 days from the receipt of the notice of denial of the petition by the petitioner; and

(B) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly

demonstrating that the denial was erroneous.

(ii) In no event shall a request for reconsideration be decided by the same Ruling Official who ruled on the original petition.

(iii) Only one request for reconsideration of a denial of a petition shall be considered.

(11) *Restoration of proceeds from sale.* (i) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a Government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

(A) Did not know of the seizure prior to the entry of a declaration of forfeiture; and

(B) Could not reasonably have known of the seizure prior to the entry of a declaration of forfeiture.

(ii) Such a petition shall be submitted pursuant to paragraphs (c)(2) through (c)(5) of this section within 90 days of the date the property is sold or otherwise disposed of.

(d) *Petitions in judicial forfeiture cases*—(1) *Notice of seizure.* The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within 30 days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until such time as the forfeited property is placed in official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore property. A notice of seizure shall include the title of the Ruling Official and the mailing and street address of the official to whom petitions should be sent, the name of the agency seizing the property, an asset identifier number, and the district court docket number.

(2) *Persons who may file.* A petition for remission or mitigation must be filed by a petitioner as defined in paragraph (b)(16) of this section, or as prescribed in paragraph (i)(7) and (8) of this section.

(3) *Contents of petition.* (i) All petitions must include the following information in clear and concise terms:

(A) The name, address, and Social Security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;

(B) The name of the seizing agency, the asset identifier number, and the date and place of seizure;

(C) The district court docket number;

(D) A complete description of the property, including the address or legal description of real property, and make, model, and serial numbers of personal property, if any; and

(E) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, mortgages, deeds, or other documentary evidence.

(ii) Any factual recitation or documentation of any type in a petition must be supported by a declaration under penalty of perjury that meets the requirements of 28 U.S.C. 1746.

(4) *Releases.* In addition to the content of the petition for remission or mitigation set forth in paragraph (d)(3) of this section, the petitioner, upon request, also shall furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing the interest in such property.

(5) *Filing petition with Department of Justice.* A petition for remission or mitigation of a judicial forfeiture shall be addressed to the Attorney General; shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set forth in paragraph (i)(7) of this section; and shall be submitted to the U.S. Attorney for the district in which the judicial forfeiture proceedings are brought.

(6) *Agency investigation and recommendation; U.S. Attorney's recommendation.* Upon receipt of a petition, the U.S. Attorney shall direct the seizing agency to investigate the merits of the petition based on the information provided by the petitioner and the totality of the agency's investigation of the underlying basis for forfeiture. The agency shall submit to the U.S. Attorney a report of its investigation and its recommendation on whether the petition should be granted or denied. Upon receipt of the agency's report and recommendation, the U.S. Attorney shall forward to the Chief, Asset Forfeiture and Money Laundering Section, the petition, the seizing agency's report and recommendation, and the U.S. Attorney's recommendation on whether the petition should be granted or denied.

(7) *Ruling.* The Chief shall rule on the petition. No hearing shall be held. The Chief shall not rule on any petition for remission if such remission was previously denied by the administrative agency pursuant to paragraph (c) of this section.

(8) *Petitions granted.* If the Chief grants a remission or mitigates the forfeiture, the Chief shall mail a copy of the decision to the petitioner (or, if represented by an attorney, to the petitioner's attorney), and shall mail or transmit electronically a copy of the decision to the appropriate U.S. Attorney, the U.S. Marshals Service or other property custodian, and the seizing agency. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein. The Chief shall advise the petitioner or the petitioner's attorney to consult with the U.S. Attorney as to such terms and conditions. The U.S. Attorney shall confer with the seizing agency regarding the release and shall coordinate disposition of the property with that office and the U.S. Marshals Service or other property custodian.

(9) *Petitions denied.* If the Chief denies a petition, a copy of that decision shall be mailed to the petitioner (or, if represented by an attorney, to the petitioner's attorney of record), and mailed or transmitted electronically to the appropriate U.S. Attorney, the U.S. Marshals Service or other property custodian, and the seizing agency. The decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Chief at the address provided in the decision, in accordance with paragraph (d)(10) of this section.

(10) *Request for reconsideration.* (i) A request for reconsideration of the denial shall be considered if:

(A) It is postmarked or received by the Asset Forfeiture and Money Laundering Section at the address contained in the decision denying the petition within 10 days from the receipt of the notice of denial of the petition by the petitioner;

(B) A copy of the request is also received by the appropriate U.S. Attorney within 10 days of the receipt of the denial by the petitioner; and

(C) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous.

(ii) In no event shall a request for reconsideration be decided by the Ruling Official who ruled on the original petition.

(iii) Only one request for reconsideration of a denial of a petition shall be considered.

(iv) Upon receipt of the request for reconsideration of the denial of a petition, disposition of the property will be delayed pending notice of the decision at the request of the Chief. lf the request for reconsideration is not received within the prescribed period, the U.S. Marshals Service may dispose of the property.

(11) *Restoration of proceeds from sale.* (i) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a Government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

(A) Did not know of the seizure prior to the entry of a final order of forfeiture; and

(B) Could not reasonably have known of the seizure prior to the entry of a final order of forfeiture.

(ii) Such a petition must be submitted pursuant to paragraphs (d)(2) through (d)(5) of this section within 90 days of the date the property was sold or otherwise disposed of.

(e) *Criteria governing administrative and judicial remission and mitigation*—(1) *Remission.* (i) The Ruling Official shall not grant remission of a forfeiture unless the petitioner establishes that the petitioner has a valid, good faith, and legally cognizable interest in the seized property as owner or lienholder as defined in this part and is an innocent owner within the meaning of 18 U.S.C. 983(d)(2)(A) or (d)(3)(A).

(ii) For purposes of this paragraph (e), the knowledge and responsibilities of a petitioner's representative, agent, or employee are imputed to the petitioner where the representative, agent, or employee was acting in the course of that person's employment and in furtherance of the petitioner's business.

(iii) The petitioner has the burden of establishing the basis for granting a petition for remission or mitigation of forfeited property, a restoration of proceeds of sale or appraised value of forfeited property, or a reconsideration of a denial of such a petition. Failure to provide information or documents and to submit to interviews, as requested, may result in a denial of the petition.

(iv) The Ruling Official shall presume a valid forfeiture and shall not consider whether the evidence is sufficient to support the forfeiture.

(v) Willful, materially false statements or information made or furnished by the petitioner in support of a petition for remission or mitigation of forfeited property, the restoration of proceeds or appraised value of forfeited property, or the reconsideration of a denial of any such petition shall be grounds for denial of such petition and possible prosecution for the filing of false statements.

(2) *Mitigation.* (i) The Ruling Official may grant mitigation to a party not involved in the commission of the offense underlying forfeiture:

(A) Where the petitioner has not met the minimum conditions for remission, but the Ruling Official finds that some relief should be granted to avoid extreme hardship, and that return of the property combined with imposition of monetary or other conditions of mitigation in lieu of a complete forfeiture will promote the interest of justice and will not diminish the deterrent effect of the law. Extenuating circumstances justifying such a finding include those circumstances that reduce the responsibility of the petitioner for knowledge of the illegal activity, knowledge of the criminal record of a user of the property, or failure to take reasonable steps to prevent the illegal use or acquisition by another for some reason, such as a reasonable fear of reprisal; or

(B) Where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the Ruling Official, complete relief is not warranted.

(ii) The Ruling Official may as a matter of discretion grant mitigation to a party involved in the commission of the offense underlying the forfeiture where certain mitigating factors exist, including, but not limited to: The lack of a prior record or evidence of similar criminal conduct; if the violation does not include drug distribution, manufacturing, or importation, the fact that the violator has taken steps, such as drug treatment, to prevent further criminal conduct; the fact that the violation was minimal and was not part of a larger criminal scheme; the fact that the violator has cooperated with Federal, state, or local investigations relating to the criminal conduct underlying the forfeiture; or the fact that complete forfeiture of an asset is not necessary to achieve the legitimate purposes of forfeiture.

(iii) Mitigation may take the form of a monetary condition or the imposition of other conditions relating to the continued use of the property, and the return of the property, in addition to the imposition of any other costs that would be chargeable as a condition to remission. This monetary condition is considered as an item of cost payable by the petitioner, and shall be deposited into the Postal Inspection Service's Fund as an amount realized from forfeiture in accordance with the applicable statute. If the petitioner fails to accept the Ruling Official's mitigation decision or any of its conditions, or fails to pay the monetary amount within 20 days of the receipt of the decision, the property shall be sold, and the monetary amount imposed and other costs chargeable as a condition to mitigation shall be subtracted from the proceeds of the sale before transmitting the remainder to the petitioner.

(f) *Special rules for specific petitioners*—(1) *General creditors.* A general creditor may not be granted remission or mitigation of forfeiture unless that person otherwise qualifies as petitioner under this part.

(2) *Rival claimants.* If the beneficial owner of the forfeited property and the owner of a security interest in the same property each files a petition, and if both petitions are found to be meritorious, the claims of the beneficial owner shall take precedence.

(3) *Voluntary bailments.* A petitioner who allows another to use the petitioner's property without cost, and who is not in the business of lending money secured by property or of leasing or renting property for profit, shall be granted remission or mitigation of forfeiture in accordance with the provisions of paragraph (e) of this section.

(4) *Lessors.* A person engaged in the business of leasing or renting real or personal property on a long-term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless the lessor can demonstrate compliance with all the requirements of paragraph (e) of this section.

(5) *Straw owners.* A petition by any person who has acquired a property interest recognizable under this part, and who knew or had reason to believe that the interest was conveyed by the previous owner for the purpose of circumventing seizure, forfeiture, or the regulations in this part, shall be denied. A petition by a person who purchases or owns property for another who has a record for related crimes as defined in paragraph (b)(19), or a petition by a lienholder who knows or has reason to believe that the purchaser or owner of record is not the real purchaser or owner, shall be denied unless both the purchaser of record and the real purchaser or owner meet the requirements of paragraph (e) of this section.

(6) *Judgment creditors.* (i) A judgment creditor will be recognized as a lienholder if:

(A) The judgment was duly recorded before the seizure of the property for forfeiture;

(B) Under applicable state or other local law, the judgment constitutes a valid lien on the property that attached to it before the seizure of the property for forfeiture; and

(C) The petitioner had no knowledge of the commission of any act or acts giving rise to the forfeiture at the time the judgment became a lien on the forfeited property.

(ii) A judgment creditor will not be recognized as a lienholder if the property in question is not property of which the judgment debtor is entitled to claim ownership under applicable state or other local law (e.g., stolen property). A judgment creditor is entitled under this part to no more than the amount of the judgment, exclusive of any interest, costs, or other fees including attorney's fees associated with the action that led to the judgment or its collection.

(iii) A judgment creditor's lien must be registered in the district where the property is located if the judgment was obtained outside the district.

(g) *Terms and conditions of remission and mitigation*—(1) *Owners.* (i) An owner's interest in property that has been forfeited is represented by the property itself or by a monetary interest equivalent to that interest at the time of seizure. Whether the property or a monetary equivalent will be remitted to an owner shall be determined at the discretion of the Ruling Official.

(ii) If a civil judicial forfeiture action against the property is pending, release of the property must await an appropriate court order.

(iii) Where the Government sells or disposes of the property prior to the grant of the remission, the owner shall receive the proceeds of that sale, less any costs incurred by the Government in the sale. The Ruling Official, as a matter of discretion, may waive the deduction of costs and expenses incident to the forfeiture.

(iv) Where the owner does not comply with the conditions imposed upon release of the property by the Ruling Official, the property shall be sold. Following the sale, the proceeds shall be used to pay all costs of the forfeiture and disposition of the property, in addition to any monetary conditions imposed. The remaining balance shall be paid to the owner.

(2) *Lienholders.* (i) When the forfeited property is to be retained for official use or transferred to a state or local law enforcement agency or foreign government pursuant to law, and remission or mitigation has been granted to a lienholder, the recipient of the property shall assure that:

(A) In the case of remission, the lien is satisfied as determined through the petition process; or

(B) In the case of mitigation, an amount equal to the net equity, less any monetary conditions imposed, is paid to the lienholder prior to the release of the property to the recipient agency of foreign government.

(ii) When the forfeited property is not retained for official use or transferred to another agency or foreign government pursuant to law, the lienholder shall be notified by the Ruling Official of the right to select either of the following alternatives:

(A) *Return of Property.* The lienholder may obtain possession of the property after paying the United States, through the Ruling Official, the costs and expenses incident to the forfeiture, the amount, if any, by which the appraised value of the property exceeds the lienholder's net equity in the property, and any amount specified in the Ruling Official's decision as a condition to remit the property. The Ruling Official, as a matter of discretion, may waive costs and expenses incident to the forfeiture. The Ruling Official shall forward a copy of the decision, a memorandum of disposition, and the original releases to the division or field office responsible for the seizure and custody of the property or, if applicable, to the U.S. Marshals Service, who shall thereafter release the property to the lienholder; or

(B) *Sale of Property and Payment to Lienholder.* Subject to the provisions of paragraph (i)(1) of this section, upon sale of the property, the lienholder may receive the payment of a monetary amount up to the sum of the lienholder's net equity, less the expenses and costs incident to the forfeiture and sale of the property, and any other monetary conditions imposed. The Ruling Official, as a matter of discretion, may waive costs and expenses incident to the forfeiture.

(iii) If the lienholder does not notify the Ruling Official of the selection of one of the two options set forth in this paragraph (g)(2)(ii) within 20 days of the receipt of notification, the Ruling Official shall direct the division or field office responsible for the seizure or custody, or if applicable, the U.S. Marshals Service, to sell the property and pay the lienholder an amount up to the net equity, less the costs and expenses incurred incident to the forfeiture and sale, and any monetary conditions imposed. In the event a lienholder subsequently receives a payment of any kind on the debt owed for which he or she received payment as a result of the granting of remission or mitigation, the lienholder shall reimburse the Postal Service Forfeiture Fund to the extent of the payment received.

(iv) Where the lienholder does not comply with the conditions imposed upon the release of the property, the property shall be sold after forfeiture. From the proceeds of the sale, all costs incident to the forfeiture and sale shall first be deducted, and the balance up to the net equity, less any monetary conditions, shall be paid to the lienholder.

(h) *Remission procedures for victims.* This section applies to victims of an offense underlying the forfeiture of property, or of a related offense, who do not have a present ownership interest in the forfeited property (or, in the case of multiple victims of an offense, who do not have a present ownership interest in the forfeited property that is clearly superior to that of other petitioner victims). This section applies only with respect to property forfeited pursuant to statutes that explicitly authorize restoration or remission of forfeited property to victims. A victim requesting remission under this section may concurrently request remission as an owner, pursuant to the regulations set forth in paragraphs (c), (d), and (g) of this section. The claims of victims granted remission as both an owner and victim shall, like other owners, have priority over the claims of any non-owner victims whose claims are recognized under this section.

(1) *Remission procedure for victims*—(i) *Where to file.* Persons seeking remission as victims shall file petitions for remission with the appropriate deciding official as described in paragraph (c)(5) (administrative forfeiture) or (d)(5) (judicial forfeiture) of this section.

(ii) *Time of decision.* The Ruling Official or that person's designee as described in paragraph (a)(2) of this section may consider petitions filed by persons claiming eligibility for remission as victims at any time prior to the disposal of the forfeited property in accordance with law.

(iii) *Request for reconsideration.* Persons denied remission under this section may request reconsideration of the denial, in accordance with paragraph (c)(10) (administrative forfeiture) or (d)(10) (judicial forfeiture) of this section.

(2) *Qualification to file.* A victim, as defined in paragraph (b)(22) of this section, may be granted remission, if in

addition to complying with the other applicable provisions of this paragraph (h), the victim satisfactorily demonstrates that:

(i) A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that was the underlying basis for the forfeiture, and that the loss is supported by documentary evidence including invoices and receipts;

(ii) The pecuniary loss is the direct result of the illegal acts and is not the result of otherwise lawful acts that were committed in the course of a criminal offense;

(iii) The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards commission of the offense, or related offense, that was the underlying basis of the forfeiture;

(iv) The victim has not in fact been compensated for the wrongful loss of the property by the perpetrator or others; and

(v) The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of the property.

(3) *Pecuniary loss.* The amount of the pecuniary loss suffered by a victim for which remission may be granted is limited to the fair market value of the property of which the victim was deprived as of the date of the occurrence of the loss. No allowance shall be made for interest forgone or for collateral expenses incurred to recover lost property or to seek other recompense.

(4) *Torts.* A tort associated with illegal activity that formed the basis for the forfeiture shall not be a basis for remission, unless it constitutes the illegal activity itself, nor shall remission be granted for physical injuries to a petitioner or for damage to a petitioner's property.

(5) *Denial of petition.* As a matter of discretion, the Ruling Official may decline to grant remission where:

(i) There is substantial difficulty in calculating the pecuniary loss incurred by the victim or victims;

(ii) The amount of the remission, if granted, would be small compared with the amount of expenses incurred by the Government in determining whether to grant remission; or

(iii) The total number of victims is large and the monetary amount of the remission so small as to make its granting impractical.

(6) *Pro rata basis.* In granting remission to multiple victims pursuant to this section, the Ruling Official should generally grant remission on a pro rata basis to recognized victims when petitions cannot be granted in full due to the limited value of the forfeited property. However, the Ruling Official may consider, among others, the following factors in establishing appropriate priorities in individual cases:

(i) The specificity and reliability of the evidence establishing a loss;

(ii) The fact that a particular victim is suffering an extreme financial hardship;

(iii) The fact that a particular victim has cooperated with the Government in the investigation related to the forfeiture or to a related persecution or civil action; and

(iv) In the case of petitions filed by multiple victims of related offenses, the fact that a particular victim is a victim of the offense underlying the forfeiture.

(7) *Reimbursement.* Any petitioner granted remission pursuant to this part shall reimburse the Postal Service Forfeiture Fund for the amount received, to the extent the individual later receives compensation for the loss of property from any other source. The petitioner shall surrender the reimbursement upon payment from any secondary source.

(8) *Claims of financial institution regulatory agencies.* In cases involving property forfeitable under 18 U.S.C. 981(a)(1)(C) or (D), the Ruling Official may decline to grant a petition filed by a petitioner in whole or in part due to the lack of sufficient forfeitable funds to satisfy both the petitioner and claims of the financial institution regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7). Generally, claims of financial institution regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7) shall take priority over claims of victims.

(9) *Amount of remission.* Consistent with the Assets Forfeiture Fund statute (28 U.S.C. 524(c)), the amount of remission shall not exceed the victim's share of the net proceeds of the forfeitures associated with the activity that caused the victim's loss. The calculation of net proceeds includes, but is not limited to, the deduction of allowable Government expenses and valid third-party claims.

(i) *Miscellaneous provisions*—(1) *Priority of payment.* Except where otherwise provided in this part, costs incurred by the Postal Inspection Service, the U.S. Marshals Service, and other agencies participating in the forfeiture that were incident to the forfeiture, sale, or other disposition of the property shall be deducted from the amount available for remission or mitigation. Such costs include, but are not limited to, court costs, storage costs, brokerage and other sales-related costs, the amount of any liens and associated costs paid by the Government on the property, costs incurred in paying the ordinary and necessary expenses of a business seized for forfeiture, awards for information as authorized by statute, expenses of trustees or other assistants pursuant to paragraph (i)(3) of this section, investigative or prosecutorial costs specially incurred incident to the particular forfeiture, and costs incurred incident to the processing of petitions for remission or mitigation. The remaining balance shall be available for remission or mitigation. The Ruling Official shall direct the distribution of the remaining balance in the following order or priority, except that the Ruling Official may exercise discretion in determining the priority between petitioners belonging to classes described in paragraph (i)(1)(iii) and (iv) of this section in exceptional circumstances:

(i) Owners;

(ii) Lienholders;

(iii) Federal financial institution regulatory agencies (pursuant to paragraph (i)(5) of this section), not constituting owners or lienholders; and

(iv) Victims not constituting owners or lienholders pursuant to paragraph (h) of this part.

(2) *Sale or disposition of property prior to ruling.* If forfeited property has been sold or otherwise disposed of prior to a ruling, the Ruling Official may grant relief in the form of a monetary amount. The amount realized by the sale of property is presumed to be the value of the property. Monetary relief shall not be greater than the appraised value of the property at the time of seizure and shall not exceed the amount realized from the sale or other disposition. The proceeds of the sale shall be distributed as follows:

(i) Payment of the Government's expenses incurred incident to the forfeiture and sale, including court costs and storage charges, if any;

(ii) Payment to the petitioner of an amount up to that person's interest in the property;

(iii) Payment to the Postal Service Forfeiture Fund of all other costs and expenses incident to the forfeiture;

(iv) In the case of victims, payment of any amount up to the amount of that person's loss; and

(v) Payment of the balance remaining, if any, to the Postal Service Forfeiture Fund.

(3) *Trustees and other assistants.* As a matter of discretion, the Ruling Official, with the approval of the Chief Postal Inspector, may use the services of a trustee, other Government official, or appointed contractors to notify potential petitioners, process petitions, and make recommendations to the Ruling Official

on the distribution of property to petitioners. The expense for such assistance shall be paid out of the forfeited funds.

(4) *Other agencies of the United States.* Where another agency of the United States is entitled to remission or mitigation of forfeited assets because of an interest that is recognizable under this part or is eligible for such transfer pursuant to 18 U.S.C. 981(e)(6), such agency shall request the transfer in writing, in addition to complying with any applicable provisions of paragraphs (c) through (e) of this section. The decision to make such transfer shall be made in writing by the Ruling Official.

(5) *Financial institution regulatory agencies.* A Ruling Official may direct the transfer of property under 18 U.S.C. 981(e) to certain Federal financial institution regulatory agencies or an entity acting in their behalf, upon receipt of a written request, in lieu of ruling on a petition for remission or mitigation.

(6) *Transfers to foreign governments.* A Ruling Official may decline to grant remission to any petitioner other than an owner or lienholder so that forfeited assets may be transferred to a foreign government pursuant to 18 U.S.C. 981(i)(1); 19 U.S.C. 1616a(c)(2); or 21 U.S.C. 881(e)(1)(E).

(7) *Filing by attorneys.* (i) A petition for remission or mitigation may be filed by a petitioner or by that person's attorney or legal guardian. If an attorney files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner stating that:

(A) The attorney has the authority to represent the petitioner in this proceeding;

(B) The petitioner has fully reviewed the petition; and

(C) The petition is truthful and accurate in every respect.

(ii) Verbal notification of representation is not acceptable. Responses and notification of rulings shall not be sent to an attorney claiming to represent a petitioner unless a written notice of representation is filed. No extensions of time shall be granted due to delays in submission of the notice of representation.

(8) *Consolidated petitions.* At the discretion of the Ruling Official in individual cases, a petition may be filed by one petitioner on behalf of other petitioners, provided the petitions are based on similar underlying facts, and the petitioner who files the petition has written authority to do so on behalf of other petitioners. This authority must be either expressed in documents giving the petitioner the authority to file petitions for remission, or reasonably implied from documents giving the petitioner express authority to file claims or lawsuits related to the course of conduct in question on behalf of these petitioners. An insurer or an administrator of an employee benefit plan, for example, which itself has standing to file a petition as a ''victim'' within the meaning of paragraph (b)(22) of this section, may also file a petition on behalf of its insured or plan beneficiaries for any claims they may have based on co-payments made to the perpetrator of the offense underlying the forfeiture, or the perpetrator of a ''related offense'' within the meaning of paragraph (b)(20), if the authority to file claims or lawsuits is contained in the document or documents establishing the plan. Where such a petition is filed, any amounts granted as remission must be transferred to the other petitioners, not the party filing the petition; although, as a matter of discretion, the Ruling Official may use the actual petitioner as an intermediary for transferring the amounts authorized as a remission to the other petitioners.

§ 233.10 [Removed and Reserved]

■ 5. Section 233.10 is removed and reserved.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–10271 Filed 4–30–12; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 11–42, 03–109, 12–23 and CC Docket No. 96–45; FCC 12–11]

Lifeline and Link Up Reform and Modernization, Advancing Broadband Availability Through Digital Literacy Training

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of six months, the information collection requirements associated with certain of the provisions of the rules adopted as part of the Commission's *Lifeline and Link Up Reform and Modernization Report and Order* (*Order*). The Commission submitted revisions to those information collection requirements under control number 3060–0819 to OMB for review and approval, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), 77 FR 13319, March 6, 2012. The revisions as updated were approved by OMB on April 13, 2012.

DATES: Sections 54.202(a), 54.401(d), 54.403, 54.405(c), 54.407, 54.416, 54.417, 54.420(b), and 54.422, published at 77 FR 12952, March 2, 2012, are effective May 1, 2012 and § 54.410(a) through (f) is effective June 1, 2012.

FOR FURTHER INFORMATION CONTACT: Kimberly Scardino, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This document announces that, on April 13, 2012, OMB approved, for a period of six months, the information collection requirements contained in the Commission's *Order,* FCC 12–11, published at 77 FR 12952, March 2, 2012. The OMB Control Number is 3060–0819. The Commission publishes this notice as an announcement of the effective date rules requiring OMB approval. The Commission updated its request to remove the temporary address confirmation and recertification requirements set forth in 47 CFR 54.410(g) and the portion of 47 CFR 54.405(e)(4) relating to temporary address de-enrollment; and the biennial audit requirements (47 CFR 54.420(a)). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on April 13, 2012, for the information collection requirements contained in the Commission's rules at 47 CFR Sections 54.202(a), 54.401(d), 54.403, 54.404, 54.405(c) as it applies to the certification form, 54.405(e) except the portion of paragraph (4) relating to temporary address de-enrollment, 54.407, 54.410(a) through (f), 54.416, 54.417, 54.420(b), and 54.422.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the

Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0819.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0819.

OMB Approval Date: April 13, 2012.

OMB Expiration Date: October 31, 2012.

Title: Section 54.400 through 54.707 and Lifeline Assistance (Lifeline) Connection Assistance (Link-Up) Reporting Worksheet and Instructions.

Form Number: FCC Form 497.

Respondents: Individuals or households and businesses or other for-profit.

Number of Respondents and Responses: 13,500,940 respondents; 36,025,860 responses.

Estimated Time per Response: .25 hours to 50 hours.

Frequency of Response: On occasion, quarterly, biennially, monthly, 1-time, and annual reporting requirements, third party disclosure requirements and recordkeeping requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1, 4(i), 201–205, 214, 254, 403 of the Communications Act of 1934, as amended.

Total Annual Burden: 21,102,135 hours.

Total Annual Cost: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the Commission. We note that the Universal Service Administrative Corporation must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program mechanism, must not use the data except for purposes of administering the universal service support program, and must not disclose data in company-specific form unless directed to do so by the Commission. Also, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: In the *2012 Lifeline Reform Order,* 77 FR 12952, March 2, 2012, we take actions necessary to address waste in the Universal Service Fund. All the requirements contained herein are necessary to implement the congressional mandate for universal service. These reporting and recordkeeping requirements are necessary to ensure that only eligible subscribers receive support and that Eligible Telecommunications Carriers follow certain rules designed to protect low income consumers and the Universal Service Fund. The *Lifeline Reform Order* is another step in the Commission's ongoing efforts to overhaul all of USF programs. The Order acts to eliminate waste and inefficiency in the program and to increase accountability.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

[FR Doc. 2012–10267 Filed 4–30–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Chapter II

[Docket No. FRA–2009–0057, Notice No. 3]

Statement of Agency Policy and Interpretation on the Hours of Service Laws as Amended; Delay of Effective Date of One Specific Interpretation

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Statement of agency policy and interpretation; delay of effective date.

SUMMARY: This document delays the effective date of a section of FRA's statement of agency policy and interpretation on the hours of service laws that was published in the **Federal Register** on February 29, 2012, and that is scheduled to take effect on May 29, 2012. In response to the document, several issues were brought to FRA's attention with regard to the feasibility of implementing one of the interpretations by the May 29, 2012 effective date. In response to those concerns, the present document delays the effective date of that specific interpretation until January 1, 2013. However, a railroad may choose to comply with the interpretation on or after May 29, 2012, and in advance of its new January 1, 2013, effective date. The effective date of all other interpretations contained in the February 29, 2012, statement remains May 29, 2012.

DATES: The effective date for section IV.B.1 of the statement of agency policy and interpretation published February 29, 2012, at 77 FR 12408, and originally effective on May 29, 2012, is delayed until January 1, 2013. All other sections of the statement of agency policy and interpretation published February 29, 2012, remain effective on May 29, 2012.

FOR FURTHER INFORMATION CONTACT: Colleen A. Brennan, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6028 or 202–493–6052); Matthew T. Prince, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6146 or 202–493–6052); or Richard Connor, Operating Practices Specialist, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–1351).

SUPPLEMENTARY INFORMATION: On February 29, 2012, FRA published its statement of agency policy and interpretation on the hours of service laws as amended (Final Interpretations), responding to public comments on FRA's earlier interim statement of policy, 74 FR 30665 (June 26, 2009), and clarifying additional questions concerning the hours of service laws. 77 FR 12408. In the Final Interpretations, FRA construed the word ''day'' for purposes of the statutory limitation on the number of consecutive days on which certain employees may initiate an on-duty period before being required to receive a certain rest period (*i.e.,* 49 U.S.C. 21103(a)(4) (sec. 21103(a)(4)). In the Final Interpretations, FRA interpreted the word ''day'' for purposes of sec. 21103(a)(4) to refer to the 24-hour period ending when an employee is finally released from duty, and any new initiation of an on-duty period at any point during the 24-hour period following the employee's prior final release will have been initiated on a day consecutive to the prior duty tour. This interpretation differed from the interpretation of what constitutes a ''day'' that was articulated in the interim statement of policy, which construed a ''day'' for the purposes of section 21103(a)(4) as a calendar day. FRA's interim interpretations went into effect on July 16, 2009, and they have remained in effect. The Final Interpretations are scheduled to go into effect on May 29, 2012.

In response to the Final Interpretations, the Association of American Railroads (AAR) requested a meeting with FRA. The meeting took place on April 4, 2012, and included the AAR as well as several railroads in teleconference. At the meeting, FRA

requested that the AAR put its concerns in writing. FRA received a letter from the AAR, dated April 9, 2012, requesting that FRA delay the effective date of the interpretation relating to the meaning of ''day'' in section 21103(a)(4), section IV.B.1 of the Final Interpretations, until January 1, 2013, and raising other concerns. FRA has posted the letter to the docket, Docket No. FRA–2009–0057. The letter argues that it is infeasible for railroads to comply with the interpretation by May 29, 2012, for three reasons:

First, the change to a 24-hour day requires significant programming changes for railroad information technology (IT) systems. These programming changes, which will require significant testing before they can be implemented, cannot be accomplished by May 29 or even shortly thereafter. Second, the change to a 24-hour day will require some railroads to hire additional employees * * *. Those railroads cannot hire and train employees by May 29. Third, the railroads need to update their training materials and train all affected employees on the new interpretation.

Recognizing that it may not be possible for some railroads to comply with the new interpretation by May 29, 2012, FRA is issuing this document, which delays the effective date of section IV.B.1, ''What constitutes a 'Day' for the purpose of sec. 21103(a)(4)?'' until January 1, 2013. All other sections of the Final Interpretations remain effective on May 29, 2012.

In its April 9, 2012, letter, the AAR also requests a transition period from December 1, 2012 until the requested January 1, 2013, effective date in order to allow railroads to comply with the new interpretation of ''day'' for purposes of section 21103(a)(4) in advance of the effective date, rather than requiring compliance with the interim interpretation until the effective date of the new interpretation. To provide flexibility, rather than establish a static transition date, FRA will allow a railroad to choose to comply with the new interpretation on any date on or after May 29, 2012, and prior to January 1, 2013. FRA suggests that railroads choosing to transition to the new interpretation prior to January 1, 2013, inform the appropriate FRA regional offices, to reduce confusion and avoid redundant information requests from FRA inspectors.

Transition to the new interpretation must be by a railroad in its entirety, rather than on an employee-by-employee or subdivision-by-subdivision basis. Were a railroad to try to transition piecemeal, employees would likely be forced to move frequently between the interim interpretation and the new interpretation as they moved between subdivisions of the railroad. The AAR noted the complexity of moving employees from the interim interpretation to the new interpretation in the context of a single transition date; allowing multiple transition dates for a single railroad would exacerbate these concerns.

FRA requests that Class I railroads provide monthly status reports to Richard Connor, FRA Operating Practices Specialist, at *Richard.Connor@dot.gov* or at the street address listed above, starting July 1, 2012 and ending for each railroad after its transition to the new interpretation, to update FRA on the progress of each railroad toward resolving technological, training, and hiring issues, and any other issues that present an obstacle to compliance with the new interpretation. Such reports will allow FRA to ensure that railroads are working toward full compliance with the new interpretation no later than January 1, 2013. If FRA determines that railroads are not progressing toward implementation of the new interpretation, or if FRA is unable to gather the information necessary to make such a determination, FRA may publish an additional notice expediting the transition period.

Issued in Washington, DC, on April 25, 2012.

Joseph C. Szabo,

Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 17 and 424

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 226 and 424

[Docket Nos. FWS–R9–ES–2010–0073; NOAA–110131071–2013–02; MO–92210–0–0009–B4]

RIN 1018–AX44; 0648–BA77

Endangered and Threatened Wildlife and Plants; Revised Implementing Regulations for Requirements To Publish Textual Descriptions of Boundaries of Critical Habitat

AGENCY: United States Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: We (FWS and NMFS; also jointly referred to as the Services) are revising regulations related to publishing textual descriptions of proposed and final critical habitat boundaries in the **Federal Register** for codification in the Code of Federal Regulations. In the interest of making the process of designating critical habitat more user-friendly for affected parties, the public as a whole, and the Services, as well as more efficient and cost effective, we are going to maintain the publication of maps of proposed and final critical habitat designations, but are making optional the inclusion of any textual description of the boundaries of the designation in the **Federal Register** for codification in the Code of Federal Regulations. The boundaries of critical habitat as mapped or otherwise described in the Regulation Promulgation section of a rulemaking that is published in the **Federal Register** will be the official delineation of the designation. The coordinates and/or plot points from which the maps are generated will be included in the administrative record for the designation, and will be available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov,* and at the lead field office of the Service responsible for the designation. We will also continue our practice of providing the public with additional tools and supporting information, such as interactive maps and additional descriptions, on the Internet site of the Service promulgating the designation and at the lead field office responsible for the designation (and we may also include such information in the preamble and/or at *www.regulations.gov*) to assist the public in evaluating the coverage of the critical habitat designation. We have undertaken this effort as part of the Services' response to Executive Order 13563 (Jan. 18, 2011) directing Federal agencies to review their existing regulations and, inter alia, to modify or streamline them in accordance with what they learned.

DATES: This rule becomes effective May 31, 2012.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov.* Supporting documentation used in the preparation of this rule will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Division of

Conservation and Classification, 4401 N. Fairfax Drive, Suite 420; Arlington, VA 22203, telephone 703/358–2171; facsimile 703/358–1735 and National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301–713–1401; facsimile 301–713–0376.

FOR FURTHER INFORMATION CONTACT: Nicole Alt, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 4401 N. Fairfax Drive, Suite 420; Arlington, VA 22203, telephone 703/358–2171; facsimile 703/358–1735 or Marta Nammack, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301–427–8469; facsimile 301–713–0376. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Before a plant or animal species can receive the protection provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), it must first be added to the Federal lists of threatened and endangered wildlife and plants. The List of Endangered and Threatened Wildlife (found in title 50 of the Code of Federal Regulations (CFR) in § 17.11) and the List of Endangered and Threatened Plants (found in 50 CFR 17.12) contain the names of all organisms that have been determined by the Services to qualify as ''endangered species'' or ''threatened species.'' After a species is listed as endangered or threatened under the Act, the Service that listed the species designates as ''critical habitat,'' to the maximum extent prudent and determinable, specific areas essential for the conservation of the species.

Under section 4(b)(5)(A) of the Act, the Services are required, when designating or revising critical habitat for species listed under the Act, to publish the complete text of the regulation in the Regulation Promulgation section of a rulemaking published in the **Federal Register**. The existing implementing regulations found in 50 CFR 17.94(b), 226.101, 424.12(c), 424.16(b) and (c)(1)(ii), and 424.18(a) have interpreted this requirement to comprise publication of both maps and textual descriptions of the boundaries of such habitat. We have found over time that textual descriptions of critical habitat boundaries are often difficult to interpret and understand, and do not provide clarity regarding the areas being designated. Publishing these textual descriptions is also inefficient and costly. Below we discuss our current requirements and their limitations, and the regulation changes we are promulgating to address these issues.

NMFS' current practice is to publish maps in the **Federal Register** along with a textual description of the boundaries of the areas being designated as critical habitat in both their proposed and final rules. FWS publishes only the maps in the proposed critical habitat rule and then publishes the maps along with a textual description of the boundaries in the final critical habitat rule. Historically we described the boundaries following a variety of methods, including Public Land Survey System designations (which specify township, range, and section; sometimes referred to as the ''rectangular survey system'') and metes-and-bounds (a system of describing a parcel of land using the physical features of local geography, along with directions and distances, to define the boundaries). However, as GIS and specific geographic-based data have become more available, we have been using predominantly the Universal Transverse Mercator (UTM) coordinate system (a grid-based system employing a series of 60 zones to specify locations on the surface of the Earth) and latitude-longitude. We adopted these practices because our current regulations at 50 CFR 424.12(c) state, ''Each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area.'' Unfortunately, these descriptions are often difficult to interpret and understand, and do not provide clarity regarding which areas are being designated as critical habitat. Therefore, in addition to the maps and textual descriptions published in the **Federal Register**, over the last several years we have provided the public with interactive maps and additional descriptions, on the Services' Internet sites and at the lead field office responsible for the designation. References to these Internet sites are cited throughout the proposed (NMFS only) and final (NMFS and FWS) rules and in our outreach materials for the specific action. In addition, we have provided maps and GIS coverages (data layers) to affected Federal agencies, states, counties, jurisdictions, and interested parties for use in their computer databases and to make available to their constituencies. Our understanding that the public has referred to these latter materials in lieu of the detailed coordinates and other similar textual descriptions published in the **Federal Register** and codified in the Code of Federal Regulations reinforces our view that these textual descriptions are of limited utility in informing the public as to which areas are designated as critical habitat.

Given that the textual descriptions are of limited utility, we are revising the implementing regulations contained within 50 CFR 17.94(b), 226.101, 424.12(c), 424.16(b) and (c)(1)(ii), and 424.18(a), to eliminate the requirement to publish textual descriptions of proposed (NMFS only) and final (NMFS and FWS) critical habitat boundaries in the **Federal Register** and reprinting in the CFR, and instead provide that the map(s), as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a critical habitat. Each critical habitat area will be shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register**. The map published in the CFR will be generated from the coordinates and/or plot points corresponding to the location of the boundaries. These coordinates and/or plot points will be included in the administrative record for the designation, and will be available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov,* and at the lead field office of the Service responsible for the designation. In addition, if the Service responsible for the designation concludes that additional tools or supporting information would be appropriate and would help the public understand the official boundary map, it will make the additional tools and supporting information available on our Internet sites and at the lead field office of the Service that is responsible for the critical habitat designation (and may also include it in the preamble and/or at *www.regulations.gov*). The maps and brief textual descriptions that we plan to publish in the **Federal Register** after we finalize this rule will be sufficient to inform the public of the boundaries of a particular critical habitat designation, and thus constitutes sufficient notice to the public. It is not necessary—or generally even helpful—for the public to have UTM or latitude-longitude coordinates in order to know where critical habitat is located. We believe these changes will be for the public good and make the process more user-friendly, without compromising the public's understanding of the overall process.

In addition to making the process more accessible to the public, eliminating the need to publish detailed textual descriptions in the **Federal Register** and annually in the CFR will also result in significant financial savings, thereby saving Federal resources. In FWS's final designations, UTM coordinate pairs or other textual descriptions of the boundaries of areas often account for more than half of the rulemaking document; therefore, eliminating the requirement to publish those textual descriptions will result in significant savings of **Federal Register** publication costs. For example, FWS spent $764,523 in fiscal year 2008, $539,639 in fiscal year 2009, and $662,952 in fiscal year 2010 to publish critical habitat designations in the **Federal Register**, for a total of $1,967,114 for the three fiscal years combined. If, based on the percentage of critical habitat **Federal Register** pages that were devoted in 2010 to textual descriptions, we estimate that 50 percent of those total costs were spent on the publication of the textual descriptions of the boundaries, then publishing those descriptions cost the Service $983,557 for the three fiscal years, or $327,852 per fiscal year.

In addition, the regulation portion of the rule, including the maps and textual descriptions of the boundaries, is reprinted annually in the CFR, resulting in a further expenditure of taxpayer resources. FWS spent $80,000 in fiscal year 2008, $92,400 in fiscal year 2009, and $83,160 in fiscal year 2010 to reprint critical habitat designations in the CFR. Based on a review of the current volume (i.e., number of pages) of critical habitat designations represented in the CFR, we estimate that the textual descriptions account for approximately 75 percent of the volume and therefore 75 percent of the printing costs. Using the estimated 75 percent as the cost of reprinting the textual descriptions of the boundaries, publishing those descriptions cost FWS $191,670 for the three fiscal years. Adding this to the **Federal Register** costs discussed above, we estimate that the annual cost for publishing textual descriptions of boundaries in the **Federal Register** and then reprinting them in the CFR is nearly $391,742 for FWS alone. Thus, eliminating the need to publish latitude-longitude coordinates, UTM coordinate pairs, or other detailed textual descriptions in the **Federal Register** and CFR would result in a significant cost savings to the Services and the public as a whole.

Finally, relying on maps and brief textual descriptions to identify areas designated as critical habitat is consistent with the Act. Section 4(a)(3)(A) of the Act only requires that critical habitat be designated ''by regulation.'' Moreover, section 4(b)(5)(A) of the Act indicates that the Secretary shall ''not less than 90 days before the effective date of the regulation—(i) publish a general notice and the complete text of the proposed regulation in the **Federal Register**, and (ii) give actual notice of the proposed regulation (including the complete text of the regulation).'' We interpret the mandate to publish the ''complete text'' of the proposed regulation as requiring that the regulation provide a sufficiently detailed description of the area included within the proposed designation, in the form of maps and any accompanying text, so as to provide all interested persons with an understanding of, and a meaningful opportunity to comment on, the critical habitat boundaries. As is already the current practice with critical habitat designations containing detailed UTM coordinates as required by the existing regulations, the public will be able to refer to any additional supporting information we make available through our outreach efforts, Internet sites, and at the lead field office responsible for the designation to assist the public in understanding the official boundary.

We note that the Services never maintained that requiring detailed textual descriptions was legally necessary. Instead, the first critical habitat regulations required only that critical habitat designations be ''accompanied by maps and/or geographical descriptions.'' 43 FR 870, 876 (Jan. 4, 1978). Although the Services subsequently added the requirement that critical habitat designations include textual descriptions describing the specific boundary limits of the critical habitat, there is nothing in the preamble to that rule indicating that the Services did so because the Act required it. Rather, it was in response to several commenters, who had opined that the proposed rule was not sufficiently clear in setting out the method by which critical habitat boundaries would be described. 45 FR 13009, 13015 (Feb. 27, 1980). With this change, the regulations would continue to be explicit as to the method by which critical habitat boundaries would be described; it would just do so by means that do not require detailed textual descriptions.

Summary of Comments and Recommendations

In the proposed rule published on May 17, 2011 (76 FR 28405), we requested that all interested parties submit written comments on the proposal by July 18, 2011. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties, and invited them to comment on the proposal. We did not receive any requests for a public hearing.

During the comment period for the proposed rule, we received 14 comment letters directly addressing the proposed regulations for requirements to publish textual descriptions of boundaries of critical habitat. Five commenters supported the proposal, 8 commenters opposed it, and one commenter was neutral. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below.

Federal Agency Comments

(1) *Comment:* Two Federal agencies suggested that we provide a link and a point of contact within the **Federal Register** publication to the internet sites maintained by both Services.

Our Response: We will provide a link and a point of contact within the **Federal Register** publication to the Internet sites that will house the GIS information regarding the location of critical habitat.

(2) *Comment:* Two Federal agencies suggested we provide more information on our GIS maps, such as detailed scale, legend, scale bar, north arrow, title, source, the date critical habitat was finalized, and **Federal Register** citation.

Our Response: We will provide as much information as possible on the GIS maps to improve their usefulness.

Comments From States

Section 4(i) of the Act states, ''[T]he Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from State agencies regarding the proposal to revise the implementing regulations requiring textual descriptions of critical habitat boundaries are addressed below.

(3) *Comment:* Technical publishing limitations can create a barrier to utilizing the best scientific data available in the pictorial maps published in the **Federal Register**.

Our Response: Although it is true there are technical publishing limitations imposed by the **Federal Register** regarding map size and detail, these limitations will not affect our mandated practice of using the best available science. In addition, if there are limitations imposed due to map size such that additional rule text would be necessary to ensure that interested

persons have adequate notice to afford them a meaningful opportunity to comment on the critical habitat boundary, we will provide language in the rule text to clarify the map. Plus, the coordinates and/or plot points from which the maps are generated will be included in the administrative record for the designation, and will be available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov,* and at the lead field office of the Service responsible for the designation. For the convenience of the public, we will continue to provide additional tools and supporting information on our Internet sites and at the lead field office of the Service that is responsible for the critical habitat designation (and some of this information may also be included in the preamble and/or at *www.regulations.gov*).

(4) *Comment:* Pictorial maps cannot always provide the same level of detail that a textual description can provide.

Our Response: Although maps may not be as detailed as UTM and latitude-longitude coordinates, the maps and any accompanying textual description published in the **Federal Register** will provide sufficient notice to the public of the designation. We are not prohibiting textual descriptions. We always have the option to include them, and if we determine they are needed to ensure the public has adequate notice, we will include them in the rule text. We will also include in the administrative record for the designation the coordinates and/or plot points on which the maps are based, and will make them available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov,* and at the lead field office of the Service responsible for the designation. In addition, as is the current practice, if we determine that any other supporting information or additional tools would help the public understand the official boundary map, we will make them available on our Internet sites and at the lead field office responsible for the designation (and we may also include such information in the preamble and/or at *www.regulations.gov*).

(5) *Comment:* Under the proposed change, access to the GIS data underlying the maps would be restricted.

Our Response: Access to the GIS data underlying the maps would continue to be available on our Internet sites and from the lead field office of the Service responsible for the critical habitat designation. We will also make hard copies available for individuals who do not have access to the internet upon request at our field offices. Our statement that ''we do not think it is necessary for the public to have UTM or latitude-longitude coordinates in order to know where critical habitat is located,'' is based on our understanding that for the last few years the public has not used the UTM or latitude-longitude coordinates to determine if their property is located in critical habitat areas, and that the UTM and latitude-longitude coordinates published in the **Federal Register** have not helped most individuals determine if their property is in or out of critical habitat designations, because they would need to have access to USGS quadrangle maps in order to plot the coordinates to determine the boundaries of critical habitat. We will continue to include in the administrative record the coordinates and/or plot points on which the maps are based, and we will make those coordinates and/or plot points available to the public on our Internet sites and at the lead field office of the Service responsible for the critical habitat designation, and at *www.regulations.gov,* but will not publish these data in the **Federal Register**.

(6) *Comment:* The Service's intention to address the technical publishing limitations by directing the public to their Internet sites and local offices for more information is inadequate.

Our Response: As discussed in our response to comment 4, we will address the technical publishing limitations by including whatever explanatory text the Service responsible for the designation determines is necessary to ensure the public has adequate notice of the designation. In addition, the coordinates and/or plot points from which the maps are generated will be included in the administrative record for the designation, and will be available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov,* and at the lead field office of the Service responsible for the designation. For the convenience of the public, we will continue the current practice of making available on the Internet site and at the local field office of the designating Service any supporting information or additional tools that it determines would help the public understand the official boundary map.

(7) *Comment:* The reliance on pictorial maps would affect the Services' ability to analyze the primary constituent elements (PCE), economic, national security, or other relevant impacts and the ability of the States and the public to consider and comment on these issues.

Our Response: The Services are not changing the way we analyze the physical and biological features essential to the conservation of the species, including the primary constituent elements, economic, national security, or other relevant impacts. We will continue to define the critical habitat areas with coordinate data and use that data to generate the critical habitat map contained in the rule. The only difference from the way we presently are operating is that we would no longer publish the coordinate data in the **Federal Register**. The States and the public would still have that information in the supporting administrative record, and would be able to obtain it on our Internet sites, at *www.regulations.gov,* and at the lead field office of the Service responsible for the critical habitat designation.

(8) *Comment:* Internet site addresses that contain the critical habitat boundaries should be provided in easily accessible locations for both the proposed and final rules.

Our Response: We will continue to provide the critical habitat boundary information on our Internet sites and at the lead field office of the Service responsible for the critical habitat designation and will make it available at *www.regulations.gov* for easy access. We will also continue to publish the Internet sites and local office addresses in the **Federal Register** for both the proposed and final critical habitat rules.

(9) *Comment:* Complete metadata related to critical habitat maps, as well as a complete legal description of the boundary, should be available on the Services' Internet sites and at all local field offices within the region of the designation.

Our Response: We will provide this information on our Internet sites and at the lead field office of the Service responsible for the critical habitat designation (and we may also make it available at *www.regulations.gov*).

(10) *Comment:* In describing the proposed and final critical habitat boundary designation, the maps and data used in the **Federal Register** and other information vehicles should include references to how accurate the underlying data are and what at least the essential elements of the metadata are.

Our Response: Information about the metadata and the accuracy of the data will be provided in the supporting rulemaking files for the proposed and final critical habitat boundaries. We will not publish this information in the **Federal Register**.

(11) *Comment:* Critical habitat boundaries should be available in a

geographic information system (GIS) compatible format for downloading.

Our Response: We concur, and we will provide GIS maps on our Internet sites and at the lead field office of the Service responsible for the critical habitat designation (and we may also make it available at *www.regulations.gov*).

Public Comments

(12) *Comment:* Three commenters fully support the proposal, because it would significantly streamline the process of designating critical habitat, would not weaken the effectiveness of the Act for wildlife, and would not undermine the public's ability to identify the boundaries of proposed and final critical habitat designations.

Our Response: We appreciate the comments, and agree.

(13) *Comment:* One commenter stated that there was inconsistent language in the proposed rule that should be clarified and corrected. In 50 CFR 424.12(c) we use an ''and'' between the clauses and in 50 CFR 424.18(a) we use an ''or'' between the clauses.

Our Response: We do not believe that the language is inconsistent as proposed. The ''and'' between the phrases in 50 CFR 424.12(c) is referring to the detailed information that will be provided in the preamble for each critical habitat designation. This information will also be on our Internet sites and at the lead field office of the Service responsible for the critical habitat designation. The ''or'' between the clauses in 50 CFR 424.18(a) is referring to the additional tools and supporting information that we will make available if we determine it would help the public understand the official boundary map. Such additional tools or supporting information may be published in the preamble of the rulemaking document or at *www.regulations.gov,* or—depending on the size, detail, etc.—may only be made available from our Internet sites and the lead office of the Service responsible for the designation.

(14) *Comment:* Two commenters stated the definitive regulatory text is necessary to set forth the extent of critical habitat, its intended function and purpose, its regulatory basis, and any related interpretations.

Our Response: We will continue to provide textual descriptions as necessary for purposes of clarifying or refining the location and boundaries of each area or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area. The major change from the way we are currently doing business is that we would not publish the coordinates of the critical habitat boundaries in the **Federal Register**. This information would still be part of the administrative record underlying the designation, and will be available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov,* and at the lead field office of the Service responsible for the designation.

(15) *Comment:* The proposed rule raises the possibility of overbroad designations of critical habitat made without careful prior analysis of the primary constituent elements, areas of exclusion for existing facilities, and delineation of the critical habitat boundaries.

Our Response: We are not changing the way we analyze physical and biological features essential to the conservation of the species, including the primary constituent elements, areas of exclusion for existing facilities or delineation of the critical habitat boundaries. We will continue to generate the coordinates of the boundaries of the critical habitat, which will in turn provide the basis for the maps and any necessary textual descriptions published in the **Federal Register**. Therefore, the coordinate information will be part of the rulemaking files and will be available to the public. This will save the Federal government money, and provide better and easier public access to the data.

(16) *Comment:* One commenter asked why the public was left out of the 50 CFR 424.16(ii) language.

Our Response: This section only applies to State and local governments. The public is always invited to comment, and this in no way prevents that from occurring.

(17) *Comment:* One commenter wanted to know at whose discretion is the optional additional textual data provided, and what criteria go into that decision.

Our Response: The discretion would fall to the Secretary of the Interior for critical habitat being designated by the Fish and Wildlife Service and to the Secretary of Commerce for critical habitat being designated by the National Marine Fisheries Service. The conditions that would lead the designating Secretary to make the decision to publish rule text in addition to the maps would include instances in which the rule text is necessary to ensure that the public has adequate notice of the location and boundaries of the designation or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area.

(18) *Comment:* One commenter stated that this proposal makes an already inadequate and unlawful notification system even worse by removing all meaningful constraints and requirements on how the Services designate critical habitat.

Our Response: This regulation change does not alter how the Services designate critical habitat. Under the Administrative Procedure Act, the designating Service must ensure that the public has adequate notice to provide meaningful comment on the proposed designation. To do this, the notice of proposed rulemaking must fairly apprise interested persons of the issues in the rulemaking, and the agency must make available the data on which the rule is based. In the context of designation of critical habitat, this means, among other things, that the notice must fairly apprise interested persons as to what areas may be included in the final designation, and the designating Service must make available the coordinate information and/or plot points on which the maps published in the **Federal Register** are based. It is our intent that every designation issued pursuant to these revised regulations meet this standard. This rule would simply allow us to eliminate publishing the rarely-used coordinate data in the **Federal Register**, while still providing the public with adequate notification.

(19) *Comment:* The Services are violating the Act by unlawfully shifting the burden of demonstrating what is or is not critical habitat to the landowner by this proposed rule change.

Our Response: This rule change would not shift the responsibility of determining which specific areas are critical habitat to the landowner; this would still be the responsibility of the Services. The map combined with any additional rule text should provide adequate notice to the public regarding the critical habitat boundaries. Landowners would have no added burden of demonstrating what is or is not critical habitat, and as with critical habitat designations under the existing regulations, will continue to have access to the coordinates and/or plot points underlying the maps, as well as all of the additional tools and supporting information the Service responsible for the designation routinely makes available to help the public understand the official boundary.

(20) *Comment:* The Services' proposal violates the Act's mandate that the agencies designate specific, not general, areas.

Our Response: The Services would continue to be responsible for identifying specific areas, to the maximum extent prudent and

determinable, that meet the definition of critical habitat in the Act. The changes to the regulations discussed herein will not have any effect or bearing on that statutory requirement. We have determined, however, that the manner in which we have been describing the boundaries of the specific areas in our **Federal Register** document is not the most helpful or useful to the public.

(21) *Comment:* One commenter stated that removal of the textual descriptions of critical habitat would violate the Act.

Our Response: Relying on maps and brief textual descriptions to identify areas designated as critical habitat is consistent with the Act, as explained above. In fact, the current requirement to publish the textual descriptions is not found in the Act itself, but in our implementing regulations. With this change, the implementing regulations would continue to prescribe the manner in which the Secretaries will delineate critical habitat boundaries; the manner those regulations prescribe for delineating critical habitat boundaries would leave to the discretion of the agencies whether it was necessary to include the publication of textual descriptions in the **Federal Register** in a particular designation.

(22) *Comment:* The Services' assertion that even more limited descriptions of critical habitat will be sufficient to inform the public is unsupported and wrong, because map scales are too general to be of much use to individual landowners.

Our Response: It is true that due to technical publishing limitations, the scale of some maps that will be published in the **Federal Register** may necessitate that we provide explanatory text for clarification. If the maps are ambiguous such that rule text would be needed to ensure the public has adequate notice of the designation, we will include accompanying text in the rule. Moreover, as with critical habitat designations under the existing regulations, the public will continue to have access to the coordinates and/or plot points underlying the maps, as well as all of the additional tools and supporting information the Service responsible for the designation routinely makes available to help the public understand the official boundary.

(23) *Comment:* The Services' proposal supplants established surveying techniques with unspecified general descriptions to the detriment of private landowners.

Our Response: We would continue to use established surveying techniques for defining the boundaries of critical habitat, which would then be represented in the maps and any accompanying textual descriptions in the **Federal Register**.

(24) *Comment:* One commenter stated that publishing only a detailed description of the critical habitat violates the Act, which requires publication of the complete text of the critical habitat.

Our Response: We interpret the mandate to publish the ''complete text'' of the proposed regulation as requiring that the regulation provide a sufficiently detailed description of the area included within the proposed designation so as to provide all interested persons with an understanding of the critical habitat boundaries and a meaningful opportunity to comment on those boundaries. The regulation changes will allow us to continue to meet that mandate by publishing maps of the critical habitat boundaries.

(25) *Comment:* The Services' proposed changes would deny landowners due process.

Our Response: We will continue to provide a sufficiently detailed description in the **Federal Register** of the critical habitat area in the form of maps and any accompanying rule text that is needed to provide landowners with a meaningful opportunity to comment. We will also continue to include within the administrative record for the designation the coordinates and/or plot points that were used to generate the maps and will make this data available on the Services' Internet sites, *www.regulations.gov,* and at the lead field office of the Service responsible for the designation. In addition, as we already do under the existing regulations, whenever we conclude that additional tools or supporting information would help the public understand the official boundary, we will make those materials available on our Internet sites and at the lead field office of the Service responsible for the critical habitat designation (and we may also provide them at *www.regulations.gov*). These changes will continue to provide landowners due process, as they will not alter the nature of the information the public currently uses to identify critical habitat boundaries.

(26) *Comment:* The projected cost savings is minuscule compared to the increased cost burdens that will be imposed on individual property owners.

Our Response: We do not anticipate that this change would impose increased cost burdens on individual property owners. The critical habitat boundaries will be reflected in maps and any accompanying text published in the **Federal Register**. In addition, individual property owners will be able to easily access additional information regarding the critical habitat designation on our Internet sites, at *www.regulations.gov,* and at the lead field office of the Service responsible for the critical habitat designation. We will not only save Federal monies, but also reduce the cost burden on individual property owners by making critical habitat information easier to obtain.

(27) *Comment:* The Services should provide written notice directly to the owners of land by mail whenever they propose to include land in a critical habitat designation.

Our Response: In addition to the **Federal Register** notices, the Services provide notification through outreach materials including press releases and legal notices in newspapers of the affected areas. We believe these outreach efforts are sufficient to inform the public about proposed critical habitat designations. Notifying property owners by mail would be costly, time consuming, and largely duplicative of our current outreach efforts.

(28) *Comment:* The Services should publish maps in the **Federal Register** of a sufficient scale and with sufficient detail to allow a landowner to determine whether their property falls within a proposed critical habitat designation.

Our Response: The **Federal Register** limitations on map size and detail prevent the Services from being able to improve upon the present maps being published in the **Federal Register**. We will publish maps in the **Federal Register** in as detailed a manner as possible, given the technical limitations. For designations with large-scale maps, the map itself may leave ambiguity as to whether a particular property is within the mapped boundaries (and therefore covered by the critical habitat designation). When the designating Service determines that additional regulatory text clarifying ambiguities in the map is needed to ensure that the public would have adequate notice of the critical habitat boundaries, the designating Service will provide additional regulation text. The designating Service will ensure that the notice of proposed rulemaking provides sufficient notice of the boundary of the proposed designation to afford the public a meaningful opportunity to comment on it. Moreover, the Services will make available the underlying rulemaking files for the proposed and final rule (including the coordinate information and/or plot points on which the maps published in the **Federal Register** are based).

(29) *Comment:* One commenter was concerned that if the proposed rule is

adopted, it will reduce information that must be published in the **Federal Register** when designating critical habitat, and would potentially provide the opportunity to change the information available at agencies without going through rulemaking.

Our Response: We would not be able to change the critical habitat designation without going through the rulemaking process. We have acknowledged that what is printed in the **Federal Register** and subsequently in the CFR will be the legally binding delineation of critical habitat. Should there be ambiguity due to the scale of the map such that additional regulatory text clarifying ambiguities in the map is needed to ensure that the public would have adequate notice of the boundaries, we will provide additional regulation text. The only change in the **Federal Register** would be the lack of the detailed coordinate data of the boundaries of the specific areas being designated as critical habitat (i.e., latitude-longitude and UTM coordinates). We would still generate that data, and would make it available on our Internet sites, at *www.regulations.gov,* and at the lead field office of the Service responsible for the critical habitat designation. Neither the critical habitat designation published in the **Federal Register**, nor the underlying data on which it is based, could be changed without undergoing a further rulemaking.

(30) *Comment:* One commenter stated that the proposed approach could create significant concerns if implemented in a manner that designates wide swaths of lands on a map, only certain areas of which contain the physical and biological features necessary for conservation of the species.

Our Response: The way we designate critical habitat would not change. This rule change would simply remove the requirement that we publish the reference points (i.e., textual descriptions) in the **Federal Register** and reprint them annually in the CFR. In addition, in instances where there are areas within a bigger area that do not contain the physical and biological features necessary for the conservation of the species, the Services would have the option of drawing the map to reflect only those parts of the area that do contain those features, or including a textual description that excludes from the designation specific areas that do not contain those features.

(31) *Comment:* One commenter proposes that we add the following sentence to 50 CFR 424.18(a): ''General descriptions of the location and boundaries of each area may be provided for clarification purposes or to explain the exclusion of sites (e.g., paved roads, buildings, etc.) within the mapped area.''

Our Response: We have inserted that language in 50 CFR 424.12(c). We do not believe it is necessary to repeat this in 50 CFR 424.18(a).

(32) *Comment:* One commenter was concerned about the removal of the textual descriptions of existing final critical habitat boundaries set forth in the CFR and whether the broad scale maps would increase critical habitat.

Our Response: Removing the coordinate data from the **Federal Register** and CFR will not increase or otherwise change the critical habitat boundaries or areas. We are merely planning to remove the reference points (i.e., UTM or latitude-longitude coordinates) of the textual descriptions from existing final critical habitat designations in the **Federal Register** and CFR in future rule making. We will, however, continue to provide this information on our Internet sites, at *www.regulations.gov,* and at the lead field office of the Service responsible for the critical habitat designation.

(33) *Comment:* One commenter stated that, without the requirement of a written description, there is no assurance that the maps will or will not indicate the boundary of the critical habitat.

Our Response: We are making the textual descriptions optional. This means we will not, in most cases, publish the reference points (i.e., UTM or latitude-longitude coordinates) in the **Federal Register**. However, every critical habitat designation must include a map delineating the critical habitat boundary, and may also include general textual descriptions for clarification purposes or to explain the exclusion of sites (e.g., paved roads, buildings, etc.) within the mapped area. The critical habitat map, combined with any general textual descriptions included in the rule text, will provide the public with adequate notice of where the boundary of the critical habitat designation is located. As we have acknowledged, therefore, the final rule published in the **Federal Register** and subsequently in the CFR will continue to contain the legally binding delineation of critical habitat. However, if for some reason a member of the public is uncertain about the boundaries of a particular critical habitat designation even after reading the map and any regulatory text, they will continue to have access to the coordinates and/or plot points underlying the maps, as well as all of the additional tools and supporting information the Service responsible for the designation already routinely makes available to assist the public in understanding the official boundary.

(34) *Comment:* One commenter stated that our proposed changes to 50 CFR 17.94(b) (Each Critical Habitat area will be shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead field office of the Service responsible for such designation) was in conflict with our proposed changes to 50 CFR 424.18(a) (The Service may also create additional explanatory text, information, or maps and include them in the preamble of the rulemaking document or make them available from the lead office responsible for the designation).

Our Response: The two provisions referenced by the commenter are consistent. Both provisions have two components. The first component requires that the detailed description of the action contained in the **Federal Register** rule and then in the CFR will include a map delineating the boundary of the designation. This can be found at 50 CFR 424.18(a) (''For a rule designating or revising critical habitat, the detailed description of the action will include a map that delineates the official boundary of the designation.'') and at 50 CFR 17.94(b) (''Each Critical Habitat area will be shown on a map * * *''). The requirement to include a map in the detailed description of the action does not eliminate the option of also including additional clarifying rule text within that detailed description. The second component of the two provisions outlines ways to provide more information that we believe would be helpful to inform the public on the location of critical habitat above and beyond the detailed description of the action. This can be found at 50 CFR 17.94(b) (''with more-detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead field office of the Service responsible for such designation.'') and at 50 CFR 424.18(a) (''The Service responsible for the designation will include more-detailed information in the preamble of the rulemaking document and will make the coordinates and/or plot points on which the map is based available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov,* and at the lead field office of the Service responsible for the designation. In addition, if the Service responsible for the designation concludes that additional tools or supporting information would be appropriate and would help the public

understand the official boundary map, it will, for the convenience of the public, make those additional tools and supporting information available on our Internet sites and at the lead field office of the Service that is responsible for the critical habitat designation (and may also include it in the preamble and/or at *www.regulations.gov*)''). Therefore, in accordance with 50 CFR 17.94(b), the more-detailed information we provide in the preamble of the rulemaking document will also be available from the lead Service office responsible for the designation. Any additional tools or supporting information—explanatory text, information, or maps—that we may provide would, in accordance with 50 CFR 424.18(a), be available through our Internet sites and at the lead field office responsible for the designation, and depending on the size and format of that supporting information, it may also be included in the preamble to the rulemaking document and/or at *www.regulations.gov*. Also under 50 CFR 424.18(a), the coordinates and/or plot points on which the map is based would be available at the Internet site and lead field office of the Service promulgating the designation and at *www.regulations.gov*.

Regulation Changes

50 CFR 17.94(b)

The existing regulation states that the map provided by the Director does not, unless otherwise indicated, constitute the definition of the boundaries of a critical habitat. In order to provide more clarity regarding the areas being designated, as well as be more efficient and cost-effective, we are changing the wording of the first sentence to state, ''For the critical habitat designations published and effective after May 31, 2012, the map provided by the Secretary of the Interior, as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a critical habitat.'' We are replacing ''the Director'' with ''the Secretary of the Interior'' since the authority to designate critical habitat under the Act lies with the Secretary due to the Secretarial discretion under section 4(b)(2) of the Act to exclude specific areas from final critical habitat. We are limiting application of the new language to critical habitat designations published after the effective date of the final rule. For existing critical habitat designations, we also intend to remove the textual descriptions of final critical habitat boundaries set forth in the CFR in order to save the annual reprinting cost, but we must do so in separate rulemakings to ensure that removing the textual descriptions does not change the existing boundaries of those designations.

The second sentence of the existing regulation states, ''Such maps are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the Critical Habitat.'' We are revising this sentence to read ''Each Critical Habitat area will be shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead field office of the Service responsible for such designation.'' We believe this will provide greater clarity regarding the areas being designated, as well as be a more efficient and cost-effective way to provide information to the public concerning areas designated as critical habitat. We acknowledge that what is printed in the **Federal Register** and subsequently in the CFR will be the legally binding delineation of critical habitat. In addition, the Services will include more-detailed information in the preamble of the rulemaking document and will make the coordinates and/or plot points on which the official map is based available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov,* and at the lead field office of the Service responsible for the designation. Furthermore, if the Service responsible for the designation concludes that additional tools or supporting information would be appropriate and would help the public understand the official boundary map, it will, for the convenience of the public, make those additional tools and supporting information available on our Internet sites and at the lead field office of the Service that is responsible for the critical habitat designation (and may also include it in the preamble and/or at *www.regulations.gov*).

We are replacing the third existing sentence, which currently reads, ''Critical habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the Critical Habitat is located.'' The new wording will be ''Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the Critical Habitat is located. General descriptions of the location and boundaries of each area may be provided to clarify or refine what is included within the boundaries depicted on the map, or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area.'' This change will relieve us of the regulatory and financial burden of publishing the textual descriptions of the boundaries of critical habitat in the regulations, which have shown to be of limited use to the general public.

50 CFR 226.101

This section addresses critical habitat designations made by the Secretary of Commerce. We are replacing the ''Maps and charts identifying designated critical habitat * * *'' phrase in the beginning of the last sentence with ''Additional information regarding designated critical habitat * * *.'' This new language will provide the flexibility needed to provide any kind of useful information to the public concerning areas designated as critical habitat, and not just maps and charts.

50 CFR 424.12(c)

We are removing the references to defining critical habitat by specific limits using reference points and lines as found on standard topographic maps of the area. The revision will read, ''Each Critical Habitat area will be shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead field office of the Service responsible for such designation.'' This revision will provide more clarity regarding the areas being designated, as well as relieve the regulatory and financial burden of both Services being required to print these reference points in the **Federal Register** and reprint them annually in the CFR. We acknowledge that what is printed in the **Federal Register** and subsequently in the CFR will be the legally binding delineation of critical habitat. However, should there be ambiguity due to the scale of the map such that regulatory text clarifying the ambiguity is needed to ensure that the public would have adequate notice of the designation, the Services will include clarifying rule text. The designating Service will make the coordinates and/or plot points on which the map is based available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov,* and at the lead field office of the Service responsible for the designation. In addition, if the Service responsible for the designation concludes that additional tools or supporting information would be appropriate and would help the public understand the official boundary map, it will, for the convenience of the public, make those additional tools and supporting information available on our Internet sites and at the lead field office

of the Service that is responsible for the critical habitat designation (and may also include it in the preamble and/or at *www.regulations.gov*). In the future, we intend to remove the textual descriptions of final critical habitat boundaries set forth in the CFR for existing critical habitat designations in separate rulemakings in order to save the annual reprinting cost, without changing those boundaries.

We are adding the following sentence to this regulation: ''Textual information may be included for purposes of clarifying or refining the location and boundaries of each area or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area.''

50 CFR 424.16(b)

The change to this section is in the first sentence where it currently states, ''A notice of a proposed rule to carry out one of the actions described in § 424.10 shall contain the complete text of the proposed rule.'' We are changing the wording ''shall contain the complete text of the proposed rule'' to ''will contain a detailed description of the proposed action.'' Although we will in fact publish the complete proposed critical habitat designation, it could be confusing to require that the notice of a proposed critical habitat designation contain ''the complete text'' of the proposed regulation,'' since as a result of the other changes in this notice, the boundaries of a critical habitat designation may be identified using only a map. Because the regulation will consist of the legally binding detailed description of the designation, which will include the map, we included the language ''will contain a detailed description of the proposed action'' to clarify that the proposed rule must include the maps, and may include any accompanying text, that establish the legal boundary of the designation. We also added that the proposed rule ''may also include rule text that clarifies or modifies the map'' to make clear that the designating Service has the option of including textual descriptions that clarify or modify the map.

50 CFR 424.16(c)(1)(ii)

The change to this section is that we have removed the parenthetical phrase ''(including the complete text of the regulation).'' As stated above, although we would still give notice of the complete proposed critical habitat designation, it could be confusing to require that the notice include the ''complete text'' of the designation, since as a result of the other changes in this notice, we are interpreting the ''complete text'' of the designation to be the map, along with any optional rule text that may clarify the map. As discussed above, the Services will include more-detailed information in the preamble of the rulemaking document and will make the coordinates and/or plot points on which the map is based available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov*, and at the lead field office of the Service responsible for the designation. In addition, if the Service responsible for the designation concludes that additional tools or supporting information would be appropriate and would help the public understand the official boundary map, it will, for the convenience of the public, make those additional tools and supporting information available on our Internet sites and at the lead field office of the Service that is responsible for the critical habitat designation (and may also include it in the preamble and/or at *www.regulations.gov*).

50 CFR 424.18(a)

This section addresses the final rule requirements. In the second sentence of the existing regulation, we are replacing ''the complete text of the rule'' with ''a detailed description of the action being finalized.'' As with the sections above that deal with the requirements for a proposed rule, changing the wording here, along with the other changes proposed in this notice, will clarify that the final rule must contain the detailed description of the designation as reflected in the map and any optional additional rule text that clarifies or refines the map. As discussed above, the Services will include more-detailed information in the preamble of the rulemaking document and will make the coordinates and/or plot points on which the map is based available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov*, and at the lead field office of the Service responsible for the designation. In addition, if the Service responsible for the designation concludes that additional tools or supporting information would be appropriate and would help the public understand the official boundary map, it will, for the convenience of the public, make those additional tools and supporting information available on our Internet sites and at the lead field office of the Service that is responsible for the critical habitat designation (and may also include it in the preamble and/or at *www.regulations.gov*). Because the regulation will consist of the legally binding detailed description of the designation, which will include the map, we included the language ''will contain a detailed description of the proposed action'' to clarify that the final rule must include the maps, and may include any accompanying text, that establish the legal boundary of the designation.

In the fourth sentence of the existing regulation, we are removing the references to the final rule containing a description of the boundaries of the critical habitat being designated. We are modifying this section and expanding the discussion on the requirement for a map. The new section will read, ''For a rule designating or revising critical habitat, the detailed description of the action will include a map of the critical habitat area, and may also include rule text that clarifies or modifies the map. The map itself, as modified by any rule text, constitutes the official boundary of the designation. The Service responsible for the designation will include more-detailed information in the preamble of the rulemaking document and will make the coordinates and/or plot points on which the map is based available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov*, and at the lead field office of the Service responsible for the designation. In addition, if the Service responsible for the designation concludes that additional tools or supporting information would be appropriate and would help the public understand the official boundary map, it will, for the convenience of the public, make those additional tools and supporting information available on our Internet sites and at the lead field office of the Service that is responsible for the critical habitat designation (and may also include it in the preamble and/or at *www.regulations.gov*).'' This change will provide more clarity regarding the areas being designated, and will assist the public in evaluating the coverage of the critical habitat designation, as well as allow us to reduce our printing costs in both the **Federal Register** and for the annual reproductions of the CFR.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the

environment, or other units of the government.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities as defined under the RFA. This certification is available upon request (see **ADDRESSES** section above).

This rule will revise the implementing regulations contained within 50 CFR 17.94(b), 226.101, 424.12(c), 424.16(b) and (c)(1)(ii), and 424.18(a), to eliminate the requirement to publish textual descriptions of proposed (NMFS only) and final (NMFS and FWS) critical habitat boundaries in the **Federal Register** and reprinting in the CFR, and instead provide that the map(s), as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a Critical Habitat. A full description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this rule. The rule does not duplicate, overlap, or conflict with other Federal rules.

This rulemaking amends the procedural requirements for NMFS and FWS when designating critical habitat. NMFS and FWS are the only entities that are directly affected by this rule, and they are not considered to be small entities under SBA's size standards. Therefore, no small entities are directly affected by this rule.

The revisions to the implementing regulations herein are not expected to impose any direct costs on regulated entities. Although the Services will make additional information available to assist small entities in evaluating the coverage of the critical habitat delineated by the published maps, the Services already make such information available, and our understanding is that small entities and the public already routinely make use of such information. Therefore, eliminating the requirement to publish textual descriptions and instead publishing the maps in the **Federal Register** and making additional information available on the Internet site of the Service promulgating the designation, at www.regulations.gov, and at local field offices would not impose any additional burden on small entities. The elimination of the procedural requirement to publish textual descriptions of proposed (NMFS only) and final (NMFS and FWS) critical habitat boundaries in the **Federal Register** and reprinting in the CFR is an administrative action, and it is intended to facilitate public understanding of the critical habitat designation process and make it easier for the public to determine if specific areas are within the critical habitat designation. In fact, this regulation would make the process more cost-effective for the agencies and the public as a whole, and would potentially save the FWS alone an estimated $391,742 annually. Therefore, for the reasons above, this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Services make the following findings:

a. This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)—(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

b. This rule will not significantly or uniquely affect small governments, because the revisions to the implementing regulations herein will facilitate public understanding of the critical habitat designation process, and the areas included within the critical habitat, and make the process more cost-effective for the agencies and the public as a whole by potentially saving the FWS alone an estimated $391,742 annually. As such, we do not believe that a Small Government Agency Plan is required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have evaluated the revised implementing regulations for designating critical habitat, and have determined that this rule does not pose significant takings implications. The revisions to the implementing regulations are intended to facilitate the public understanding of the rulemaking process for critical habitat. It does not involve individual property rights.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A

Federalism assessment is not required. The revisions to the regulations addressed in this rule are intended to facilitate the public understanding of the rulemaking process for critical habitat, and thus should not significantly affect or burden the authority of the States to govern themselves.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The revisions to the regulations addressed in this rule are intended to facilitate the public understanding of the rulemaking process for critical habitat, and thus should not significantly affect or burden the judicial system.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (NEPA)

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(c)), 43 CFR part 46, and 516 Departmental Manual (DM) 2 and 8.

A categorical exclusion from NEPA documentation applies to policies, directives, regulations, and guidelines that are ''of an administrative, financial, legal, technical, or procedural nature'' (43 CFR 46.210(i)). However, even if an individual Federal action falls within a categorical exclusion, the Service must still prepare environmental documents pursuant to NEPA if one of the 12 exceptions listed in 43 CFR 46.215 applies.

We have reviewed each of the 12 exceptions and have found that because this rule is administrative in nature (i.e., we are making optional the inclusion of any textual description of the boundaries of the designation in the **Federal Register**), none of the exceptions apply. Therefore, this action meets the requirements for a categorical exclusion from the NEPA process

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Native American Tribes on a government-to-government basis. We have evaluated the potential effects on federally recognized Tribes from these revisions to our implementing regulations for critical habitat. We have determined that there are no potential effects to federally recognized Tribes, since the revisions to the implementing regulations are intended to facilitate the public understanding of critical habitat designations and save taxpayer monies. We will, however, continue to coordinate with Tribes as we promulgate critical habitat designations.

Energy Supply, Distribution, or Use

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. ''Significant energy action'' means any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that is a significant regulatory action under Executive Order 12866 or any successor order, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rule to revise the implementing regulations for designating critical habitat does not qualify as a significant regulatory action under Executive Order 12866 and will not have a significant adverse effect on the supply, distribution, or use of energy, and has not been designated by the Adminstrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Author(s)

The primary authors of this package are staff members from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Parts 17, 226, and 424

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we are amending parts 17, 226, and 424, title 50 of the Code of Federal Regulations, as set forth below:

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.94, revise paragraph (b) to read as follows:

§ 17.94 Critical habitats.

* * * * *

(b)(1) For the critical habitat designations published and effective after May 31, 2012, the map provided by the Secretary of the Interior, as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a critical habitat. Each critical habitat area will be shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead field office of the Service responsible for such designation. Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the critical habitat is located. General descriptions of the location and boundaries of each area may be provided to clarify or refine what is included within the boundaries depicted on the map, or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area.

(2) For critical habitat designations published and effective on or prior to

May 31, 2012, the map provided by the Secretary of the Interior is for reference purposes to guide Federal Agencies and other interested parties in locating the general boundaries of the critical habitat. The map does not, unless otherwise indicated, constitute the definition of the boundaries of a critical habitat. Critical habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat description, the State and county(ies) names are provided for informational purposes only.

* * * * *

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 226—[AMENDED]

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 4. Revise § 226.101 to read as follows:

§ 226.101 Purpose and scope.

The regulations contained in this part identify those habitats designated by the Secretary of Commerce as critical, under section 4 of the Act, for endangered and threatened species under the jurisdiction of the Secretary of Commerce. Those species are enumerated at § 223.102 of this chapter if threatened and at § 224.101 of this chapter if endangered. For regulations pertaining to the designation of critical habitat, see part 424 of this title; for regulations pertaining to prohibitions against the adverse modification or destruction of critical habitat, see part 402 of this title. Additional information regarding designated critical habitats that is not provided in this section may be obtained upon request to the Office of Protected Resources (*see* § 222.102, definition of ''Office of Protected Resources'').

CHAPTER IV—JOINT REGULATIONS (UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR AND NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE); ENDANGERED SPECIES COMMITTEE REGULATIONS

PART 424—[AMENDED]

■ 5. The authority citation for part 424 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); unless otherwise noted.

■ 6. In § 424.12, revise paragraph (c) to read as follows:

§ 424.12 Criteria for designating critical habitat.

* * * * *

(c) Each critical habitat area will be shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents published in the **Federal Register** and made available from the lead field office of the Service responsible for such designation. Textual information may be included for purposes of clarifying or refining the location and boundaries of each area or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area. Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area. Ephemeral reference points (*e.g.,* trees, sand bars) shall not be used in any textual description used to clarify or refine the boundaries of critical habitat.

* * * * *

■ 7. In § 424.16, revise paragraphs (b) and (c)(1)(ii) to read as follows:

§ 424.16 Proposed rules.

* * * * *

(b) *Contents.* A notice of a proposed rule to carry out one of the actions described in § 424.10 will contain a detailed description of the proposed action and a summary of the data on which the proposal is based (including, as appropriate, citation of pertinent information sources) and will show the relationship of such data to the rule proposed. If such a rule proposes to designate or revise critical habitat, such summary will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify such habitat or may be affected by such designation. For any proposed rule to designate or revise critical habitat, the detailed description of the action will include a map of the critical habitat area, and may also include rule text that clarifies or modifies the map. Any such notice proposing the listing, delisting, or reclassification of a species or the designation or revision of critical habitat will also include a summary of factors affecting the species and/or its designated critical habitat.

(c) * * *

(1) * * *

(ii) Give actual notice of the proposed regulation to the State agency in each State in which the species is believed to occur and to each county or equivalent jurisdiction therein in which the species is believed to occur, and invite the comment of each such agency and jurisdiction;

* * * * *

■ 8. In § 424.18, revise paragraph (a) to read as follows:

§ 424.18 Final rules—general.

(a) *Contents.* A final rule promulgated to carry out the purposes of the Act will be published in the **Federal Register**. This publication will contain a detailed description of the action being finalized, a summary of the comments and recommendations received in response to the proposal (including applicable public hearings), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. Publication of a final rule to list, delist, or reclassify a species or designate or revise critical habitat will also provide a summary of factors affecting the species.

(1) For a rule designating or revising critical habitat, the detailed description of the action will include a map of the critical habitat area, and may also include rule text that clarifies or modifies the map. The map itself, as modified by any rule text, constitutes the official boundary of the designation.

(i) The Service responsible for the designation will include more-detailed information in the preamble of the rulemaking document and will make the coordinates and/or plot points on which the map is based available to the public on the Internet site of the Service promulgating the designation, at *www.regulations.gov,* and at the lead field office of the Service responsible for the designation.

(ii) In addition, if the Service responsible for the designation concludes that additional tools or supporting information would be appropriate and would help the public understand the official boundary map, it will, for the convenience of the public, make those additional tools and supporting information available on our Internet sites and at the lead field office of the Service that is responsible for the critical habitat designation (and may

also include it in the preamble and/or at *www.regulations.gov*).

(2) The rule will, to the maximum extent practicable, include a brief description and evaluation of those activities (whether public or private) that might occur in the area and which, in the opinion of the Secretary, may adversely modify such habitat or be affected by such designation.

* * * * *

Dated: April 18, 2012.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior.

Dated: April 4, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–10178 Filed 4–30–12; 8:45 am]

BILLING CODE 4310–55–P; 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120316196–2422–02]

RIN 0648–BB89

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Interim Action; Republication

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

ACTION: Temporary rule; interim measures; request for comments.

SUMMARY: NMFS is republishing a temporary rule that implements interim Gulf of Maine (GOM) Atlantic cod (cod) management measures for the 2012 fishing year. This republication is necessary to ensure the effective date for the rule's measures are consistent with NMFS's interim rule authority provided by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This rule is unchanged from the rule published on April 3, 2012, and subsequently withdrawn. The need of the interim measures is unchanged by the withdrawal and republication: To establish GOM cod Annual Catch Limits (ACLs); implement recreational management measures that will constrain catch to the recreational sub-ACL; and reduce overfishing occurring on GOM cod in anticipation of further action to end overfishing in fishing year 2013.

DATES: Effective May 1, 2012, until October 29, 2012; comments must be received by May 31, 2012.

ADDRESSES: You may submit comments on this document, identified by ''NOAA–NMFS–2012–0045,'' by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0045 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Daniel Morris, Acting Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930.
- *Fax:* (978) 281–9135.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the supplemental environmental assessment (EA) prepared for this action by NMFS are available from Daniel Morris, Acting Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. The supplemental EA is accessible via the Internet at *http://www.nero.noaa.gov.* A copy of the most recent stock assessment for GOM cod is also accessible via the Internet at *http://www.nefsc.noaa.gov/groundfish.*

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, phone: 978–281–9104.

SUPPLEMENTARY INFORMATION:

Explanation of Withdrawal and Republication of GOM Cod Interim Measures

NMFS published the information that follows in this rule's preamble, classification, and amendatory language on April 3, 2012 (77 FR 19944), in the **Federal Register**. The interim rule measures were issued under authority of section 305(c) of the Magnuson-Stevens Act and were designed to become effective on May 1, 2012, the first day of the 2012 GOM cod fishing year. The initially published interim rule did specify that the measures were to become effective on May 1, 2012, and were to be in effect for 180 days from the date of publication (April 3–September 30, 2012). The interim rule was published in advance of the start of the fishing year to afford advanced notice of the measures to fishery participants and the interested public.

However, the effective date specified in the April 3, 2012 published interim rule is inconsistent with NMFS's authority provided by section 305(c) of the Magnuson-Stevens Act, which specifies that interim rules cannot be effective for more than 180 days from the date the rule publishes in the **Federal Register**. However, the rule was intended to be effective for 180 days from May 1, 2012, not April 3, 2012. Because the language pertaining to effective dates for interim rules is specific in the Magnuson-Stevens Act, NMFS could not issue a correction notice to change the effective date and reset the 180-day effective period.

To ensure that the interim rule measures effective date (May 1, 2012) and duration (180 days) is both correct and consistent with the authority provided to NMFS by the Magnuson-Stevens Act, we withdrew the rule published on April 3, 2012 (77 FR 19944), and are now republishing the rule in the **Federal Register**, with minimal changes to explain the withdrawal and republication. For clarity, the language, descriptions, measures, and rules being implemented by this rule are the same as those previously published and withdrawn. The language that follows this section is unchanged from the language contained in the previously published and withdrawn rule.

Plain Language Executive Summary

A recent assessment of the amount of cod found in the GOM was finalized in January 2012. The results are

substantially different from those from a similar examination conducted in 2008. The new assessment concludes that GOM cod are ''overfished,'' meaning there is a lower amount of fish than necessary to sustain the population over the long term. It also concludes that GOM cod are subject to ''overfishing,'' meaning fishing activities are removing too many fish from the sea to sustain the population. The required population and fishing-related removal levels are set for GOM cod under a fishery management plan developed by the New England Fishery Management Council (Council) in collaboration with NMFS. This plan is designed to satisfy requirements of the primary law governing U.S. fisheries—the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The new assessment indicates that increasing GOM cod to the rebuilding stock size target is not possible by 2014, even if no cod are harvested by fisheries between now and then. Based on the information in the new assessment, NMFS has determined that the GOM cod rebuilding program is not making adequate progress toward building the stock to the required size. NMFS has notified the Council of this finding. Based on this notification and in accordance with Magnuson-Stevens Act requirements, the Council must revisit the GOM cod rebuilding plan and revise it within the next two years so that the recovery effort is back on track. NMFS also advised the Council that there is some limited flexibility the agency may use to reduce, rather than end, overfishing on GOM cod for up to one year. The Council had originally intended to use the new assessment information and recommend measures for fishing year 2012 (May 1, 2012–April 30, 2013). However, the Council elected not to do so, based on concerns about the new assessment. Instead, the Council has asked NMFS to implement interim measures for the fishing year, under its authorization to do so provided by section 305(c) of the Magnuson-Stevens Act.

In response to the Council's request, NMFS has decided that it is necessary and appropriate to implement this interim action to address overfishing of GOM cod using NMFS' authority in the Magnuson-Stevens Act (see *Justification for Interim Action* section later in this preamble for additional detail). In anticipation of implementing an interim rule, NMFS held several meetings with the Council, stakeholders, and interested parties. The objective of these meetings was to help identify fishing measures for the 2012 fishing year that will reduce overfishing. The measures implemented by this interim rule reduce GOM cod catch levels available to fishermen by approximately 17 percent from 2010 catch levels and 22 percent from 2011 catch levels, reduce the rate of fishing mortality by approximately 23 percent from the 2010 rate and approximately 4 percent from the 2011 rate, and therefore are consistent with Magnuson-Stevens Act requirements. These measures are based, in part, on the input from the meetings and are intended to reduce the magnitude of negative economic impact to fishery participants, fishery-dependent businesses, and coastal communities in New England in comparison to taking a more strict action to achieve reductions from 2010 catch levels by 84 percent and from 2011 catch levels by 85 percent that would be necessary to end overfishing.

This action implements catch levels and recreational management measures designed to reduce rather than end overfishing on the GOM cod stock in fishing year 2012. The Council intends to revisit the stock's rebuilding plan over the next two years and to develop measures to end overfishing on GOM cod starting in fishing year 2013 (May 1, 2013–April 30, 2014).

This interim rule implements a total GOM cod total annual catch limit (ACL) of 6,700 mt and divides this catch limit among the fishery as follows: Sectors, 3,618 mt, with an additional 471 mt as carryover; Common Pool, 81 mt; Recreational, 2,215 mt; State Waters, 253 mt; and Other Sub-component, 62 mt. This rule also implements a 19-inch (48.26-cm) minimum fish size for recreationally caught GOM cod and a recreational possession limit of 9 fish per angler. This rule is effective for 180 days.

NMFS is requesting comment on these interim measures in anticipation of extending the measures this fall to ensure measures are in place for the entire 2012 fishing year. Further, in response to public input, additional analysis is planned during 2012 to re-examine some components of the recent stock assessment. NMFS cannot predict how this additional analysis may influence what is known about the size and condition of the GOM cod population. It is possible that changes to measures may be necessary to respond to comments or new information when catch and management measures are extended this fall.

Additional detail is provided in the remainder of the preamble to this rule.

Background

The Northeast (NE) Multispecies Fishery Management Plan (FMP) specifies management measures for 16 fish species that occur in Federal waters off the New England and Mid-Atlantic coasts. Cod, along with haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, and Atlantic wolffish are referred to as ''regulated species,'' in that they are subject to large mesh size requirements through the FMP. These regulated species are jointly managed by the Council and NMFS. Several of the regulated species are further subdivided into 19 separate stocks. These stocks, along with ocean pout, form the groundfish fishery complex managed under the FMP. There are two recognized stocks of cod in the U.S. portion of the North Atlantic: GOM and George's Bank.

Rebuilding Program and Stock Assessment Information

Amendment 13 to the FMP, developed by the Council and implemented by NMFS, established a program designed to rebuild the GOM cod stock from low population levels. This program, implemented in 2004 (69 FR 22906; April 27, 2004), was designed to rebuild the GOM cod stock in 10 years, by May 1, 2014.

Comprehensive assessments of the GOM cod stock were conducted in 2005, 2008, and most recently in December 2011 (published in January 2012). The 2008 assessment, conducted by NMFS' Northeast Fisheries Science Center (NEFSC) in collaboration with state agency scientists, academia, and industry-hired consultants, and externally peer-reviewed by the Center for Independent Experts, indicated that the GOM cod stock was likely to rebuild by 2014, consistent with the rebuilding plan.

The new assessment, conducted through a similar collaborative and peer-review process, provided a new and significantly revised scientific understanding of the status of GOM cod. The most recent assessment indicates that rebuilding the stock to the biomass target of 61,218 mt would not be possible by 2014 even in the absence of all fishing mortality. Additionally, this assessment indicates that the stock is subject to continued overfishing and is overfished. Because the most recent assessment provides a substantially changed perspective for the status of GOM cod, the inability to adequately rebuild the stock is the fault of neither the Council nor fishery participants.

Additional detail on all the GOM stock assessments, including the most recent assessment results, are available on the NEFSC stock assessment-related Web site (*http://www.nefsc.noaa.gov/nefsc/saw/*) and are not further summarized here.

Implications of New Assessment Information

Based on the new assessment, the fishing mortality rate (F) on GOM cod in 2010 was 1.14. Based on the Council's Plan Development Team (PDT) analysis, the current projection indicates F for 2011 is 0.92. The overfishing threshold calculated by the assessment is an F of 0.2; thus to end overfishing, the F rate would need to be reduced by at least 82 percent from the 2010 rate and 78 percent from the 2011 rate to be at or below the overfishing threshold.

The mechanism for reducing F is to reduce catch. To achieve the level of reduction in F to end overfishing immediately (i.e., F = 0.2 or less), the assessment calculated that total catch limit for fishing year 2012 would need to be 1,313 mt, and stock biomass would increase to 11,463 mt in 2013. Further, the Council established in Amendment 13 that it would set an F rate at 75 percent of the overfishing threshold of 0.2 for an F of 0.15. This 0.15 F rate would result in a catch limit of 1,001 mt in fishing year 2012, and stock biomass would increase to 11,838 mt in 2013. Reductions in catch limits of this magnitude would end overfishing; however, this would have significant negative economic impacts to fishery participants, fishing-related industries in New England, and coastal communities in the region.

Council Process for Fishing Year 2012 Measures

The Council was aware that the new assessment for GOM cod was being conducted in December 2011, and that final results from the assessment would be available in early 2012. Typically, the Council takes final action on recommendations for the subsequent fishing year in November of the preceding year (i.e., November 2011 for 2012 measures). Because the timing of the GOM cod assessment complicated the normal process used, the Council had included a range of potential catch levels in its analysis of Framework Adjustment 47 to the FMP (FW47). The Council took final action on FW47 in November 2011. The Council intended to have its PDT and Scientific and Statistical Committee (SSC) review the assessment results in early 2012 to provide advice for a GOM cod Acceptable Biological Catch (ABC) for fishing year 2012. Subsequently, the Council expected to finalize GOM cod catch recommendations to NMFS for inclusion in the FW47 rulemaking.

However, as the preliminary GOM cod assessment results became available, the Council grew concerned about the assessment as well as the potentially low catch levels that appeared to be required for the 2012 fishing year. It was at this point that NMFS began a detailed examination of potential options for the fishing year and concurrently began meeting with the Council and stakeholders.

Flexibility To Reduce But Not Immediately End Overfishing

When the assessment results were finalized in late January 2012, NMFS notified the Council, as required by section 304(e)(7) of the Magnuson-Stevens Act, that the GOM cod rebuilding program is not making adequate progress toward rebuilding the stock based on the new and significantly revised scientific understanding of the stock's status. Based on this determination and subsequent notification to the Council, NMFS has determined the Secretary of Commerce (Secretary) may take interim action for up to one year under section 304 (e)(6) of the Magnuson-Stevens Act to reduce rather than end overfishing on GOM cod while the Council revisits the rebuilding program. Measures to reduce rather than end overfishing must, at a minimum, maintain the current GOM cod stock size and preferably, should result in an increase in the stock size. Further, the reduction in overfishing must be appreciable.

In addition, to invoke the flexibility of section 304(e)(6) of the Magnuson-Stevens Act for fishing year 2012, the Council must be in the process of revising the GOM cod rebuilding program for completion within 2 years for implementation no later than May 1, 2014. The Council has stated its intent to address the rebuilding needs and NMFS anticipates collaborating with the Council on the development of stock-rebuilding measures over the months to come.

The Secretary may implement emergency or interim measures for only up to 1 year under the emergency action authority provided by section 305(c) of the Magnuson-Stevens Act. The Council is expected to develop measures to end overfishing beginning with the 2013 fishing year, which starts May 1, 2013.

Council Recommendation for Fishing Year 2012

Upon receiving the preliminary GOM cod assessment results in early 2012, the Council asked the SSC not to recommend an ABC in part due to concerns about the assessment. Subsequently, the Council did not recommend ABC or ACLs in FW 47 for GOM cod. Instead, the Council, relying on the notification and flexibility measures previously described, voted to request of NMFS that it implement an interim action to reduce rather than end overfishing for fishing year 2012. In making this request, the Council recommended that NMFS implement interim GOM cod catch and recreational fishery management measures for the 2012 fishing year. The Council recommended three specific items to NMFS for consideration in developing and implementing interim measures:

- Setting a total GOM cod ACL in a 6,700 to 7,500 mt range;
- Modifying the recreational management measures with particular emphasis on reductions in the possession/bag limit and minimum fish size to reduce discards; and,
- Re-opening several existing closed areas: Nantucket Lightship Closed Area year round, Closed Area I from 1 May 1–February 15, Closed Area II south of 41°50′ May 1 through February to selective fishing gear, and a portion of the both the Western GOM Closed Area and Cashes Ledge Closed Area year round.

Interim 2012 Fishing Measures

After considering the Council recommendations and public input from outreach meetings, NMFS implements, through this interim action, the following measures for the commercial and recreational GOM cod fisheries for fishing year 2012. These measures, based on a total GOM cod ACL of 6,700 mt, are expected to reduce overfishing. The assessment found an F of 1.14 for 2010 and PDT-conducted analysis has projected an F of 0.92 for 2011. The 6,700 mt catch limit established for this rule is expected to produce an F of 0.879, or a reduction in F of 23 percent from 2010 and 4 percent from 2011. Fishing under these measures in fishing year 2012 is expected to increase spawning stock biomass by 19 percent, from 8,618 mt in 2012, to 10,235 mt in 2013.

As noted above, if overfishing were ended in 2012 based on an F rate of 0.2, the ACL would be 1,313 mt, and the 2013 stock biomass would increase to 11,463 mt. If the fishery were closed in fishing year 2012, the 2013 stock biomass would increase to 13,073. Under the Council's recommended upper bound ACL of 7,500 mt for fishing year 2012, the 2013 stock biomass would increase to 9,564 mt, but

the F rate would increase to 1.031 (i.e., overfishing would not be reduced).

There are several compelling reasons why NMFS is implementing an ACL of 6,700 mt as opposed to a higher or lower limit. Fishing at this level is likely to reduce overfishing to an appreciable degree while allowing meaningful mitigation of negative impacts for fishing year 2012 resulting from the reduced ACL while the Council develops revisions to the GOM cod rebuilding program. Fishing at 6,700 mt in fishing year 2012 is projected to allow growth in the GOM cod biomass and should not significantly influence the fishing year 2013 catch level. The magnitude of reduction needed for fishing year 2013 is so substantial that it is unlikely that the 2013 ACL will be greater than 3,000 mt. This would be true even if the fishing year 2012 ACL were set at a much lower level.

The 6,700 mt ACL is consistent with National Standard 8, which requires fishing measures to minimize adverse economic impacts on fishing communities while remaining consistent with conservation requirements. Adopting a measure effectively eliminating the GOM cod harvest for 2012 could permanently remove the smaller fishing operations from the fishery, without a significant corresponding benefit (e.g., in terms of increasing stock biomass). Setting the ACL at this level is further justified as an equitable measure as it recognizes that the need for more severe reductions of GOM cod fishing mortality is not the result of a failure of the FMP or the fishing industry in complying with FMP measures, but rather it is the result of a sudden change in the understanding of the GOM cod stock status. In light of this sudden change in the assessment, this fishing level is particularly needed to help mitigate the negative economic impacts in the transition year before more restrictive measures having more substantial adverse impacts are necessary for the 2013 fishing year.

Rationale for the agency's decision not to adopt some recommendations is also provided within each following sub-section.

Annual Catch Limits (ACLs)

This action implements a total GOM cod ACL of 6,700 mt for fishing year 2012. Normally, the sub-ACL allocations are derived from the ABC; however, for the interim action no ABC has been set by the Council. To determine sub-ACLs, NMFS calculated a proxy for ABC from the ACL of 6,700 mt. This results in a proxy ABC value of 7,066 mt. Under the Council's procedures for setting ACLs, the ACL is set 5 percent lower for commercial fisheries and 7 percent lower for the recreational fishery to offset management uncertainty. However, instead of using the FMP-established distribution percentages for calculating the sub-ACLs from ABC, this action modifies the distribution percentages by reducing State Waters and Other Sub-component catch levels, and shifting tonnage from those sub-components to the commercial fishery. The revised sub-sector ACLs are shown in Table 1.

TABLE 1—GOM COD FISHING YEAR 2012 SUB-ACLS, IN METRIC TONS (MT)

Total ACL	Interim sub-ACLs (mt)					
	Commercial fishery			Recreational	State waters	Other sub-component
	Total	Sectors	Common pool			
6,700	4,170	4,089 potential total ..... 3,618 sub-ACL ..... (471 as carryover)	81	2,215	253	62

Consistent with the FMP, the recreational fishery sub-ACL was calculated first. The remaining tonnage was apportioned across the four commercial fishery sub-components: Sectors, Common Pool, State Waters, and the Other Sub-component.

The adjustment in commercial catch levels was done to help ensure that sector carryover, if maximized to 10 percent from fishing year 2011 and fully utilized in fishing year 2012, would not cause fishing to increase above the projected fishing year 2011 level. Neither the State Waters nor Other Sub-component categories were fully utilized in fishing year 2010, nor are they projected to be fully harvested in fishing year 2011. NMFS has moved tonnage from these two categories to the Commercial (Sector and Common Pool) sub-ACLs to provide a buffer for sector carryover from fishing year 2011. The catch from state waters was approximately 250 mt, and catch attributed to the other sub-component category was approximately 60 mt in fishing year 2010. It is expected that these sub-sectors will harvest around that same amount in fishing year 2011. NMFS has reduced the catch components for the two categories from 468 to 253 mt (State Waters) and 234 to 62 mt (Other Sub-component) and reapportioned the 387 mt derived from these fisheries to the Total Commercial ACL. The Commercial ACL is then subdivided to the sub-ACLs for the sector and the common pool fisheries.

Incidental Catch Total Allowable Catches (TACs) and Allocations to Special Management Programs

Incidental catch TACs are specified for certain stocks of concern (i.e., stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs (i.e., special access programs and the Regular B Days-At-Sea (DAS) Program), in order to limit the catch of these stocks in these programs. The Incidental Catch TAC for each stock is based on the Common Pool sub-ACL and is distributed to each special management program using a predetermined formula specified in the implementing regulations for the FMP. Any catch on a trip that ends on a Category B DAS (either Regular or Reserve B DAS) is attributed to the Incidental Catch TAC for the pertinent stock. Catch on a trip that starts under a Category B DAS and then flips to a Category A DAS is attributed to the Common Pool sub-ACL.

The incidental catch TAC for GOM cod is 1 percent of the common pool sub-ACL. For fishing year 2012, the incidental catch TAC is 0.81 mt, and 100 percent of this incidental catch TAC is allocated to the Regular B DAS Program.

Common Pool Trimester TACs

Beginning in fishing year 2012, Common Pool trimester TACs outlined in Amendment 16 become effective. The Common Pool sub-ACL for each stock will be divided into trimester TACs at the start of the fishing year. The percentage of each sub-ACL allocated to each trimester was determined in Amendment 16. The regulations require

that once 90 percent of an applicable trimester TAC is caught, the area where 90 percent of the catch for the pertinent stock occurred will be closed. The area closure will apply to all common pool vessels fishing with gear capable of catching the pertinent stock. Any overages or underages of the trimester TAC in Trimester 1 or Trimester 2 will be applied to the next trimester (e.g., any remaining portion of the Trimester 1 TAC will be added to the Trimester 2 TAC). Any overage of the total sub-ACL will be deducted from the following fishing year's Common Pool sub-ACL for that stock. Uncaught portions of the Trimester 3 TAC will not be carried over into the following fishing year.

Table 2 contains the fishing year 2012 trimester TACs for GOM cod.

TABLE 2—FISHING YEAR 2012 GOM COD COMMON POOL TRIMESTER TACS

Percentage of sub-ACL allocated to each trimester			2012 Trimester TACs (mt)		
Trimester 1	Trimester 2	Trimester 3	Trimester 1	Trimester 2	Trimester 3
27	36	37	22	29	30

The fishing year 2012 sector rosters will not be finalized until May 1, 2012. Therefore, the allocation of the Commercial ACL between the Common Pool and Sector sub-ACLs for GOM cod may change due to changes in the sector rosters. An updated Sector sub-ACL, Common Pool sub-ACL, incidental catch TAC, and trimester TACs for GOM cod will be published in a subsequent adjustment rule, if necessary, based on the final fishing year 2012 sector rosters as of May 1, 2012.

Sector Carryover

NMFS weighed several options for addressing GOM cod sector carryover. NMFS considered providing less than the 10-percent carryover, as well as options that would have allowed carryover to occur above and beyond the total fishery ACL. However, the only viable options to ensure that the potential fishing year 2012 catch would not increase overfishing in light of the new assessment were scenarios that kept all potential catch, both sub-ACLs and carryover, within the total fishery ACL of 6,700 mt. Allowing catch to exceed 6,700 mt could cause overfishing to occur at levels equal to or higher than the overfishing level in fishing year 2011. Thus, the potential fishing year 2011 sector carryover of 471 mt is being allowed in conjunction with the Sector sub-ACL of 3,618 mt. The sub-ACL of 3,618 mt will be used to calculate Sector Annual Catch Entitlement (ACE). Overall, this is an 83-mt reduction from the Sector sub-ACL of 3,701 mt discussed publically at the February 10, 2012, GOM Cod Working Group meeting in Portsmouth, NH. If the sector sub-ACL and full 10-percent carryover are caught in fishing year 2012, the total sector catch will be 4,089 mt. By constraining potential carryover catch within the total fishery ACL, overfishing will be reduced in fishing year 2012 from 2011 levels. If all recreational and commercial fishery components, including a potential sector harvest of 4,089 mt (i.e., sub-ACL plus 10-percent carryover) catch their full allocations, the total catch will be 6,700 mt under this apportionment scheme.

Consistent with the existing regulations, accountability measures (AMs) for the State Waters and Other Sub-component sub-ACLs are implemented only if the total ACL (i.e., 6,700 mt) is exceeded and the State Waters and/or the Other Sub-component sub-ACLs are also exceeded. If the State Waters and/or Other Sub-component sub-ACLs are exceeded and the total ACL is not, no AMs are implemented.

Recreational Fishery Management Measures

As indicated in Table 1, the recreational sub-ACL for fishing year 2012 is 2,215 mt. NMFS is reducing the recreational GOM cod minimum fish size from 24 to 19 inches (60.96 to 48.26 cm) and is reducing the per-angler possession limit from 10 to 9 fish. Preliminary analysis indicates that these measures will sufficiently reduce recreational catch to ensure that the revised recreational sub-ACL of 2,215 mt will not be exceeded in fishing year 2012. NMFS engaged the Council's Recreational Advisory Panel (RAP) and recreational fishery stakeholders during development of these measures in a public meeting held February 10, 2012, in Portsmouth, NH. These measures were supported for use by the Council's RAP. Most stakeholders present at the meeting also supported these measures for fishing year 2012.

It may seem counterintuitive that reducing the minimum fish size will reduce total catch. The most recent stock assessment assumes that all recreational discarded cod die—a discard mortality assumption of 100 percent. The reduction in minimum fish size is expected to increase overall effort by a minor amount; however, analysis indicates that anglers will likely have higher success in catching legal-sized fish more quickly, so that there will theoretically be fewer discarded fish within trips. There is also a lower average fish weight with the lower minimum fish size that has some effect in reducing the total recreational landings amount.

Anglers are reminded that the per-person limit is a possession limit. The act of ''high-grading,'' or discarding previously captured smaller fish for larger fish is strongly discouraged, as it would undermine the management program.

Potential Changes to Recreational Measures in 6 Months

The interim measures implemented by this rule were developed through a new analytical model. The theory of its operation is as previously outlined and is sound. However, the model, its underlying assumptions, and output have not yet been subject to the type of rigorous review typically used before providing advice for management. To be clear, this model is new, untested, and not yet peer-reviewed. There exists some uncertainty about the effectiveness of the measures produced, particularly if anglers ''high grade'' to keep larger cod. The previously used approach for deriving recreational management measures did not consider discard mortality of 100 percent. NMFS has determined that using this new model in the limited, short-term context of this interim rule is appropriate given the caveats discussed in this preamble.

Prior to the expiration of this temporary rule, NMFS intends to rigorously review the new model and will work to have some level of external review of the model, the underlying assumptions, and the output generated during the period between issuing these interim measures and the renewal of interim measures after 180 days. Recreational measures will be revisited once the model has been peer-reviewed to ensure that the measures are effective in meeting the catch reductions necessary for the 2012 fishing year (i.e.,

to constrain catch within the recreational sub-ACL).

In addition, it is possible that NMFS will re-evaluate or otherwise re-visit the 100-percent discard mortality assumption utilized in the most recent assessment during the course of the 2012 fishing year. The discard mortality assumption used in the assessment is also used to monitor catch in the fishery. If the assumed discard mortality of recreationally caught fish were to change from 100 percent to a lower value, the effectiveness of a reduced minimum fish size could be less.

Based on these ongoing examinations, it is possible that NMFS may need to include changes to recreational management measures when these interim measures are extended after 180 days in October 2012. There are two possible outcomes:

• The modeling approach is valid and appropriate and the discard mortality assumption is unchanged.

In this scenario, it is unlikely that any changes to the interim recreational measures implemented by this rule would be necessary.

• The model-generated advice is found to be inappropriate to achieve the required reduction and/or the discard mortality assumption is changed to a level less than 100 percent.

Under this scenario, it is likely that additional, more restrictive measures would be necessary for the second half of the fishing year—essentially for April 16–30, 2013, due to the GOM recreational cod closure currently in place from November 1–April 15. This is the more problematic scenario, as fishing will have already occurred for 6 months and more restrictive measures would be implemented mid-year. NMFS anticipates working closely with the Council's RAP and the recreational fishing industry in developing any mid-year changes to reduce catch, should such measures become necessary. Such measures would likely include at least some closure of the fishery in April 2013, and/or increases to minimum fish size, and/or reduction in possession limits. There is also the potential for changes in our understanding of GOM cod status. See the *6-month renewal of interim measures* section for additional detail.

Closed Areas

NMFS is not taking action at this time to re-open those closed areas as requested by the Council. NMFS finds that there are several compelling reasons for not modifying these closed areas through this interim or other emergency action. While the agency did receive some input supporting the Council's request, the majority of comments received through correspondence and at the February 10, 2012, GOM Cod Working Group meeting requested that NMFS leave in place the existing closed areas.

The process for evaluating the biological impacts to fish stocks, particularly GOM cod, as well as the habitat protection requirements outlined in the Magnuson-Stevens Act, involves complex analyses. Such analyses could not be completed in a thorough, deliberative, and transparent manner in the time period NMFS had to develop and implement the interim measures contained in this rule.

The Council continues to develop a comprehensive omnibus amendment process to address the Essential Fish Habitat requirements of the Magnuson-Stevens Act. This process is undertaking analysis that contemplates modification of many of the closed areas. This process is tentatively scheduled to be completed in 2013. In addition, the PDT continues to discuss and analyze stock-level impacts of re-opening closed areas. It is appropriate to examine potential changes to the closed areas through these deliberative Council processes to ensure that analysis to support any changes is both robust and conducted in a transparent manner.

6-Month Renewal of Interim Measures

NMFS' interim authority is available for up to 180 days in an initial action and may be extended up to an additional 186 days by a subsequent rule. This system provides for a full year of interim measures, when necessary. NMFS will renew interim measures in October 2012 to ensure coverage of the entire 2012 fishing year. We are accepting comment on these initial interim measures for consideration on the extension to be issued this fall.

It is expected that additional information regarding calendar and fishing year 2011 catch will become available between now and the 6-month renewal of this action. In addition, several concurrent processes are underway to more closely examine components of the most recent GOM stock assessment. These include the assumed discard mortality rate, analysis of industry catch-per-unit-effort data, further development and potential incorporation of Marine Recreational Information Program data, and potentially other components of the assessment. Additional recreational analysis may be conducted pending review of the modeling approach used to develop measures for this rule. It is possible that any one or several of these ongoing efforts may provide additional information on the status of GOM cod and/or the appropriateness of the measures being implemented by this initial set of interim measures. NMFS will work closely with the Council, public, and interested parties to openly discuss potential catch-level or management measure changes necessary for the second half of fishing year 2012.

It is not possible to predict whether changes, either more liberal or more constraining, may become necessary to reduce overfishing and/or to ensure ACLs are not likely to be exceeded; however, as previously stated, the current situation for GOM cod is highly unusual. We remain committed to providing as much information as possible as quickly as practical so that business and fishing-related operations can be planned.

Justification for Interim Action

The Magnuson-Stevens Act authorizes the Secretary to act if (1) the Secretary finds that an emergency involving a fishery exists; or (2) the Secretary finds that interim measures are needed to reduce overfishing in any fishery; or (3) if the Council finds one of those factors exists and requests that the Secretary act. See section 305 of the Magnuson-Stevens Act. Where such circumstances exist, the Secretary may promulgate emergency rules or interim measures ''to address the emergency or overfishing''. 16 U.S.C. 1855(c)(1) and (2). The Secretary has delegated this authority to NMFS. Further, NMFS has issued guidance defining when ''an emergency'' involving a fishery exists. 62 FR 44421; August 21, 1997. This guidance defines an emergency as a situation that (1) arose from recent, unforeseen events, (2) presents a serious conservation problem in the fishery, and (3) can be addressed through interim emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and the deliberative consideration of the impacts on participants to the same extent as would be expected under the formal rulemaking process. Under the statute and guidance, the rationale for issuing these emergency and interim regulations is as follows:

The new GOM cod stock assessment indicates that the stock is overfished, is subject to overfishing, and is not making adequate progress toward the rebuilding objective. Neither NMFS nor the Council could have foreseen the GOM cod stock assessment's recent findings, because the previous stock assessment suggested that GOM cod was recovering according to the schedule set out in a prior rebuilding plan. The most recent stock assessment represents a significant

and unforeseen change in scientific understanding of the GOM cod stock, and the final stock assessment did not become available to NMFS and the Council until late January 2012.

Both NMFS and the Council agree with the stock assessment's findings. Thus, both NMFS and the Council have determined that overfishing is occurring on GOM cod. Further, based on this information, the Council has found that interim measures are needed to reduce overfishing in the GOM cod fishery, and has requested that NMFS issue emergency regulations designed to reduce overfishing of GOM cod. Accordingly, under the Magnuson-Stevens Act, NMFS, acting by delegation for the Secretary under the previously outlined provisions, is issuing emergency interim measures designed to address the emergency situation concerning the overfishing of GOM cod.

Classification

The Acting Administrator, Northeast Region, NMFS, determined that this interim rule is necessary for the conservation and management of the GOM cod fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Pursuant to 5 U.S.C. 553(b)(B) and 553(d)(3), the Assistant Administrator finds good cause to waive prior notice and an opportunity for public comment on this action along with the 30-day delay in effectiveness, as notice and comment and delayed effectiveness are impracticable and contrary to the public interest. There has been insufficient time to conduct notice-and-comment rulemaking for this action, which is necessary due to recent, unforeseen events; namely, the most recent GOM cod stock analysis indicates that despite the management measures in place, GOM cod is currently overfished and undergoing overfishing. This analysis, which came out in January 2012, has complicated the timing and process for setting catch levels and management measures that normally occurs. As a result of these changes, NMFS has had to quickly conduct substantial and complex analyses to develop rulemaking to ensure that measures to reduce overfishing would be in place by the start of the fishing year on May 1, 2012. These timing complications were unavoidable. The immediate benefits of the interim measures, implemented by this rule, the mitigation of substantial negative economic impacts to fishery participants, associated businesses, and coastal communities that depend on GOM cod-related revenues, outweigh the value of formal advance notice and public comment.

Though notice-and-comment rulemaking is not being conducted, substantial outreach discussions have occurred with the Council, public, and interested parties to explore what measures should be included in this interim action. NMFS has shared a great deal of information with these groups, and has received input on the interim measures from a wide range of stakeholders and interested parties. NMFS requests comment on these interim measures in anticipation of extending the measures this fall to ensure management measures are in place for the entire fishing year.

The normal process for establishing ACLs for GOM cod was substantially impacted for the 2012 fishing year. In a typical process, the Council receives new scientific information by October and decisions on ACLs and any necessary management measures changes would be voted on by the Council in November. By late December/early January of the following year, the Council's recommendations are forwarded to NMFS for rulemaking. The Council would typically forward with its recommendation the comprehensive analyses necessary to satisfy all applicable laws, including the National Environmental Policy Act (NEPA). Notice-and-comment rulemaking would be conducted by NMFS through the spring months and measures would be implemented for the May 1 start of the fishing year.

For the cycle leading into fishing year 2012, the Council and public knew that a new stock assessment for GOM cod would be conducted in December 2011. The Council acknowledged that the assessment could differ from previous management advice and result in a wide range of catch recommendations; thus, it recommended a range of ACLs and other measures for NMFS' consideration in FW47 for implementation beginning on May 1, 2012. The Council had intended to receive the new assessment results in January 2012, evaluate this new information quickly, and finalize its catch and management measures recommendations to NMFS for the 2012 fishing year at its February 1, 2012, meeting. This schedule would allow the Council to utilize the most recent stock assessment information in its recommendation to NMFS.

As stated in the preamble of this rule, the new assessment markedly changed the understanding of the GOM cod stock. It is overfished and subject to overfishing, the rebuilding plan is not making adequate progress, and the stock biomass is at a much lower level than previously believed. The magnitude of change in our understanding of the GOM cod stock was unforeseen. The previous assessment, conducted in 2008, indicated that the GOM cod stock was growing and expected to be rebuilt by 2014. The new assessment directly contradicts those findings and indicates rebuilding will not be achieved by 2014.

The GOM cod catch levels that would result from using the new assessment information, if applied by the Council to end overfishing, would result in very low catch levels for the 2012 fishing year. In light of the substantially changed stock information, the magnitude of negative economic impacts associated with very low catch levels, and a number of assessment-related topics the Council would like to explore further, the Council elected not to formally recommend a specific catch level to NMFS for the 2012 GOM cod fishery. Instead, in understanding that NMFS could utilize limited authority to reduce, but not end, overfishing, in the interim while the Council revisits the GOM cod rebuilding program design, the Council recommended a range of catch and requested NMFS implement interim measures for the 2012 fishing year based on these recommendations. This specific request to the Secretary to act under section 305(c) of the Magnuson-Stevens Act is consistent with NMFS policy guidelines for the use of emergency rules issued August 21, 1997 (62 FR 44421), as it is a request from the Council to address an emergency situation. Had the Council not taken such action, it would have been compelled to recommend very low catch levels for the 2012 fishing year that in turn would have substantial negative economic impacts to the fishery participants and coastal communities in New England that rely on fishing-related revenues. The emergency, in the context of the Council's request, is for NMFS to apply the interim rulemaking provisions of section 305(c) to avoid the significant negative economic impacts to fishery participants and communities that would result from ending overfishing at the beginning of fishing year 2012 (i.e., May 1, 2012).

NMFS received the Council's recommended catch range of 6,700 to 7,500 mt at the February 1, 2012 meeting. NMFS began analyzing this range along with recreational measures for consistency with the requirement to reduce overfishing, and to determine which catch levels would be appropriate within this range. In conjunction with the Council, NMFS held a GOM Cod Working Group meeting on February 10, 2012, in

Portsmouth, NH. This group was chaired by the Acting Assistant Administrator for Fisheries. At this meeting, NMFS indicated that fishing at a level higher than 6,700 mt would likely not reduce overfishing on the GOM cod stock. NMFS discussed potential sub-ACLs that would result from fishing at 6,700 mt for the year as well as providing potential changes to the recreational management measures for discussion, should this catch level eventually be implemented. Though no formal recommendations were sought or provided, a great deal of public input was received during this meeting and through correspondence after the meeting. This input was very helpful for NMFS as the interim measures were further developed.

The typical analytical process that is used to inform development of catch and recreational measures spans from late August through late December. Because of the introduction of new and substantially changed GOM cod stock information, these analyses had to be conducted by NMFS within a few weeks' time to ensure that rulemaking-related analyses and development could be conducted and concluded in sufficient time for the start of the fishing year (May 1). Though the work and discussion were conducted as quickly as possible, it was not possible to do so in a manner that provided sufficient time for notice-and-comment rulemaking. NMFS is relying on the collaborative development process for the measures within this interim rule to have provided a meaningful opportunity to engage with the affected public prior to issuing interim measures. Although this rule is becoming effective on May 1, based on the emergency precipitating it, NMFS is allowing the public an opportunity to comment on the measure for 60 days after the rule becomes published. NMFS will address public comments, including any necessary changes, before these interim measures are renewed in 6 months (October 2012).

Similarly, NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the full 30-day delay in effectiveness for this rule, and to have it become effective on May 1, 2012. That date is the beginning of the fishing year for GOM cod. If this rule does not become effective on May 1, 2012, then the previous ACL and AMs would remain in effect, with the result that overfishing would not be reduced. These measures would increase overfishing on the GOM cod stock and, as such, are inconsistent with the Magnuson-Stevens Act, the stated intent of the GOM cod rebuilding program, and the FMP. Moreover, failing to have the rule effective on May 1, 2012, may lead to confusion in the fishing community as to what regulations govern the harvest of GOM cod. Thus, the 30-day delay is impracticable and contrary to the public interest, and NMFS waives the requirement and makes this rule effective on May 1, 2012.

NMFS has consulted with the Office of Information and Regulatory Affairs (OIRA) and due to the circumstances described above this action is exempt from review under Executive Order 12866.

Under section 608 of the Regulatory Flexibility Act, an agency may waive the requirement to perform a regulatory flexibility analysis for a rule where the agency finds that the ''rule is being promulgated in response to an emergency that makes compliance or timely compliance with [the regulatory flexibility analysis requirements] impracticable.'' 5 U.S.C. 608. As discussed in the preamble to this interim rule, and as elaborated in this classification section, NMFS takes this action to address an emergency situation in the GOM cod fishery. Undertaking a regulatory flexibility analysis would delay this action and put the GOM cod and any small businesses that depend on it at further risk. Because the nature of this emergency requires immediate action, NMFS finds that compliance with the Regulatory Flexibility Act is impracticable. Thus, the requirements of the Regulatory Flexibility Act are hereby waived.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 26, 2012.

Alan D. Risenhoover,

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

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.89,

■ a. Amend paragraph (b)(1) introductory text by removing the reference ''paragraph (b)(3)'' and adding ''paragraph (b)(5)'' in its place;

■ b. Suspend paragraphs (b)(3), (c)(1)(i), and (c)(2)(i); and

■ c. Add paragraphs (b)(5), (c)(1)(vi), and (c)(2)(vi) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

(b) * * *

(5) *GOM cod.* Private recreational vessels and charter party vessels described in paragraph (b)(1) of this section may not possess cod smaller than 19 inches (48.26 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

* * * * *

(c) * * *

(1) * * *

(vi) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 9 cod per day in, or harvested from, the EEZ.

* * * * *

(2) * * *

(vi) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified in paragraph (c)(2)(v) of this section, each person on a charter/party vessel may possess no more than 9 cod per day.

* * * * *

[FR Doc. 2012–10528 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120316196–2195–01]

RIN 0648–BB89

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Interim Action; Withdrawn

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

ACTION: Interim rule; withdrawal.

SUMMARY: NMFS issued interim measures for the 2012 Gulf of Maine (GOM) Atlantic cod fishery on April 3, 2012. These measures were intended to become effective May 1, 2012; however, the authority NMFS uses to issue interim measures requires that interim measures become effective on publication in the **Federal Register**. The interim rule published on April 3, 2012, is being withdrawn so NMFS may re-issue the same measures on May 1,

2012, to ensure that the effective date is consistent with both NMFS' authority and the start of the 2012 GOM cod fishing year.

DATES: The interim rule published on April 3, 2012, at 77 FR 19944 is withdrawn as of May 1, 2012.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION: NMFS published a temporary rule containing interim measures to implement GOM cod catch limits and recreational fishing rules for the 2012 fishing year on April 3, 2012 (77 FR 19944). The interim measures were issued under authority of section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and were designed to become effective on May 1, 2012, the first day of the 2012 GOM cod fishing year. However, the effective date specified in the published interim rule is inconsistent with NMFS' authority provided by the MSA. The MSA language that authorizes NMFS to issue interim measures under specific conditions is described in detail in the April 3, 2012, rule and not repeated here.

The MSA authority for interim rules explicitly specifies that measures are effective upon publication in the **Federal Register** and may remain in place for no more than 180 days. NMFS has authority to extend interim measures for an additional 186 days under the MSA-granted authority. This provides for up to a full year (365 days) of interim measures. NMFS indicated that the interim measures issued in the April 3 rule would be extended by a subsequent rule so that measures remain effective for the duration of the 2012 fishing year which runs from May 1, 2012 to April 30, 2013. The initial 180 day effective period in the April 3 rule was calculated moving forward from the day the rule published, even though the rule states it is effective on May 1. Thus, the initial 180 day period specified in the April 3 interim rule ends on September 30, 2012. An extension of the interim measures for an additional 186 days from September 30, 2012 would be April 3, 2013. This would mean that 27 days of the 2012 fishing year would not have catch and management measures in place for GOM cod.

NMFS had published the measures in advance of the fishing season to provide advance notice to fishery participants and the interested public. Because the rule has published and the effective date outlined in the **DATES** section is inconsistent with NMFS' authority and creates a situation that would result in an unregulated portion of the 2012 fishing year, the measures and modifications to the Code of Federal Regulations (CFR) implemented by the rule are being withdrawn. NMFS will re-issue the exact measures and regulations previously published on April 3, 2012, for publication in the **Federal Register** on May 1, 2012. This ensures the effective date begins on the start of the fishing year and is consistent with the MSA section 305(c) authority that specifies interim rules are effective upon publication. This will result in the interim measures expiring on October 27, 2012. NMFS may then be able to extend the interim measures for an additional 186 days to ensure the measures are effective for the entire May 1, 2012–April 30, 2013 fishing year.

NMFS recognizes the withdrawal and re-publication of measures may cause some confusion for fishermen and those interested in the 2012 GOM cod fishery. Because the effective date in the April 3 rule is inconsistent with NMFS authority, it is not possible to simply correct the language. By withdrawing and re-issuing the interim measures for publication in the **Federal Register** on May 1, 2012, NMFS will ensure that the measures are effective at the start of the fishing year, consistent with both the intent of the previously published interim rule and the MSA authority for issuing interim rules. Furthermore, this withdrawal and re-issuance of the GOM cod 2012 fishing year interim measures will ensure that NMFS may use the MSA authority for a full fishing year, as intended and requested by the New England Fishery Management Council (Council). NMFS intends to explain the need for the withdrawal and re-issuance to the Council, fishery participants, and the interested public.

For the reasons outlined here, the publication on April 3, 2012 (77 FR 19944), implementing temporary rules to 50 CFR part 648 with an effective date of May 1–September 30, 2012, is withdrawn.

As previously stated, NMFS intends to re-issue the measures contained in the April 3, 2012 (77 FR 19944), on May 1, 2012.

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

Dated: April 25, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–10458 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 84
Tuesday, May 1, 2012

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

DEPARTMENT OF AGRICULTURE

7 CFR Part 3201

RIN 0503–AA40

Guidelines for Designating Biobased Products for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Proposed rule; amendments.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend 7 CFR part 3201, Guidelines for Designating Biobased Products for Federal Procurement, to incorporate statutory changes to section 9002 of the Farm Security and Rural Investment Act (FSRIA) that were effected when the Food, Conservation, and Energy Act of 2008 (FCEA) was signed into law on June 18, 2008.

DATES: USDA will accept public comments on these proposed rule amendments until July 2, 2012.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name and Regulatory Information Number (RIN). The RIN for this rulemaking is 0503–AA40. Also, please identify submittals as pertaining to the ''Proposed Amendments to BioPreferred Program Guidelines.''

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: biopreferred@usda.gov.* Include RIN number 0503–AA40 and ''Proposed Amendments to BioPreferred Program Guidelines'' on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024; email: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal biobased preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

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I. Authority

The Guidelines for Designating Biobased Products for Federal Procurement (the Guidelines) are established under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102. (Section 9002 of FSRIA, as amended by FCEA, is referred to in this document as ''section 9002'').

II. Background

As originally enacted, section 9002 provides for the preferred procurement of biobased products by Federal agencies. USDA proposed the Guidelines for implementing this preferred procurement program on December 19, 2003 (68 FR 70730–70746). The Guidelines were promulgated on January 11, 2005 (70 FR 1792), and are contained in 7 CFR part 3201, ''Guidelines for Designating Biobased Products for Federal Procurement.''

The Guidelines identify various procedures Federal agencies are required to follow in implementing the requirements of section 9002. They were modeled in part on the ''Comprehensive Procurement Guidelines for Products Containing Recovered Materials'' (40 CFR part 247), which the Environmental Protection Agency (EPA) issued pursuant to the Resource Conservation Recovery Act (''RCRA''), 40 U.S.C. 6962.

On June 18, 2008, the FCEA was signed into law. Section 9001 of the FCEA includes several provisions that amend the provisions of section 9002 of FSRIA. In an effort to update operational aspects of the BioPreferred program in response to the amendments in the FCEA, USDA initiated a process to review current program guidelines, gather input from government, industry, and public stakeholders on different aspects of the program, and determine appropriate methods for implementing the new requirements established by the FCEA. USDA held three public meetings during the first four months of 2010 to provide an opportunity for stakeholder input. A complete summary for each of the public meetings, including transcripts, presentation slides, and attendee lists can be found on the BioPreferred Web site at: *http://www.biopreferred.gov/BioPreferred_Public_Meetings.aspx.*

The purpose of these proposed rule amendments is to revise the Guidelines to incorporate changes to section 9002 of FSRIA that were included in the FCEA. These proposed guidelines will not affect products that have already been designated for Federal procurement preference. Any changes necessary to the existing designation status of products will be established by future rule-makings.

III. Executive Summary

USDA is proposing to amend 7 CFR part 3201 for two reasons. The first reason is to incorporate statutory changes to section 9002 of the Farm Security and Rural Investment Act made by enactment of the Food, Conservation, and Energy Act (FCEA) of 2008 on June 18, 2008. The second reason is to make improvements to the existing rule based

on several years of operating experience. The remainder of this section presents a brief summary of the proposed amendments to the existing Guidelines and Section IV of this preamble presents more detailed discussions.

A. Purpose of the Regulatory Action

1. Need for the Regulatory Action

The FCEA contains legislative requirements related to the Biobased Markets Program that cannot be implemented without further guidance. For example, the law requires USDA to first designate those intermediate ingredients and feedstocks that are or can be used to produce items that will be subject to program's Federal procurement preference. The law then requires USDA to automatically designate products composed of designated intermediate ingredients and feedstocks, if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the product (unless the Secretary determines a different composition percentage is appropriate). Today's proposed rule establishes procedures to carry out this and other provisions of FCEA.

2. Legal Authority for the Regulatory Action

Enactment of the Food, Conservation, and Energy Act (FCEA) of 2008 (Pub. L. 110–234) on June 18, 2008 provides the legal authority for the proposed rule.

B. Summary of Major Provisions of the Proposed Rule

1. Designation of Intermediate or Feedstock Categories

The designation of intermediate ingredient or feedstock categories, as proposed, will follow the same process that USDA uses in the ongoing designation of product categories. USDA will establish a minimum biobased content for each intermediate ingredient or feedstock category based on an evaluation of the available biobased content data. The minimum biobased content requirement will be set at the highest level practicable, considering technological limitations.

USDA recognizes that, in general, the Federal government does not purchase large quantities of intermediate ingredients and feedstocks. Designating such materials, then, represents a means to include finished products made from such designated materials in the Federal biobased products procurement preference program.

The proposed rule presents the procedure for designating those final products that are made from designated intermediate ingredients or feedstocks. The FCEA states that USDA shall ''automatically designate'' final products composed of designated intermediate ingredients or feedstocks if the content of the designated intermediate ingredients or feedstocks exceeds 50 percent of the final product (unless the Secretary determines a different composition percentage is appropriate). Even though the FCEA uses the term ''automatically'' when specifying that these final products are eligible for the Federal procurement preference, they still must be incorporated into the Guidelines by publication in the **Federal Register**. USDA is proposing a procedure whereby the designation of these final products would be done in conjunction with the designation of the intermediate ingredient or feedstock categories.

2. Designation of Complex Assembly Categories

The proposed rule would establish procedures for designating complex assembly products (multi-component assembled products with one or more component being made with biobased material) within the scope of the Federal biobased products procurement preference program. Although section 9001 of FCEA does not specifically mention these multi-component assembled products, USDA believes that including this type of finished product in the BioPreferred program will encourage the increased use of biobased materials and, thus, further advance the objectives of the program.

Today's proposal specifies a proposed procedure for determining the biobased content of complex assemblies. USDA is proposing that the biobased content of complex assemblies be calculated using an equation that yields a weighted average and is based on the summation of the biobased content of each individual component that contains, or could contain, biobased material divided by the total weight of all those components.

USDA selected the approach presented in the equation because it provides results that relate to the maximum amount of biobased material that could potentially be found in each complex assembly, regardless of the amount or type of materials used in other components.

3. Replacement of ''Designated Item'' With ''Designated Category''

The current guidelines use the term ''designated item'' to refer to a generic grouping of biobased products identified in subpart B as eligible for the procurement preference. The use of this term has created some confusion, however, because the word ''item'' is also used in the guidelines to refer to individual products rather than a generic grouping of products. USDA is proposing to replace the term ''designated item'' with the term ''designated product category.'' In addition, USDA is proposing to add a definition for the term ''qualifying biobased product'' to refer to an individual product that meets the definition and minimum biobased content criteria for a designated product category and is, therefore, eligible for the procurement preference. Although these changes are not required by section 9001 of FCEA, USDA believes the proposed terms and definitions will add clarity to the rule.

4. Procurement Preference for New and Emerging Markets

USDA is proposing that paragraph (b) of section 3201.5 be amended to add a statement that ''USDA will designate for preferred procurement those product categories and intermediate ingredient or feedstock categories that are determined to create new and emerging markets for biobased materials.'' This statement is being added to emphasize the section 9002 objectives ''to improve demand for biobased products'' and ''to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities.''

This new paragraph is intended to replace the current mature market exclusion, which limits the types of product categories eligible for the Federal procurement preference. USDA is proposing this change to be more consistent with the objectives and legislative intent of the Biobased Markets Program.

C. Costs and Benefits

Type	Costs	Benefits
Qualitative	Unable to quantify at this time	Unable to quantify at this time.
Qualitative	1. Costs of developing biobased alternative products	1. Advances the objectives of the BioPreferred program, as envisioned by Congress in developing the 2002 and 2008 Farm Bills.
	2. Costs to gather and submit biobased product information for BioPreferred Web site.	2. Opens new (Federal) market for biobased products that USDA designates.
	3. Loss of market share by manufacturers who choose not to offer biobased versions of products.	3. Opportunity for new and emerging biobased products to be publicized via BioPreferred Web site.

IV. Discussion of Today's Proposed Rule

USDA is proposing to amend nine sections of 7 CFR part 3201, as described below.

A. 7 CFR 3201.1—Purpose and Scope

Paragraph (b) of 7 CFR 3201.1 is being amended to state that the scope of the guidelines includes the designation of intermediate ingredients and feedstocks that are, or can be, used to produce final products that will be designated and, thus, subject to the Federal procurement preference. The amendments also specify that USDA may designate product categories for which there is only a single product or manufacturer. These proposed amendments are taken directly from the amendatory language found in section 9001 of the FCEA.

Finally, this section is being amended to include the designation of complex assembly products (multi-component assembled products with one or more component being made with biobased material) within the scope of the Federal biobased products procurement preference program. Although section 9001 of FCEA does not specifically mention these multi-component assembled products, USDA believes that including this type of finished product in the BioPreferred program will encourage the increased use of biobased materials and, thus, further advance the objectives of the program.

B. 7 CFR 3201.2—Definitions

USDA is proposing to amend 7 CFR 3201.2 by revising several of the definitions currently in that section and by adding definitions for several other terms. The current guidelines use the term ''designated item'' to refer to a generic grouping of biobased products identified in subpart B as eligible for the procurement preference. The use of this term has created some confusion, however, because the word ''item'' is also used in the guidelines to refer to individual products rather than a generic grouping of products. USDA is proposing to replace the term ''designated item'' with the term ''designated product category.'' In addition, USDA is proposing to add a definition for the term ''qualifying biobased product'' to refer to an individual product that meets the definition and minimum biobased content criteria for a designated product category and is, therefore, eligible for the procurement preference. Although these changes are not required by section 9001 of FCEA, USDA believes the proposed terms and definitions will add clarity to the rule.

Section 9001 of the FCEA authorized USDA to designate biobased intermediate ingredients or feedstocks that can be used in the manufacturing of final products. USDA is, therefore, revising the definition of the term ''biobased product'' to add the phrase ''intermediate ingredient or feedstock'' to the definition. USDA is also adding definitions for the terms ''intermediate ingredient or feedstock'' and ''designated intermediate ingredient or feedstock category'' to refer to a specific individual material and to a generic grouping of materials, respectively. The definition of the term ''intermediate ingredient or feedstock'' is taken from section 9001 of FCEA, except that the phrase referring to materials ''that have undergone a significant amount of value added processing (including thermal, chemical, biological, and mechanical), excluding harvesting operations, offered for sale by a manufacturer or vendor'' has been added. This phrase was added to the statutory definition to further distinguish intermediate ingredients or feedstocks from raw materials (such as corn or soybeans) that have been harvested but have not undergone any other processing. USDA does not intend to designate such raw materials for Federal preferred procurement under this program.

USDA recognizes that the incorporation of biobased materials into one or more of the components of an assembled final product is an important emerging trend. By including these multi-component assembled products in the BioPreferred program, USDA can encourage the increased use of biobased materials and, thus, further advance the objectives of the program. USDA is proposing revisions to the guidelines to facilitate the designation of these assembled products. USDA is proposing that these assembled products be referred to as ''complex'' assemblies and that the term ''complex assembly'' be defined as ''a system of distinct materials and components assembled to create a finished product with specific functional intent where some or all of the system inputs contain some amount of biobased material or feedstock.''

In addition to the changes discussed above, USDA is proposing to simplify the definition of the term ''BEES'' by removing the references to the BEES User Guide and Web site from the current definition, as this information is not necessary to define the term. USDA is also revising the format of the definition of ''procuring agency'' to make it consistent with the other definitions in section 3201.2 and adding a definition of the term ''relevant stakeholder,'' which is used in the proposed revision to § 3201.1 to refer to non-Federal stakeholders having an interest or involvement in the BioPreferred program.

C. 7 CFR 3201.3—Applicability to Federal Procurements; and 7 CFR 3201.4—Procurement Programs

USDA is proposing to revise the text in §§ 3201.3 and 3201.4 to be consistent with the decision to clarify the terminology used in the BioPreferred program by avoiding, to the extent possible, the use of the terms ''item'' and ''designated item.'' As proposed, the references in the sections will be to ''products'' and ''qualifying biobased products,'' as applicable. The revisions in these sections will make the terminology consistent throughout the rule but will have no other effect on the rule.

D. 7 CFR 3201.5—Item Designation

USDA is proposing to change the name of this section to ''Category Designation'' and to make several revisions to the text of the section. In addition to the change in terminology from ''item'' to ''product category,'' the section, as proposed, adds procedures for the designation of both intermediate ingredient or feedstock categories and the final products that are made from

those designated intermediate ingredients or feedstocks. As proposed, paragraph (a) of the section will include three sub-paragraphs.

Sub-paragraph (1) presents the procedure for designating product categories, which are generic groupings of specific products or complex assemblies that are commercially available to procuring agencies.

Sub-paragraph (2) presents the procedure for designating intermediate ingredient or feedstock categories, which are generic groupings of specific intermediate ingredients or feedstocks that are subsequently used in the manufacture of final products. The designation of intermediate ingredient or feedstock categories, as proposed, will follow the same process that USDA uses in the ongoing designation of product categories. USDA will establish a minimum biobased content for each intermediate ingredient or feedstock category based on an evaluation of the available biobased content data. The minimum biobased content requirement will be set at the highest level practicable, considering technological limitations.

USDA recognizes that, in general, the Federal government does not purchase large quantities of intermediate ingredients and feedstocks. Designating such materials, then, represents a means to include finished products made from such designated materials in the Federal biobased products procurement preference program.

Sub-paragraph (3) presents the procedure for designating those final products that are made from designated intermediate ingredients or feedstocks. The FCEA states that USDA shall ''automatically designate'' final products composed of designated intermediate ingredients or feedstocks if the content of the designated intermediate ingredients or feedstocks exceeds 50 percent of the final product (unless the Secretary determines a different composition percentage is appropriate). Even though the FCEA uses the term ''automatically'' when specifying that these final products are eligible for the Federal procurement preference, they still must be incorporated into the Guidelines by publication in the **Federal Register**. USDA is proposing a procedure whereby the designation of these final products would be done in conjunction with the designation of the intermediate ingredient or feedstock categories.

During the process of designating intermediate ingredient or feedstock categories, USDA would also gather information on the various types of final products that are, or can be, made from those intermediate ingredients or feedstocks. Those final products that are identified during the information gathering process would be listed in the **Federal Register** proposed rule for designating the intermediate ingredient or feedstock categories. USDA would also specify in the proposed rule a minimum biobased content for each of the final products based on the amount of designated intermediate ingredients or feedstocks such products contain. Public comment would be invited on the list of potential final products, and the minimum biobased content for each, as well as on the intermediate ingredient or feedstock categories being proposed for designation. Public comments on the list of potential final products would be considered, along with any additional information gathered by USDA, and the list would be finalized. When the final rule designating the intermediate ingredient or feedstock categories, by adding them to subpart B, is published in the **Federal Register**, the list of final products would also be added to subpart B. Once these final products are listed in subpart B, they become eligible for the Federal procurement preference.

USDA is proposing that paragraph (b) of § 3201.5 be amended to add a statement that ''USDA will designate for preferred procurement those product categories and intermediate ingredient or feedstock categories that are determined to create new and emerging markets for biobased materials.'' This statement is being added to emphasize the section 9002 objectives ''to improve demand for biobased products'' and ''to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities.''

USDA is also proposing to amend paragraph (c) of § 3201.5 to delete the exclusion (currently found in 3201.5(c)(2)) for products that are determined to have mature markets. This exclusion is being removed, in conjunction with the additions to paragraph (b), as part of USDA efforts to emphasize the intent to create new and emerging markets for biobased materials.

E. 7 CFR 3201.6—Providing Product Information to Federal Agencies

USDA is proposing to create two sub-paragraphs under paragraph (a) of § 3201.6. The first sub-paragraph describes the type of information provided on the USDA-maintained Web site and has been updated to include reference to products within designated intermediate ingredient or feedstock categories. The second sub-paragraph is new and notifies stakeholders that the BioPreferred Web site will also include the National Testing Center Registry, an electronic listing of recognized industry standard testing organizations.

F. 7 CFR 3201.7—Determining Biobased Content

USDA is proposing to make several revisions to § 3201.7. Proposed paragraphs (a) and (b) have been revised to refer to designated product categories, rather than to designated items, and to include references to the new designated intermediate ingredient or feedstock categories. Proposed paragraph (c) has been updated to refer to the new name for ASTM Standard Method D–6866. Proposed paragraph (c) has also been revised to include three sub-paragraphs.

Sub-paragraph (1) states that the biobased content for biobased products and intermediate ingredients or feedstocks will be based on the amount of biobased carbon in the product or material as percent of the weight (mass) of the total organic carbon in the product or material.

Sub-paragraph (2) states that for final products composed of intermediate ingredient or feedstock materials, the biobased content of the final product will be determined by multiplying the percentage by weight (mass) of the intermediate ingredient or feedstock material in the final product times the percentage of biobased content of the intermediate ingredient or feedstock material and dividing the result by 100. For example: a product is formulated such that 25 percent of its total weight is component A and component A is a biobased feedstock material that is 60 percent biobased; 40 percent of the total weight of the product is component B and component B is a biobased feedstock material that is 80 percent biobased. The biobased content of the final product is 47 percent [(25 * 60 = 1500) + (40 * 80 = 3200) = 4700/100 = 47 percent]. This approach was selected because the manufacturer of the final product can determine the biobased content of their final product using their own formulation data and knowledge of the biobased content of the intermediate ingredient or feedstock as certified by the manufacturer of that material. The cost of performing ASTM 6866 testing on the final product is, thus, avoided.

Sub-paragraph (3) specifies the proposed procedure for determining the biobased content of complex assemblies. USDA is proposing that the biobased content of complex assemblies be calculated using the following equation:

$$BC = \frac{\sum_{i=1}^{n} BC_i * W_i}{W_T}$$

Where:

BC = biobased content of the complex assembly product, (percent);

BC_i = biobased content of an individual component that has the potential to be manufactured with biobased material (percent);

W_i = weight of an individual component that has the potential to be manufactured with biobased material, (mass unit); and

W_T = total weight of all components that have the potential to be manufactured with biobased material (mass unit).

The result of the equation is a weighted average that is based on the summation of the biobased content of each individual component that contains, or could contain, biobased material divided by the total weight of all those components. USDA considered dividing the summation in the numerator of the equation by the total weight of the entire assembled product. However, USDA believes that the results of such an approach could be misleading because the weight of non-biobased components is expected to be drastically different among the various complex assemblies. For example, both an automobile and a computer may have several individual components that could potentially be manufactured with biobased materials. If all of these individual components in both the automobile and the computer were made of 100 percent biobased material, the equation above would result in a calculated biobased content of 100 percent for both the automobile and the computer. This would indicate that both complex assemblies (the automobile or the computer) contained the maximum biobased content possible, given that many components of the completed complex assemblies cannot be made from biobased materials. If, however, the biobased content was based on the total weight of the completed complex assembly, the results would not be comparable for the two example complex assemblies. The possible amount of biobased material in an automobile divided by the total weight of the automobile would be a very small percentage because of the amount of metal and glass in the automobile that cannot be made of biobased material. For the computer, however, the percentage would be considerably higher because a much larger portion of the completed assembly can be made from biobased materials. Thus, USDA selected the approach presented in the equation above because it provides results that relate to the maximum amount of biobased material that could potentially be found in each complex assembly, regardless of the amount or type of materials used in other components. Two example calculations using the proposed approach are provided below.

Example 1:

- A completed complex assembly contains 10 components, 7 of the components are made from steel and the other 3 (components X, Y, and Z) are plastic and could be manufactured using biobased plastic resins
- Component X weighs 5 pounds and is made from a resin with 40 percent biobased content
- Component Y weighs 7 pounds and is made from a resin with 50 percent biobased content
- Component Z weighs 15 pounds and is made from a resin with 60 percent biobased content
- The biobased content of the completed complex assembly is calculated as follows:

$$BC = \frac{((40)(5))+((50)(7))+((60)(15))}{(5)+(7)+(15)}$$

$$= \frac{(200)+(350)+(900)}{(27)}$$

$$= 53.7 = 54 \text{ percent biobased}$$

Example 2:

- Another manufacturer makes a version of the complex assembly described in Example 1 (contains 10 components, 7 of the components are made from steel and the other 3 are plastic and could be manufactured using biobased plastic resins)
- Component X weighs 5 pounds and is made from a petroleum-based resin (0 percent biobased content)
- Component Y weighs 7 pounds and is made from a resin with 20 percent biobased content
- Component Z weighs 15 pounds and is made from a resin with 90 percent biobased content
- The biobased content of the completed complex assembly is calculated as follows:

$$BC = \frac{((0)(5))+((20)(7))+((90)(15))}{(5)+(7)+(15)}$$

$$= \frac{(0)+(140)+(1350)}{(27)}$$

$$= 55.2 = 55 \text{ percent biobased}$$

These examples show how the proposed equation would be applied and also show the importance of using a weighted approach to calculating the biobased content of the completed complex assembly. In example 1, the manufacturer uses three components that all contain about 50 percent biobased content and uses a total of 14.50 pounds of biobased material in the manufacturing of the complex assembly. In example 2, the manufacturer only uses biobased material in two of the three non-steel components, with one of those components containing only 20 percent biobased content. However, because the largest component is made from 90 percent biobased material, the total weight of the biobased material in the completed complex assembly is 14.90 pounds. USDA believes that the proposed method of calculating the biobased content of complex assemblies provides manufacturers the maximum amount of flexibility in their processes while recognizing the actual amount of biobased material usage in a reasonable, equitable, and practical manner.

USDA acknowledges that the determination of which components of a complex assembly have the ''potential'' to be made from biobased materials will require significant input and cooperation from stakeholders. USDA will solicit input from industry trade organizations, as well as individual manufacturers of complex assemblies and intermediate ingredients or feedstocks, during the development of the technical information for the proposed rule designating a complex assembly. USDA will use this information to develop a minimum biobased content to include in the proposed rule. USDA will also ask for additional information in the proposal and will consider any information provided during the public comment period. USDA will use this stakeholder input to identify, for each category of complex assembly products that is designated, the components that have the potential to be made from biobased materials.

USDA is also proposing to revise paragraph (d) of § 3201.7 to add a reference to intermediate ingredients or feedstocks to the existing provisions of the paragraph. Paragraph (d) states that where multiple products are marketed under several brand names but are all essentially the same formulation, the biobased content testing does not have to be brand-name specific. This provision reduces the cost of biobased content testing for manufacturers of products or intermediate ingredients or feedstocks who sell their products or materials under more than one brand name.

G. 7 CFR 3201.8—Determining Life Cycle Costs, Environmental and Health Benefits, and Performance

USDA is proposing to change the name of this section to ''Determining relative price, environmental and health benefits, and performance.'' In the original guidelines, manufacturers were required, under § 3201.8(a), to provide life cycle cost information from either a BEES analysis or a similar analysis using ASTM D7075 when such information was requested by a Federal

agency. In response to the language in section 9001 of the FCEA and numerous comments by stakeholders, USDA previously amended § 3201.8 (76 FR 6322) to eliminate this requirement. In today's proposed revisions, USDA is adding language to paragraph (a) encouraging stakeholders to develop and provide information on environmental and public health benefits, including life cycle costs, associated with their biobased products. While Federal agencies may no longer require such information from manufacturers of biobased products, USDA believes that information from life cycle analyses (LCA) will be a valuable tool in the marketing of biobased products. Numerous stakeholders have provided comments and recommendations regarding the role of LCA in the BioPreferred program and USDA acknowledges that opinions vary widely on the benefits and the most appropriate approach to conducting LCA. USDA considered requiring that manufacturers perform LCA on their biobased products but decided that such a requirement would not be appropriate at this time, given the issues raised by stakeholders. USDA continues to believe, however, that the availability of LCA information, developed using industry-accepted approaches, such as the ASTM D7075 standard or the BEES analytical tool, may be valuable in Federal procurements that take into account human health, environmental, or disposal considerations in the product selection process. Thus, USDA is encouraging biobased product manufacturers to voluntarily perform these analyses and make the information available for posting on the BioPreferred Web site.

H. 7 CFR 3201.9—Funding for Testing

USDA is proposing to remove the existing text related to funding for BEES and other life cycle cost analyses from this section and reserve the section.

I. Subpart B—Designated Items

USDA is proposing to change the title of subpart B of part 3201 to read as follows: ''Subpart B—Designated Product Categories and Intermediate Ingredients or Feedstocks.'' We are proposing this change so that the title will be consistent with the revised terminology being proposed for the BioPreferred Program.

V. Request for Comment

USDA is requesting comment on all aspects of today's proposed amendments to the Guidelines. In particular, USDA requests that stakeholders provide comment on the following topics:

1. Whether the use of the new terms ''product category,'' ''designated product category,'' and ''qualifying biobased product'' add clarity and, if not, suggestions on terms that would be more clear.

2. Whether the proposed procedure for designating final products made from designated intermediate ingredients or feedstocks is a reasonable and workable approach. Commenters are requested to provide recommendations for alternative approaches to any element of the procedure they believe is not appropriate.

3. Whether the proposed methodology for determining the biobased content of final products composed of intermediate ingredient or feedstock materials is appropriate and, if not, specific recommendations on an alternative approach.

4. Whether the definition of the term ''complex assembly'' and the procedure for designating complex assemblies is reasonable and appropriate.

5. Whether the proposed methodology for determining the biobased content of complex assemblies is appropriate and, if not, specific recommendations on an alternative approach.

6. The appropriate role of LCA in the process of qualifying biobased products for the BioPreferred program and, if you believe there is a role for LCA, the most appropriate methodology to use.

7. USDA is proposing to revise § 3201.5(b) to state that ''USDA will designate for preferred procurement those product categories and intermediate ingredient or feedstock categories that are determined to create new and emerging markets for biobased materials.'' USDA is also proposing to remove § 3201.5(c)(2), the exclusion of mature market products. USDA requests comments on what the term ''new and emerging markets'' means to stakeholders.

VI. Regulatory Information

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

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 designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

1. Need for the Rule

Today's proposed rule would amend the BioPreferred Program Guidelines to establish the regulatory framework for the designation of complex assemblies and intermediate ingredients or feedstocks for Federal procurement preference. The designation of such products is specifically required under the Food, Conservation, and Energy Act of 2008, which states that:

> ''(B) Requirements.—The guidelines under this paragraph shall—
>
> (i) designate those items (including finished products) that are or can be produced with biobased products (including biobased products for which there is only a single product or manufacturer in the category) that will be subject to the preference described in paragraph (2);
>
> (ii) designate those intermediate ingredients and feedstocks that are or can be used to produce items that will be subject to the preference described in paragraph (2);
>
> (iii) automatically designate items composed of intermediate ingredients and feedstocks designated under clause (ii), if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the item (unless the Secretary determines a different composition percentage is appropriate).''

2. Benefits

We expect that the rule will result in benefits that justify its cost, but we lack the information to quantify those benefits. This rule expands the scope of products that may be considered for Federal procurement preference. The eligibility of intermediate ingredients or feedstocks and complex assemblies is expected to increase demand for these products once designated, which, in turn, is expected to increase demand for those agricultural products that can serve as ingredients and feedstocks. This Federal procurement preference will thus benefit businesses producing these ingredients and feedstocks. We request comment on the magnitude of this effect.

3. Costs

The anticipated costs of this action would stem from reduced demand for products that do not receive Federal Procurement Preference designation. Producers of ingredients and feedstocks that are not so designated could face a loss of market share within Federal procurement; however, this cost to some producers is a result of implementing

the provisions of the statute. As with benefits, we request information on the costs of this action to help quantify our analysis of impacts.

Although today's proposed rule would establish procedures for designating qualifying biobased product categories, no product categories are proposed to be designated today. The actual designation of biobased product categories under this program will be accomplished through future rulemaking actions and the effect of those rulemakings on the economy will be addressed at that time.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Although the BioPreferred Program ultimately may have a direct impact on a substantial number of small entities, USDA has determined that today's proposed rule itself will not have a direct significant economic impact on a substantial number of small entities. This rule will directly affect Federal agencies, which will be required to consider designated products for purchase. In addition, private sector manufacturers and vendors of biobased products voluntarily may provide information to USDA through the means set forth in this rule. However, the rule imposes no requirement on manufacturers and vendors to do so, and does not differentiate between manufacturers and vendors based on size. USDA does not know how many small manufacturers and vendors may opt to participate at this stage of the program.

As explained above, when USDA issues a proposed rulemaking to designate product categories for preferred procurement under this program, USDA will assess the anticipated impact of such designations, including the impact on small entities. USDA anticipates that this program will positively impact small entities which manufacture or sell biobased products. For example, once product categories are designated, this program will provide additional opportunities for small businesses to manufacture and sell biobased products to Federal agencies. This program also will impact indirectly small entities that supply biobased materials to manufacturers. Additionally, this program may decrease opportunities for small businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. It is difficult for USDA to definitively assess these anticipated impacts on small entities until USDA proposes product categories for designation. This rule does not designate any product categories.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule would not preempt State or local laws, is not intended to have retroactive effect, and would not involve administrative appeals.

E. Executive Order 13132: Federalism

This proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule would not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Today's proposed rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under the Guidelines is currently approved under OMB control number 0503–0011.

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for Federal preferred procurement under each designated item. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture is proposing to amend 7 CFR chapter XXXII as follows:

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 3201 continues to read as follows:

Authority: 7 U.S.C. 8102.

2. Section 3201.1 is amended by revising paragraph (b) to read as follows:

§ 3201.1 Purpose and scope.

* * * * *

(b) *Scope.* The guidelines in this part establish a process for designating categories of products (including those for which there is only a single product

or manufacturer) that are, or can be, produced with biobased components and materials and whose procurement by procuring agencies and other relevant stakeholders will carry out the objectives of section 9002 of FSRIA. The guidelines also establish a process for designating categories of intermediate ingredients and feedstocks that are, or can be, used to produce final products that will be designated and, thus, subject to Federal preferred procurement. The guidelines also establish a process for calculating the biobased content of complex assembly products, whose biobased content cannot be measured following ASTM Standard Method D–6866, and for designating complex assembly product categories.

3. Section 3201.2 is amended by:

a. Revising the definitions of ''BEES,'' ''Biobased product,'' and ''Procuring agency'';

b. Deleting the definition of ''Designated item''; and

c. Adding, in alphabetical order, new definitions for ''Complex assembly,'' ''Designated intermediate ingredient or feedstock category,'' ''Designated product category,'' ''Intermediate ingredient or feedstock,'' ''Qualifying biobased product,'' and ''Relevant stakeholder'' to read as follows:

§ 3201.2 Definitions.

* * * * *

BEES. An acronym for ''Building for Environmental and Economic Sustainability,'' an analytic tool used to determine the environmental and health benefits and life cycle costs of products and materials, developed by the U.S. Department of Commerce National Institute of Standards and Technology.

* * * * *

Biobased product. A product determined by USDA to be a commercial or industrial product (other than food or feed) that is:

(1) composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) an intermediate ingredient or feedstock.

* * * * *

Complex assembly. A system of distinct materials and components assembled to create a finished product with specific functional intent where some or all of the system inputs contain some amount of biobased material or feedstock.

Designated intermediate ingredient or feedstock category. A generic grouping of biobased intermediate ingredients or feedstocks identified in subpart B of this part that, when used in the production of a resultant final product, qualifies the resultant final product for the procurement preference established under section 9002 of FSRIA.

Designated product category. A generic grouping of biobased products, including those final products made from designated intermediate ingredients or feedstocks, or complex assemblies identified in subpart B of this part that is eligible for the procurement preference established under section 9002 of FSRIA.

* * * * *

Intermediate ingredient or feedstock. A material or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials that have undergone a significant amount of value added processing (including thermal, chemical, biological, and mechanical), excluding harvesting operations, offered for sale by a manufacturer or vendor and that is subsequently used to make a more complex compound or product.

* * * * *

Procuring agency. Any Federal agency that is using Federal funds for procurement or any person contracting with any Federal agency with respect to work performed under the contract.

* * * * *

Qualifying biobased product. A product that is eligible for Federal preferred procurement because it meets the definition and minimum biobased content criteria for one or more designated product categories, or one or more designated intermediate ingredient or feedstock categories, as specified in subpart B of this part.

* * * * *

Relevant stakeholder. Individuals or officers of state or local government organizations, private non-profit institutions or organizations, and private businesses or consumers.

* * * * *

4. Section 3201.3 is amended by revising paragraphs (c) and (d) to read as follows:

§ 3201.3 Applicability to Federal procurements.

* * * * *

(c) *Procuring products composed of the highest percentage of biobased content.* Section 9002(a)(2) of FSRIA requires procuring agencies to procure qualifying biobased products composed of the highest percentage of biobased content practicable or such products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1). Procuring agencies may decide not to procure such qualifying biobased products if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

(d) This guideline does not apply to purchases of qualifying biobased products that are unrelated to or incidental to Federal funding; i.e., not the direct result of a contract or agreement with persons supplying items to a procuring agency or providing support services that include the supply or use of products.

* * * * *

5. Section 3201.4 is amended by revising paragraphs (b) and (c) to read as follows:

§ 3201.4 Procurement programs.

* * * * *

(b) *Federal agency preferred procurement programs.*(1) On or before [date 1 year after publication of the final rule in the **Federal Register**], each Federal agency shall develop a procurement program which will assure that qualifying biobased products are purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement laws. Each procurement program shall contain:

(i) A preference program for purchasing qualifying biobased products,

(ii) A promotion program to promote the preference program; and

(iii) Provisions for the annual review and monitoring of the effectiveness of the procurement program.

(2) In developing the preference program, Federal agencies shall adopt one of the following options, or a substantially equivalent alternative, as part of the procurement program:

(i) A policy of awarding contracts on a case-by-case basis to the vendor offering a qualifying biobased product composed of the highest percentage of biobased content practicable except when such products:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards set forth in the applicable specifications, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(ii) A policy of setting minimum biobased content specifications in such a way as to assure that the required biobased content of qualifying biobased products is consistent with section 9002 of FSRIA and the requirements of the

guidelines in this part except when such products:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(3) In implementing the preference program, Federal agencies shall treat as eligible for the preference biobased products from ''designated countries,'' as that term is defined in § 25.003 of the Federal Acquisition Regulation, provided that those products otherwise meet all requirements for participation in the preference program.

(c) *Procurement specifications.* After the publication date of each designated product category and each designated intermediate ingredient or feedstock category, Federal agencies that have the responsibility for drafting or reviewing specifications for products procured by Federal agencies shall ensure within a specified time frame that their specifications require the use of qualifying biobased products, consistent with the guidelines in this part. USDA will specify the allowable time frame in each designation rule. The biobased content of qualifying biobased products within a designated product category or a designated intermediate ingredient or feedstock category may vary considerably from product to product based on the mix of ingredients used in its manufacture. Likewise, the biobased content of qualifying biobased products that qualify because they are made from materials within designated intermediate ingredient or feedstock categories may also vary significantly. In procuring qualifying biobased products, the percentage of biobased content should be maximized, consistent with achieving the desired performance for the product.

6. Section 3201.5 is amended by revising the title of the section and by revising paragraphs (a), (b), and (c) to read as follows:

§ 3201.5 Category designation.

(a) *Procedure.* Designated product categories, designated intermediate ingredient or feedstock categories, and designated final products composed of qualifying intermediate ingredients or feedstocks are listed in subpart B of this part.

(1) In designating product categories, USDA will designate categories composed of generic groupings of specific products or complex assemblies and will identify the minimum biobased content for each listed category or subcategory. As product categories are designated for procurement preference, they will be added to subpart B of this part.

(2) In designating intermediate ingredient or feedstock categories, USDA will designate categories composed of generic groupings of specific intermediate ingredients or feedstocks, and will identify the minimum biobased content for each listed category or sub-category. As categories are designated for product qualification, they will be added to subpart B of this part. USDA encourages manufacturers and vendors of intermediate ingredients or feedstocks to provide USDA with information relevant to significant potential applications for intermediate ingredients or feedstocks, including estimates of typical formulation rates.

(3) During the process of designating intermediate ingredient or feedstock categories, USDA will also gather information on the various types of final products that are, or can be, made from those intermediate ingredients or feedstocks. Final products that are identified during the information gathering process will be listed in the **Federal Register** proposed rule for designating the intermediate ingredient or feedstock categories. A minimum biobased content for each of the final products will also be identified based on the amount of designated intermediate ingredients or feedstocks such products contain. Public comment will be invited on the list of potential final products, and the minimum biobased content for each, as well as on the intermediate ingredient and feedstock categories being proposed for designation. Public comments on the list of potential final products will be considered, along with any additional information gathered by USDA, and the list will be finalized. When the final rule designating the intermediate ingredient or feedstock categories, by adding them to subpart B of this part, is published in the **Federal Register**, the list of final products will also be added to subpart B of this part. Once these final products are listed in subpart B of this part, they will become eligible for the Federal procurement preference.

(b) *Considerations.* (1) In designating product categories and intermediate ingredient or feedstock categories, USDA will consider the availability of qualifying biobased products and the economic and technological feasibility of using such products, including relative price. USDA will gather information on individual qualifying biobased products within a category and extrapolate that information to the category level for consideration in designating categories.

(2) In accordance with USDA interpretation of the intent of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102, USDA will designate for preferred procurement those product categories and intermediate ingredient or feedstock categories that are determined to create new and emerging markets for biobased materials.

(c) *Exclusions.* Motor vehicle fuels, heating oil, and electricity are excluded by statute from this program.

7. Section 3201.6 is amended by revising paragraph (a) to read as follows:

§ 3201.6 Providing product information to Federal agencies.

(a) *Informational Web site.* An informational USDA Web site implementing section 9002 of FSRIA can be found at: *http://www.biopreferred.gov.* USDA will maintain a voluntary Web-based information site for manufacturers and vendors of qualifying biobased products and Federal agencies to exchange information, as described in paragraphs (a)(1) and (2) of this section.

(1) *Product Information.* The Web site will provide information as to the availability, relative price, biobased content, performance and environmental and public health benefits of the designated product categories and designated intermediate ingredient or feedstock categories. USDA encourages manufacturers and vendors to provide product and business contact information for designated categories. Instructions for posting information are found on the Web site itself. USDA also encourages Federal agencies to utilize this Web site to obtain current information on designated categories, contact information on manufacturers and vendors, and access to information on product characteristics relevant to procurement decisions. In addition to any information provided on the Web site, manufacturers and vendors are expected to provide relevant information to Federal agencies, subject to the limitations specified in § 3201.8(a), with respect to product characteristics, including verification of such characteristics if requested.

(2) *National Testing Center Registry.* The Web site will include an electronic listing of recognized industry standard testing organizations that will serve biobased product manufacturers such as ASTM International, Society of Automotive Engineers, and the

American Petroleum Institute. USDA encourages stakeholders to submit information on other possible testing resources to the BioPreferred Program for inclusion.

* * * * *

8. Section 3201.7 is revised to read as follows:

§ 3201.7 Determining biobased content.

(a) *Certification requirements.* For any qualifying biobased product offered for preferred procurement, manufacturers and vendors must certify that the product meets the biobased content requirements for the designated product category or designated intermediate ingredient or feedstock category within which the qualifying biobased product falls. Paragraph (c) of this section addresses how to determine biobased content. Upon request, manufacturers and vendors must provide USDA and Federal agencies information to verify biobased content for products certified to qualify for preferred procurement.

(b) *Minimum biobased content.* Unless specified otherwise in the designation of a particular product category or intermediate ingredient or feedstock category, the minimum biobased content requirements in a specific category designation refer to the organic carbon portion of the product, and not the entire product.

(c) *Determining biobased content.* Verification of biobased content must be based on third party ASTM/ISO compliant test facility testing using the ASTM Standard Method D 6866, ''Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis.'' ASTM Standard Method D 6866 determines biobased content based on the amount of biobased carbon in the material or product as percent of the weight (mass) of the total organic carbon in the material or product.

(1) *Biobased products, intermediate ingredients or feedstocks.* Biobased content will be based on the amount of biobased carbon in the product or material as percent of the weight (mass) of the total organic carbon in the product or material.

(2) *Final products composed of intermediate ingredient or feedstock materials.* The biobased content of final products composed of intermediate ingredient or feedstock materials will be determined by multiplying the percentage by weight (mass) of each intermediate ingredient or feedstock material in the final product times the percentage of biobased content of each intermediate ingredient or feedstock material, summing the results (if more than one intermediate ingredient or feedstock is used), and dividing the resultant value by 100.

(3) *Complex assemblies.* The biobased content of a complex assembly product, where the product has ''n'' components, will be determined using the following equation:

$$BC = \frac{\sum_{i=1}^{n} BC_i * W_i}{W_T}$$

Where:

BC = biobased content of the complex assembly product, (percent);

BC_i = biobased content of an individual component that has the potential to be manufactured with biobased material (percent);

W_i = weight of an individual component that has the potential to be manufactured with biobased material, (mass unit);and

W_T = total weight of all components that have the potential to be manufactured with biobased material (mass unit).

For each category of complex assembly products designated for Federal preferred procurement, USDA will identify, at the time of designation, each individual component that has the potential to be manufactured with biobased material.

(d) *Products and intermediate ingredients or feedstocks with the same formulation.* In the case of products and intermediate ingredients or feedstocks that are essentially the same formulation, but marketed under more than one brand name, biobased content test data need not be brand-name specific.

9. Section 3201.8 is amended by revising the title of the section and by revising paragraphs (a) and (b) to read as follows:

§ 3201.8 Determining relative price, environmental and health benefits, and performance.

(a) *Providing information on relative price and environmental and health benefits.* Federal agencies may not require manufacturers or vendors of qualifying biobased products to provide to procuring agencies more data than would be required of other manufacturers or vendors offering products for sale to a procuring agency (aside from data confirming the biobased contents of the products) as a condition of the purchase of biobased products from the manufacturer or vendor. USDA will work with manufacturers and vendors to collect information needed to estimate relative price of biobased products, complex assemblies, intermediate materials or feedstocks as part of the designation process, including application units, average unit cost, and application frequency. USDA encourages industry stakeholders to provide information on environmental and public health benefits based on industry accepted analytical approaches including, but not limited to: Material carbon footprint analysis, the ASTM D7075 standard for evaluating and reporting on environmental performance of biobased products, the International Standards Organization ISO 14040, the ASTM International life-cycle cost method (E917) and multi-attribute decision analysis (E1765), the British Standards Institution PAS 2050, and the National Institute of Standards and Technology BEES analytical tool. USDA will make such stakeholder-supplied information available on the BioPreferred Web site.

(b) *Performance test information.* In assessing performance of qualifying biobased products, USDA requires that procuring agencies rely on results of performance tests using applicable ASTM, ISO, Federal or military specifications, or other similarly authoritative industry test standards. Such testing must be conducted by a laboratory compliant with the requirements of the standards body. The procuring official will decide whether performance data must be brand-name specific in the case of products that are essentially of the same formulation.

* * * * *

§ 3201.9 [Reserved]

10. Remove and reserve § 3201.9.

11. Revise the heading to Subpart B of Part 3201 to read as follows:

Subpart B—Designated Product Categories and Intermediate Ingredients or Feedstocks

Dated: April 25, 2012.

Oscar Gonzales,

Deputy Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2012–10420 Filed 4–30–12; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0422; Directorate Identifier 2011–NM–177–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 adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8 airplanes. This proposed AD was prompted by reports that various pushrods had been manufactured with tubes having the incorrect heat treatment. This proposed AD would require replacing the affected pushrod assembly. We are proposing this AD to prevent loss of rudder control, reduced directional control of the airplane on the ground, or a jammed nose landing gear (NLG) door that could prevent the NLG from retracting or extending.

DATES: We must receive comments on this proposed AD by June 15, 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., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@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 and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 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–2012–0422; Directorate Identifier 2011–NM–177–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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2011–31, dated August 15, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It was discovered that various pushrods installed on the DHC–8 Series 100/200/300/400 aeroplanes had been manufactured with tubes having the incorrect heat treatment, using 6061–T4 instead of 6061–T6. The incorrect heat treatment appreciably degrades the strength of these affected pushrods. Failure of these affected pushrods could result in a loss of rudder control, reduced directional control of the aeroplane on the ground or a jammed nose landing gear (NLG) door that could prevent the NLG from retracting or extending.
>
> This [TCCA] directive mandates the replacement of the affected pushrod assembly.

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

Relevant Service Information

Bombardier has issued the following service bulletins. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Service Bulletin 8–27–99, dated October 10, 2008;
- Service Bulletin 8–27–100, Revision A, dated March 22, 2011;
- Service Bulletin 8–32–156, dated February 26, 2010;
- Service Bulletin 84–27–21, Revision A, dated March 22, 2011;
- Service Bulletin 84–32–28, dated November 27, 2008; and
- Service Bulletin 84–32–75, dated June 1, 2010.

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.

Differences Between This AD and the MCAI or Service Information

For certain actions on the same part, the MCAI specified both 3,000 and 6,000 flight-hour compliance times. To reconcile that difference, this proposed AD has a compliance time of 3,000 flight hours after the effective date of the AD, for the action in paragraph (k) of this proposed AD. We have determined this compliance time is necessary to address the identified unsafe condition in a timely manner. This difference has been coordinated with TCCA.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 171 products of U.S. registry. We also estimate that it would take about 28 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $6,504 per product. Where the service information lists required parts costs that are

covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,519,164, or $8,884 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2012–0422; Directorate Identifier 2011–NM–177–AD.

(a) Comments Due Date

We must receive comments by June 15, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc. airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model DHC–8–102,–103,–106,–201, –202,–301,–311, and –315 airplanes, serial numbers 413, 443, 450 through 452 inclusive, 456, 458, 462 through 465 inclusive, 467 through 470 inclusive, and 473 through 588 inclusive.

(2) Model DHC–8–400,–401, and –402 airplanes, serial numbers 4001, 4003 through 4006 inclusive, and 4008 through 4197 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27: Flight controls; and Code 32: Landing gear.

(e) Reason

This AD was prompted by reports that various pushrods had been manufactured with tubes having the incorrect heat treatment. We are issuing this AD to prevent loss of rudder control, reduced directional control of the airplane on the ground, or a jammed nose landing gear (NLG) door that could prevent the NLG from retracting or extending.

(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) Replace Brake Rudder Control Pushrod—Model DHC–8–100, –200, –300

For Model DHC–8–102,–103,–106,–201, –202,–301,–311, and –315 airplanes, serial numbers 464, 508, 511 through 513 inclusive, and 515 through 588 inclusive: Within 3,000 flight hours after the effective date of this AD, replace the affected brake rudder control pushrod, part number (P/N) 82710274–001, by incorporating Modsum 8Q101334, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–27–100, Revision A, dated March 22, 2011.

(h) Replace NLG Door Pushrod—Model DHC–8–200, –300

For Model DHC–8–201, –202, –301, –311, and –315 airplanes, serial numbers 552 through 588 inclusive: Within 6,000 flight hours after the effective date of this AD, replace nose landing gear door pushrod, P/N 83232012–001, by incorporating Modsum 8Q101335, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–32–156, dated February 26, 2010.

(i) Replace NLG Door Pushrod—Model DHC–8–400

For Model DHC–8–400, –401, and –402 airplanes, serial numbers 4003 through 4005 inclusive, 4009 through 4011 inclusive, 4016, 4017, and 4024 through 4072 inclusive: Within 6,000 flight hours after the effective date of this AD, replace nose landing gear door pushrod, P/N 83232012–001, by incorporating Modsum 4–113457, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–28, dated November 27, 2008.

(j) Replace Brake Rudder Control and Rudder Control Pushrods—Model DHC–8–400

For Model DHC–8–400, –401, and –402 airplanes, serial numbers 4001, 4003 through 4006 inclusive, and 4008 through 4072 inclusive: Within 3,000 flight hours after the effective date of this AD, replace brake rudder control pushrod, P/N 82710274–001, and rudder control pushrod, P/N 82710028–003, by incorporating Modsum 4–113455, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–21, Revision A, dated March 22, 2011.

(k) Replace Rudder Control Pushrod—Model DHC–8–100, –200, –300

For Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial numbers 413, 443, 450 through 452 inclusive, 456, 458, 462 through 465 inclusive, 467 through 470 inclusive, and 473 through 588 inclusive: Within 3,000 flight hours after the effective date of this AD, replace rudder control pushrod, P/N 82710028–003, by incorporating Modsum 8Q101333, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–27–99, dated October 10, 2008.

(l) Inspect/Replace NLG Landing Gear Door Pushrod

For Model DHC–8–400, –401, and –402 airplanes, serial numbers 4006, 4008, 4012 through 4015 inclusive, 4018 through 4023 inclusive, and 4073 through 4197 inclusive: Within 6,000 flight hours after the effective date of this AD, inspect the lot number of the pushrod, P/N 83232012–001, for the nose landing gear door mechanism, in accordance with Bombardier Service Bulletin 84–32–75, dated June 1, 2010.

(1) If the lot number of the pushrod does not match any of those listed in the table in paragraph 3.B.(2) of Bombardier Service

Bulletin 84–32–75, dated June 1, 2010, no further action is required by this paragraph.

(2) If the lot number of the pushrod matches any of those listed in the table in paragraph 3.B.(2) of Bombardier Service Bulletin 84–32–75, dated June 1, 2010, before further flight, replace the pushrod, in accordance with paragraph 3.B., Rectification, of Bombardier Service Bulletin 84–32–75, dated June 1, 2010.

(m) Parts Installation

For Model DHC–8–400, –401, and –402 airplanes, serial numbers 4006, 4008, 4012 through 4015 inclusive, 4018 through 4023 inclusive, and 4073 through 4197 inclusive: As of the effective date of this AD, no person may install a pushrod, P/N 83232012–001, with the lot number listed in the table in paragraph 3.B.(2) of Bombardier Service Bulletin 84–32–75, dated June 1, 2010, on any airplane.

(n) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g) and (j) of this AD, if those actions were performed before the effective date of this AD using the service bulletins identified in paragraph (n)(1) or (n)(2) of this AD.

(1) Bombardier Service Bulletin 8–27–100, dated October 10, 2008 (for paragraph (g) of this AD).

(2) Bombardier Service Bulletin 84–27–21, dated October 10, 2008 (for paragraph (j) of this AD).

(o) 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 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.

(p) Related Information

Refer to MCAI Canadian AD CF–2011–31, dated August 15, 2011, and the Bombardier service bulletins identified in paragraphs (p)(1) through (p)(6) of this AD, for related information.

(1) Bombardier Service Bulletin 8–27–99, dated October 10, 2008.

(2) Bombardier Service Bulletin 8–27–100, Revision A, dated March 22, 2011.

(3) Bombardier Service Bulletin 8–32–156, dated February 26, 2010.

(4) Bombardier Service Bulletin 84–27–21, Revision A, dated March 22, 2011.

(5) Bombardier Service Bulletin 84–32–28, dated November 27, 2008.

(6) Bombardier Service Bulletin 84–32–75, dated June 1, 2010.

Issued in Renton, Washington, on April 24, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–10483 Filed 4–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0423; Directorate Identifier 2011–NM–095–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede two existing airworthiness directives (AD) that apply to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 airplanes. The existing ADs currently require revising the airplane flight manual (AFM) to introduce limitations for the use of auxiliary power unit (APU) bleed and to prohibit dispatch with a failed air management system (AMS) controller card. Since we issued those ADs, we have determined that replacing the controller processor modular cards of the AMS is necessary. This proposed AD would add a requirement for replacing the AMS controller processor module with one containing new software, and would require a new AFM revision. We are proposing this AD to prevent the possibility of a right-hand (RH) engine compressor stall after the APU becomes the active bleed source for the left side, which may result in an engine failure; and to prevent the intermittent communication failure between the AMS controller cards and both secondary power distribution assemblies (SPDAs), which could lead to the loss of automatic activation of the engine inlet ice protection system when flying in icing conditions, which could result in ice accretion in the engine inlet and subsequent dual engine failure.

DATES: We must receive comments on this proposed AD by June 15, 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.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: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–227–2768; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0423; Directorate Identifier 2011–NM–095–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 March 16, 2010, we issued AD 2010–07–04, Amendment 39–16248 (75 FR 14333, March 25, 2010), and on August 13, 2010, we issued AD 2010–18–01, Amendment 39–16414 (75 FR 52238, August 25, 2010). Those ADs required actions intended to address an unsafe condition on EMBRAER Model ERJ 170 and ERJ 190 airplanes.

Since we issued AD 2010–07–04, Amendment 39–16248 (75 FR 14333, March 25, 2010) and AD 2010–18–01, Amendment 39–16414 (75 FR 52238, August 25, 2010), the Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian ADs 2011–05–01 and 2011–05–02, both dated May 9, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This [ANAC] AD results from the possibility of loss of automatic activation of the engine inlet ice protection system when flying in ice condition. Even though the failure is announced by the caution messages ''A–I Eng 1 Fail'' [and] ''A–I Eng 2 Fail'', if the engines inlet ice protection system is not manually activated, ice may accrete in the engine inlet and causes engine to shut down.
>
> Also there is the possibility of right hand (RH) engine compressor to stall after the Auxiliary Power Unit (APU) becomes the active bleed source for the left side, following left hand (LH) engine failure, under a condition where both engines are close to idle, the APU is running, and the APU bleed button is pushed in (automatic position).

The required action includes replacing the AMS controller processor module with one containing new software and revising the Limitations section of the AFM. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Service Bulletin 170–21–0049, dated November 29, 2010 (for Model ERJ 170 airplanes); Service Bulletin 190–21–0035, dated November 29, 2010 (for Model ERJ 190 airplanes); and Service Bulletin 190LIN–21–0016, dated February 23, 2011 (for Model ERJ 190–100 ECJ airplanes). The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 253 products of U.S. registry.

The actions that are required by AD 2010–07–04, Amendment 39–16248 (75 FR 14333, March 25, 2010), and AD 2010–18–01, Amendment 39–16414 (75 FR 52238, August 25, 2010), that are retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $35 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $30,360, or $120 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
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 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 Amendment 39–16248 (75 FR 14333, March 25, 2010) and

Amendment 39–16414 (75 FR 52238, August 25, 2010), and adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2012–0423; Directorate Identifier 2011–NM–095–AD.

(a) Comments Due Date

We must receive comments by June 15, 2012.

(b) Affected ADs

This AD supersedes AD 2010–07–04, Amendment 39–16248 (75 FR 14333, March 25, 2010); and AD 2010–18–01, Amendment 39–16414 (75 FR 52238, August 25, 2010).

(c) Applicability

This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; certificated in any category; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 21: Air Conditioning.

(e) Reason

This AD was prompted by reports of the possible loss of automatic activation of the engine inlet ice protection system. We are issuing this AD to prevent the possibility of a right-hand (RH) engine compressor stall after the auxiliary power unit (APU) becomes the active bleed source for the left side, which may result in an engine failure; and to prevent the intermittent communication failure between the air management system (AMS) controller cards and both secondary power distribution assemblies (SPDAs) which could lead to the loss of automatic activation of the engine inlet ice protection system when flying in icing conditions, which could result in ice accretion in the engine inlet and subsequent dual engine failure.

(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) Restatement of Requirements of AD 2010–07–04, Amendment 39–16248 (75 FR 14333, March 25, 2010): Revise Limitations Section of Airplane Flight Manual (AFM)

For airplanes equipped with AMS controller cards having part number (P/N) 1001050–1–YYY or 1001050–2–YYY containing software version Black Label 08 or lower installed: Within 10 days after April 9, 2010, (the effective date of AD 2010–07–04, Amendment 39–16248 (75 FR 14333, March 25, 2010)), revise the Limitations section of the AFM to include the following statement. This may be done by inserting a copy of this AD in the AFM. Doing the actions required by paragraph (i) of this AD terminates the requirements of this paragraph.

Dispatch with the message 'RECIRC SMK DET FAIL' displayed on the ground is prohibited unless troubleshooting action confirms the message has not been triggered due to a failure of an AMS controller card.

Note 1 to paragraph (g) of this AD: When a statement identical to that in paragraph (g) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(h) Restatement of Requirements of AD 2010–18–01, Amendment 39–16414 (75 FR 52238, August 25, 2010): Revise Limitations Section of AFM

For all airplanes: Within 14 days after September 9, 2010, (the effective date of AD 2010–18–01, Amendment 39–16414 (75 FR 52238, August 25, 2010)), revise the Limitations section of the applicable AFM to include the information in EMBRAER Operational Bulletin 170–001/09, Revision 1, dated February 10, 2010, as specified in the operational bulletin. This operational bulletin introduces limitations for the use of APU bleed. Doing the actions required by paragraph (i) of this AD terminates the requirements of this paragraph.

Note 2 to paragraph (h) of this AD: This may be done by inserting a copy of EMBRAER Operational Bulletin 170–001/09, Revision 1, dated February 10, 2010, into the AFM. When this operational bulletin has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in the operational bulletin, and the operational bulletin can be removed.

(i) New Requirement of This AD: Load Software or Replace AMS Controller Module

Within 3,300 flight hours after the effective date of this AD: Replace existing Hamilton Sundstrand AMS controller processor modules (slots 18 and 25) P/N 1001050–1–YYY, 1001050–2–YYY, 1001050–3–YYY, or 1001050–4–YYY, with a new or serviceable AMS controller processor module containing software version Black Label—11, or later approved version of the software, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170–21–0049, dated November 29, 2010 (for Model ERJ 170 airplanes); EMBRAER Service Bulletin 190–21–0035, dated November 29, 2010 (for Model ERJ 190 airplanes); or EMBRAER Service Bulletin 190LIN–21–0016, dated February 23, 2011 (for Model ERJ 190–100 ECJ airplanes).

(j) Definition

For purposes of this AD, ''later approved version of the software,'' is defined as software having Design Approval Holder (DAH) design changes that have been approved after the publication of EMBRAER Service Bulletin 170–21–0049, dated November 29, 2010 (for Model ERJ 170 airplanes); EMBRAER Service Bulletin 190–21–0035, dated November 29, 2010 (for Model ERJ 190 airplanes); and EMBRAER Service Bulletin 190LIN–21–0016, dated February 23, 2011 (for Model ERJ 190–100 ECJ airplanes).

(k) New Requirement of This AD: Revise Limitations Section of AFM

After doing the actions required by paragraph (i) of this AD, before further flight, revise the Limitation Section of the applicable AFM by removing the limitation required by paragraph (g) and the revision required by paragraph (h) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–227–2768; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(m) Related Information

Refer to MCAI Brazilian ADs 2011–05–01 and AD 2011–05–02, both dated May 9, 2011; and the service information specified in paragraphs (m)(1), (m)(2), and (m)(3) of this AD; for related information.

(1) EMBRAER Service Bulletin 170–21–0049, dated November 29, 2010.

(2) EMBRAER Service Bulletin 190–21–0035, dated November 29, 2010.

(3) EMBRAER Service Bulletin 190LIN–21–0016, dated February 23, 2011.

Dated: Issued in Renton, Washington, on April 23, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–10485 Filed 4–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0424; Directorate Identifier 2011–NM–004–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 777 airplanes. This proposed AD was prompted by heat damage and cracks at the pivot joint location of the main landing gear (MLG) inner cylinder/truck beam. This proposed AD would require repetitive lubrication of the MLG pivot joints; repetitive detailed inspections of the outer diameter chrome on the center axles of the MLG for chicken-wire cracks, corrosion, and chrome plate distress; repetitive magnetic particle inspections of the outer diameter chrome on the center axles of the MLG for cracks; and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct cracking in the MLG center axle and shock strut inner cylinder lugs (pivot joint), which could result in fracture of the MLG pivot joint components and consequent collapse of the MLG.

DATES: We must receive comments on this proposed AD by June 15, 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.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; email: *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: James Sutherland, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6533; fax: 425–917–6590; email: *James.Sutherland@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–2012–0424; Directorate Identifier 2011–NM–004–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

We have received reports of 39 MLG center axles with cracks at the pivot joint location of the inner cylinder/truck beam. These cracks were found in areas common to the inner cylinder pivot bushings where heat damage had occurred. This heat damage and cracks are caused by MLG truck pitching motion during normal airplane operations. Heat damage or cracking in the MLG center axle and shock strut inner cylinder lugs (pivot joint) could result in fracture of the MLG pivot joint components and consequent collapse of the MLG.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 777–32A0082, dated December 9, 2010, which describes procedures for repetitive lubrication of the MLG pivot joints; repetitive detailed inspections of the outer diameter chrome on the center axles of the MLG for chicken-wire cracks, corrosion, and chrome plate distress; repetitive magnetic particle inspections of the outer diameter chrome on the center axles of the MLG for cracks; and related investigative and corrective actions if necessary.

The related investigative actions include a detailed inspection of the inner diameters and flanges of the inner cylinder bushing for cracks, smearing of material into the lubrication grooves, bushing distress, and wear limits; a detailed inspection for corrosion of the inner cylinder lug face; a detailed inspection of the lug bore inner cylinder for cracks, corrosion, or bronze transfer; a detailed inspection of the lug bore face for corrosion or cracks; a penetrant inspection of the lug bore inner cylinder for corrosion; a magnetic particle inspection of the lug bore inner cylinder and face for cracks; and a local etch inspection of large parts of the lug bore inner cylinder for heat damage.

The corrective actions include repairing the center axle or replacing it with a new, overhauled, or serviceable axle; and refinishing the lug bore and faces, and installing new bushings.

Boeing Alert Service Bulletin 777–32A0082, dated December 9, 2010, specifies, for the lubrication, an initial compliance time of within 120 days after the original issue date of that service bulletin, and a repetitive interval of 50 flight cycles or 25 days, whichever occurs later. That service bulletin also specifies, for the detailed and magnetic particle inspections, an initial compliance time between 1,825 days after the issue date of the original Certificate of Airworthiness or Export Certificate of Airworthiness or since the last MLG overhaul, or within 1,125 days after the original issue date of this service bulletin, whichever is later; and 3,750 days after the issue date of the original Certificate of Airworthiness or Export Certificate of Airworthiness or since the last MLG overhaul, or within 375 days after the original issue date of this service bulletin, whichever is later; depending on the airplane configuration, lubrication schedule, and

inspection status. That service bulletin specifies a repetitive interval of 3,750 days for the detailed and magnetic particle inspections.

We have reviewed Boeing Special Attention Service Bulletin 777–32–0080, dated July 10, 2008; and Boeing Special Attention Service Bulletin 777–32–0080, Revision 1, dated April 16, 2009. Part 2 of the Accomplishment Instructions of these service bulletins describe procedures for a detailed inspection of the outer diameter chrome on the center axles of the MLG for chicken-wire cracks, corrosion, and chrome plate distress and a magnetic particle inspection of the outer diameter chrome on the center axles of the MLG for cracks.

We have reviewed Boeing Service Bulletin 777–32A0085, dated April 14, 2011. This service bulletin describes procedures for replacing the MLG left and right center axles with new, overhauled, or serviceable center axles, or changing the center axles by polishing to the new configuration; replacing the inner cylinder assemblies with new, overhauled, or serviceable inner cylinder assemblies; part marking the MLG components and assemblies; lubricating the pivot joint with new grease; and updating the maintenance program to do repetitive lubrication of the MLG pivot joints.

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 designs.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 160 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
Lubrication of MLG pivot joints.	4 work-hours × $85 per hour = $340 per lubrication cycle.	$0	$340 per lubrication cycle	$54,400 per lubrication cycle.
Detailed and magnetic particle inspections.	39 work-hours × $85 per hour = $3,315 per inspection cycle.	0	$3,315 per inspection cycle ...	$530,400 per inspection cycle.
Inner cylinder lug bore inspection.	6 work-hours × $85 per hour = $510 per inspection cycle.	0	$510 per inspection cycle	$81,600 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacing center axle	25 work-hours × $85 per hour = $2,125	$54,030	$56,155.
Refinishing the lug bore and faces, and installing new bushings.	12 work-hours × $85 per hour = $1,020	Up to $3,526	Up to $4,546.
Replacing the inner cylinder assembly	46 work-hours × $85 per hour = $3,910	Up to $254,847	Up to $258,757.

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–2012–0424; Directorate Identifier 2011–NM–004–AD.

(a) Comments Due Date

We must receive comments by June 15, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–32A0082, dated December 9, 2010.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by heat damage and cracks at the pivot joint location of the main landing gear (MLG) cylinder/truck beam. We are issuing this AD to detect and correct cracking in the MLG center axle and shock strut inner cylinder lugs (pivot joint), which could result in fracture of the MLG pivot joint components and consequent collapse of the MLG.

(f) Compliance

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

(g) Repetitive Lubrication and Inspections

At the applicable compliance times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–32A0082, dated December 9, 2010, except as provided by paragraph (i) of this AD: Lubricate the MLG pivot joints; do a detailed inspection of the outer diameter chrome on the center axles of the MLG for chicken-wire cracks, corrosion, and chrome plate distress; do a magnetic particle inspection of the outer diameter chrome on the center axles of the MLG for cracks; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–32A0082, dated December 9, 2010. Repeat the lubrication and inspections thereafter at the applicable interval specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–32A0082, dated December 9, 2010. Do all applicable related investigative and corrective actions before further flight.

(h) Definition

For the purposes of this AD, chicken-wire cracks are defined as cracks that occur when stress created in the chrome deposit during plating is relieved. The cracks are evident in the deposited chrome when viewed from a perpendicular plane as a pattern similar to chicken wire. Crack size can vary with plating conditions.

(i) Exception to Service Information

Where Boeing Alert Service Bulletin 777–32A0082, dated December 9, 2010, specifies a compliance time after the original issue date of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) Optional Actions for Compliance With Paragraph (g) of This AD

(1) Doing the detailed and magnetic particle inspections in accordance with Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–32–0080, dated July 10, 2008; or Boeing Special Attention Service Bulletin 777–32–0080, Revision 1, dated April 16, 2009; is considered acceptable for compliance with the inspections of the center axle of the MLG required by paragraph (g) of this AD.

(2) Replacing the MLG left and right center axles with new, overhauled, or serviceable center axles, or changing the center axles by polishing to the new configuration; replacing the inner cylinder assembly with new, overhauled, or serviceable inner cylinder assembly; part marking the MLG components and assemblies; and lubricating the pivot joint with new grease; and updating the maintenance program to repetitively lubricate the MLG pivot joints; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–32A0085, dated April 14, 2011; is considered acceptable for compliance with lubricating of the MLG pivot joints and inspecting the center axles of the MLG as required by paragraph (g) of this AD.

(k) Special Flight Permit

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), if the flight is operated as a non-revenue flight.

(l) Alternative Methods of Compliance (AMOCs)

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

(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.

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

(m) Related Information

(1) For more information about this AD, contact James Sutherland, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6533; fax: 425–917–6590; email: *James.Sutherland@faa.gov*.

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

Issued in Renton, Washington, on April 20, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–10489 Filed 4–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0264]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patuxent River, Solomons, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Chesapeake Challenge'' power boat races, a marine event to be held on the waters of the Patuxent River, near Solomons, MD on September 15 and 16, 2012. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel

traffic in a portion of the Patuxent River during the event.

DATES: Comments and related material must be received by the Coast Guard on or before June 15, 2012. Requests for public meetings must be received by the Coast Guard on or before May 31, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0264 using any one of the following methods:

(1) *Federal eRulemaking Portal*: *http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 15 and 16, 2012, the Chesapeake Bay Power Boat Association will sponsor power boat races on the Patuxent River near Solomons, MD. The event consists of offshore power boats racing in a counter-clockwise direction on an irregularly-shaped course located between the Governor Thomas Johnson Memorial (SR–4) Bridge and the U.S. Naval Air Station Patuxent River, MD. The start and finish lines will be located near the Solomons Pier. A large spectator fleet is expected during the event. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators, and other transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Patuxent River. The regulations will be in effect from 10 a.m. on September 15, 2012 through 6 p.m. on September 16, 2012. The regulated area, approximately 4,000 yards in length and 1,700 yards in width, includes all waters of the Patuxent River, within lines connecting the following positions: From latitude 38°19′45″ N, longitude 076°28′06″ W, thence to latitude 38°19′24″ N, longitude 076°28′30″ W, thence to latitude 38°18′32″ N, longitude 076°28′14″ W; and from latitude 38°17′38″ N, longitude 076°27′26″ W, thence to latitude 38°18′00″ N, longitude 076°26′41″ W, thence to latitude 38°18′59″ N, longitude 076°27′20″ W, located in Solomons, Maryland. The effect of this proposed rule will be to restrict general navigation in the regulated area during the event. Spectator vessels will be allowed to view the event from a designated spectator area within the regulated area, which will be located within a line connecting the following positions: latitude 38°19′00″ N, longitude 076°28′22″ W, thence to latitude 38°19′07″ N, longitude 076°28′12″ W, thence to latitude 38°18′53″ N, longitude 076°27′55″; W, thence to latitude 38°18′30″ N, longitude 076°27′45″ W, thence to latitude 38°18′00″ N, longitude 076°27′11″ W, thence to latitude 38°17′54″ N, longitude 076°27′20″ W, thence to the point of origin at latitude 38°19′00″ N, longitude 076°28′22″ W. Spectator vessels viewing the event outside the

regulated area may not block the navigable channel. Other vessels intending to transit the Patuxent River will be allowed to safely transit around the regulated area. These regulations are needed to control vessel traffic during the event to ensure the safety of participants, spectators, and transiting vessels.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Patuxent River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety determined to be necessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the affected portions of the Patuxent River during the event.

Although this regulation prevents traffic from transiting a portion of the Patuxent River at Solomons, MD during the event, this proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Coast Guard Sector Baltimore, MD. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

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.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary section, § 100.35T05–0264 to read as follows:

§ 100.35T05–0264 Special Local Regulations for Marine Events; Patuxent River, Solomons, MD.

(a) *Regulated area.* The following location is a regulated area: All waters of the Patuxent River, within lines connecting the following positions: From latitude 38°19′45″ N, longitude 076°28′06″ W, thence to latitude 38°19′24″ N, longitude 076°28′30″ W, thence to latitude 38°18′32″ N, longitude 076°28′14″ W; and from latitude 38°17′38″ N, longitude 076°27′26″ W, thence to latitude 38°18′00″ N, longitude 076°26′41″ W, thence to latitude 38°18′59″ N, longitude 076°27′20″ W, located at Solomons, Maryland. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all vessels participating in the Chesapeake Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol.

(c) *Special local regulations:* (1) The Coast Guard 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 in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(3) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(4) Only participants and official patrol are allowed to enter the race course area.

(5) Spectators are allowed inside the regulated area only if they remain within the designated spectator area. Spectators will be permitted to anchor within the designated spectator area. No vessel may anchor within the regulated area outside the designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area outside the race course and spectator areas at a safe speed and without loitering.

(6) Designated Spectator Fleet Area. The spectator fleet area is located within a line connecting the following positions: Latitude 38°19′00″ N, longitude 076°28′22″ W, thence to latitude 38°19′07″ N, longitude 076°28′12″ W, thence to latitude 38°18′53″ N, longitude 076°27′55″ W, thence to latitude 38°18′30″ N, longitude 076°27′45″ W, thence to latitude 38°18′00″ N, longitude 076°27′11″ W, thence to latitude 38°17′54″ N, longitude 076°27′20″ W, thence to the point of origin at latitude 38°19′00″ N, longitude 076°28′22″ W. All coordinates reference datum NAD 83.

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) Enforcement periods: This section will be enforced (1) from 10 a.m. until 6 p.m. on September 15, 2012, and (2) from 10 a.m. until 6 p.m. on September 16, 2012.

Dated: April 4, 2012.

Mark P. O'Malley,

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

[FR Doc. 2012–10413 Filed 4–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0193]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), at Wrightsville Beach, NC; Cape Fear and Northeast Cape Fear River, at Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs three North Carolina Department of Transportation (NCDOT) bridges: The S.R. 74 Bridge, across the AIWW, mile 283.1 at Wrightsville Beach, NC; the Cape Fear Memorial Bridge across the Cape Fear River, mile 26.8; and the Isabel S. Holmes Bridge across the Northeast Cape Fear River, mile 1.0; both at Wilmington, NC. The proposed modification will alter the

dates and times these bridges are allowed to remain in the closed position to accommodate the time and route change of the annual YMCA Tri Span 5K & 10K races.

DATES: Comments and related material must reach the Coast Guard on or before July 2, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0193 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Lindsey Middleton, Fifth District Bridge Program, Coast Guard; telephone 757–398–6629, email *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0193), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2012–0193'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0193'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The current operating schedule for the S.R. 74 Bridge at Wrightsville Beach, NC, the Cape Fear Memorial Bridge and the Isabel S. Holmes Bridge both at Wilmington, NC are located at 33 CFR 117.821(a)(4), 33 CFR 117.823, and 33 CFR 117.829(a) respectively. All three operating regulations were last amended on May 27, 2011 regarding an unrelated issue. There have been no previous publications or other efforts to reach out to the public in the development of the proposed rule modifications because these races are annual races that mariners are familiar with and this proposed rule makes minor adjustments to the times the bridges will be unable to open.

C. Basis and Purpose

The YMCA Tri Span 5K and 10K races are annual events that are held in the Wrightsville Beach and Wilmington, NC areas. Recently, the Wilmington Family YMCA made a permanent change to both the time and route of the events. The races will continue to be held on the second Saturday of July of every year; however, the events will now begin and end an hour earlier (7 a.m. to 9 a.m.) and the race routes will now include the S.R. 74 Bridge. As a result, the Wilmington Family YMCA, on behalf of NCDOT, is requesting a change to the current operating regulations for the S.R. 74 Bridge, the Cape Fear Memorial Bridge, and the Isabel S. Holmes Bridge. This proposal would allow the bridges to remain in the closed position from 7 a.m. to 9 a.m. on the second Saturday of July of every year.

The S.R. 74 Bridge is a double-leaf bascule drawbridge across AIWW, mile 283.1, at Wrightsville Beach, NC. It has a vertical clearance of 20 feet at mean high water in the closed position. The Cape Fear Memorial Bridge is a vertical-lift bridge across the Cape Fear River, mile 26.8, at Wilmington, NC. It has a vertical clearance of 65 feet at mean high water in the closed position. The Isabel S. Holmes Bridge is a double-leaf bascule drawbridge, at mile 1.0, at

Wilmington, NC with a vertical clearance of 40 feet at mean high water in the closed position.

D. Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.821(a)(4) for the S.R. 74 Bridge, mile 283.1 at Wrightsville Beach, NC to allow the bridge to remain in the closed position from 7 a.m. to 9 a.m. on the second Saturday of July of every year. The Coast Guard proposed to amend 33 CFR 117.823 and 33 CFR 117.829(a)(4) for the Cape Fear Memorial Bridge and the Isabel S. Holmes Bridge, respectively, to allow the bridges to remain in the closed position from 7 a.m. to 9 a.m. on the second Saturday of July of every year from the current closure times of 8 a.m. to 10 a.m. on the second Saturday of July of every year. The amendments to these operating regulations will allow the bridges to remain in the closed position for the racers of the annual YMCA Tri Span 5K & 10K races to safely cross the bridges. The Coast Guard will issue Local Notices to Mariners and Broadcast Notices to Mariners every year to remind mariners of the annual closures which will allow them to plan their scheduled transits accordingly.

There are no alternative routes available to vessels transiting these waterways. Vessels that can transit under the bridges without an opening may do so at any time. The bridges will be able to open for emergencies.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The proposed changes are expected to have minimal impacts on mariners due to the short duration that the moveable bridges will be maintained in the closed position. The races have been reserved in years past with little to no impact to marine traffic. It is also a necessary measure to facilitate public safety that allows for the orderly movement of participants before, during, and after the races.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit any of the effected bridges from 7 a.m. to 9 a.m. on the second Saturday of July of every year.

This action will not have a significant economic impact on a substantial number of small entities because the rule adds minimal restrictions to the movement of navigation and mariners who plan their transits in accordance with the scheduled bridge closures can minimize delay. Vessels that can safely transit under the bridges may do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Unfunded Mandates Reform Act

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

7. Taking of Private Property

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

8. Civil Justice Reform

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

9. Protection of Children

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

10. Indian Tribal Governments

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

11. Energy Effects

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

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), 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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.821 revise paragraph (a)(4) to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach.

(a) * * *

(4) S.R. 74 Bridge, mile 283.1, at Wrightsville Beach, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour; except that from 7 a.m. to 9 a.m. on the second Saturday of July of every year, from 7 a.m. to 11 a.m. on the third and fourth Saturday of September of every year, and from 7 a.m. to 10:30 a.m. on the last Saturday of October of every year or the first or second Saturday of November of every year, the draw need not open for vessels due to annual races.

* * * * *

3. Revise § 117.823 to read as follows:

§ 117.823 Cape Fear River.

The draw of the Cape Fear Memorial Bridge, mile 26.8, at Wilmington need not open for the passage of vessels from 7 a.m. to 9 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the first or second Sunday of November of every year to accommodate annual races.

4. In § 117.829 revise paragraph (a)(4) to read as follows:

§ 117.829 Northeast Cape Fear River.

(a) * * *

(4) From 7 a.m. to 9 a.m. on the second Saturday of July of every year, from 12 p.m. to 11:59 p.m. on the last Saturday of October or the first or second Saturday of November of every year, and from 7 a.m. to 11 a.m. on the first or second Sunday of November of every year, the draw need not open for vessels to accommodate annual races.

* * * * *

Dated: April 11, 2012.

Lincoln D. Stroh,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 2012–10415 Filed 4–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0179]

RIN 1625–AA09

Drawbridge Operation Regulation; Tombigbee River, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to add a special operating regulation governing the Meridian and Bigbee Railroad (MNBR) vertical lift span bridge across the Tombigbee River at Naheola, Marengo and Choctaw Counties, Alabama. The bridge currently remains in the open-to-navigation position and only lowers for the passage of trains. This rule proposes to codify the current schedule as a special operating regulation.

DATES: Comments and related material must reach the Coast Guard on or before July 2, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0179 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email David Frank, Bridge Administration Branch; telephone 504–671–2128, email *David.m.frank@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0179), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one

of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2012–0179'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0179'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

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

B. Regulatory History and Information

The Code of Federal Regulations (CFR) under 33 CFR 117.5 requires that drawbridges open on signal for vessel passage. Prior to this request to change the operating schedule of the draw, no previous requests for changes have been received. The bridge owner has initiated this request without consultation of waterway users but did consult with the USCG Bridge Administration Office in New Orleans to request guidance on how to comply with the requirements of 33 CFR 117.41.

C. Basis and Purpose

The MNBR vertical lift span bridge crosses the Tombigbee River at mile 128.6 (Black Warrior Tombigbee Waterway mile 173.6), Naheola, Marengo and Choctaw Counties, Alabama. The bridge is currently untended and maintained in the open-to-navigation position, closing only for the passage of rail traffic. The bridge has a vertical clearance of 12.2 feet above ordinary high water (OHW), elevation 64.5 feet is based on the North American Vertical Datem of 1988 (NAVD 88), in the closed-to-navigation position and 55 feet above OHW in the open-to-navigation position. Many of the vessels using the waterway transit under a fixed span of the bridge at periods of lower water due to the difficulty of transiting the navigation span, which only has a horizontal clearance of 150 feet between piers.

Due to the limited number of trains using the rail line in this area, maintaining the bridge in the fully open-to-navigation position and only lowering the bridge for rail traffic is the preferred operating schedule. Because this operating schedule has been in place for over ten years, and is understood and accepted by local traffic, the bridge owner requested that the Coast Guard publish the current operating schedule. This operating schedule allows vessels to transit the waterway as normal while permitting railroad personnel to lower the bridge for the passage of train traffic after ensuring that no vessels are approaching the bridge.

Maintaining the bridge untended and in the open-to-navigation position also eliminates the need for a bridge tender. This rule proposes to codify the practice and bring it into compliance with 33 CFR 117.41(b)(1).

D. Discussion of Proposed Rule

Under 33 CFR 117.5, the MNBR bridge is required to open on signal for the passage of vessels except as otherwise authorized or required. The MNBR bridge is currently untended and operates under a schedule, known and understood by the local users, maintaining the bridge in the open-to-navigation position and only closing for the passage of rail traffic. That schedule is not reflected in the CFR. This rule proposes to publish the locally known operating schedule, codifying the schedule as a Special Operating Requirement under 33 CFR part 117, subpart B. The proposed special operating schedule closing the bridge to navigation would occur as follows: When a train arrives at the bridge, the train will stop and a crewmember from the train will observe the waterway for approaching vessels. If vessels are approaching, the vessels will be allowed to pass prior to the bridge being lowered. The crewmember will then make an announcement via VHF–FM channel 16 that the bridge will be lowered. If, after two minutes, no response has been received, the bridge will be lowered for the passage of train traffic. The bridge will remain down until the train has completely passed over the bridge, then the bridge will be raised and the crewmember will announce an ''all clear'' via VHF–FM channel 16 that the bridge has been raised and left in the open-to-navigation position.

If a vessel approaches while the bridge is in the closed position, they may request an opening by contacting the railroad at a number provided in the regulatory text as well as on the sign at the bridge or by calling the bridge on VHF–FM channel 16.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses

based on 14 of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this proposed rule to be minimal. This rule proposes to codify the current operating schedule for the MNBR bridge which is already understood, known and accepted by the local bridge and waterway users. Very few vessels will be impacted as the bridge remains open at all times except to allow rail traffic to pass trains two times a day, five days a week.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels wishing to transit the Tombigbee River above mile 128.6 with vessel air drafts that would require the bridge to be open to navigation for them to pass safely through the bridge site. This action will not have a significant economic impact on a substantial number of small entities because the bridge remains open at all times except to allow rail traffic to pass two times a day, five days a week.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. 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.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Unfunded Mandates Reform Act

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

7. Taking of Private Property

This proposed rule would 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.

8. Civil Justice Reform

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

9. Protection of Children

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

10. Indian Tribal Governments

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

11. Energy Effects

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

12. Technical Standards

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

13. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. § 117.118 is added to read as follows:

§ 117.118 Tombigbee River.

The draw of the Meridian and Bigbee Railroad (MNBR) vertical lift span bridge across the Tombigbee River, mile 128.6 (Black Warrior Tombigbee (BWT) Waterway mile 173.6), at Naheola, shall operate as follows:

(a) The draw shall be maintained in the fully open-to-navigation position for vessels at all times, except during periods when it is closed for the passage of rail traffic.

(b) When a train approaches the bridge, it will stop and a crewmember from the train will observe the waterway for approaching vessels. If vessels are observed approaching the bridge, they will be allowed to pass prior to lowering the bridge. The crewmember will then announce via radiotelephone on VHF–FM channel 16 that the bridge is preparing to be lowered. If, after two minutes, no response has been received, the crewmember will initiate the lowering sequence.

(c) After the train has completely passed over the bridge, the crewmember will initiate the raising sequence. When the bridge is in the fully open-to-navigation position, the crewmember will announce via radiotelephone on VHF–FM channel 16 that the bridge is in the fully open-to-navigation position.

(d) To request openings of the bridge when the lift span is in the closed-to-navigation position, mariners may contact the MNBR via VHF–FM channel 16 or by telephone at 205–654–4364.

Dated: April 17, 2012.

Roy A. Nash,

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

[FR Doc. 2012–10449 Filed 4–30–12; 8:45 am]

BILLING CODE 9910–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2012–OPE–0008]

Negotiated Rulemaking Committee; Public Hearings

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish negotiated rulemaking committee.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid Programs authorized by the Higher Education Act of 1965, as amended (HEA). The committee will include representatives of organizations or groups with interests that are significantly affected by the subject matter of the proposed regulations. We also announce two public hearings at which interested parties may suggest additional issues that should be considered for action by the negotiating committee. In addition, for anyone unable to attend a public hearing, we announce that the Department will accept written comments.

DATES: The dates, times, and locations of the public hearings are listed under the **SUPPLEMENTARY INFORMATION** section of this notice. We must receive written comments suggesting issues that should be considered for action by the negotiating committee on or before May 31, 2012.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under ''How to Use Regulations.gov.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For information about the public hearings, go to *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html* or contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526. Email: *Wendy.Macias@ed.gov.*

For information about negotiated rulemaking in general, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html* or contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526. Email: *Wendy.Macias@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526. Email: *Wendy.Macias@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs authorized under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, the Secretary conducts negotiated rulemaking to develop the proposed regulations. We announce our intent to develop proposed Title IV regulations by following the negotiated rulemaking procedures in section 492 of the HEA.

We intend to select participants for the negotiated rulemaking committee from nominees of the organizations and groups that represent the interests significantly affected by the proposed regulations. To the extent possible, we will select, from the nominees, individual negotiators who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA.

Regulatory Issues

We intend to convene a committee to develop proposed regulations designed to prevent fraud and otherwise ensure proper use of Title IV, HEA program funds, especially within the context of current technologies. In particular, we intend to propose regulations to address the use of debit cards and other banking mechanisms for disbursing Federal Student Aid funds. In addition, we intend to propose regulations to

improve and streamline the campus-based Federal Student Aid programs.

On September 26, 2011, the Department's Office of Inspector General issued an Investigative Program Advisory Report alerting the Department to the increasingly common discovery of groups of individuals who conspire to defraud the Title IV, HEA programs through distance education programs (the report is available at *http://www2.ed.gov/about/offices/list/oig/invtreports/l42l0001.pdf*). In response to the report, on October 20, 2011, the Department issued Dear Colleague Letter GEN–11–17 (available at *http://ifap.'ed.gov/dpcletters/GEN1117.html*) recommending actions that institutions can take to detect and prevent fraud in distance education programs and convened a Department-wide task force on the subject. The Department is now considering suggestions for regulatory changes to further help institutions combat fraud and protect students and taxpayers from fraudulent activity.

In addition, we are considering regulatory changes related to the disbursement of Title IV, HEA program funds, particularly electronic funds transfers (EFTs) made directly to a student's bank account and available to the student via debit or another bank-provided card. We are interested in how or whether the use of EFTs, in lieu of checks, could provide one means to help prevent fraud or identify those involved in fraud rings. We are also interested in whether students should have a greater role in deciding to accept debit cards or other banking services provided through an institutionally-controlled process or contracted provider, particularly in view of the costs and fees associated with the use of those cards and services. We are requesting public input on these areas and others that the public believes should be addressed through regulations to ensure the proper use of Title IV, HEA program funds.

Finally, pursuant to Executive Order 13563, the Department issued its final ''Plan for Retrospective Analysis of Existing Regulations'' in August 2011 (the plan is available at *http://www2.ed.gov/policy/gen/reg/retrospective-analysis/index.html*). The Department's plan creates a defined policy, method, and schedule for identifying significant regulations, as determined under Executive Order 12866, that may be outmoded, ineffective, insufficient, or excessively burdensome, as well as regulations that can be modified, streamlined, expanded, or repealed to be more effective and efficient, achieve better outcomes for students, and be easy to understand. As part of the retrospective analysis of existing regulations, the Department identified the need to review the regulations in 34 CFR parts 673, 674, 675, and 676 governing the campus-based Federal Student Aid programs (i.e., the Federal Perkins Loan, Federal Supplemental Educational Opportunity Grants, and Federal Work-Study programs). The Department is considering whether to update and streamline the regulations governing these programs. We will consider changes that improve the administration and efficiency of these programs while reducing burden on regulated parties.

After a complete review of the public comments presented at the public hearings and in the written submissions, we will publish a document (or documents) announcing the specific subject areas for which we intend to establish a negotiated rulemaking committee, and a request for nominations for individual negotiators for the committee who represent the interests significantly affected by the proposed regulations.

Public Hearings

We will hold two public hearings for interested parties to discuss the rulemaking agenda. The public hearings will be held on:

- May 23, 2012, at South Mountain Community College, 7050 South 24th Street, Student Union Building, Room 100–ABC, Phoenix, AZ 85042.
- May 31, 2012, at the U.S. Department of Education, 1990 K Street NW., 8th Floor Conference Center, Washington, DC 20006.

The public hearings will be held from 9:00 a.m. to 4:00 p.m., local time. Further information on the public hearing sites, including directions, is available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html.*

Individuals desiring to present comments at the public hearings must register by sending an email to *negreg2012@ed.gov.* The email should include the name of the presenter along with a general timeframe during which the individual would like to speak (for example, a presenter could indicate morning or afternoon, or before 11:00 a.m. or after 3:00 p.m.). We will attempt to accommodate each speaker's preference but, if we are unable to do so, we will make the determination on a first-come first-served basis (based on the time and date the email was received). It is likely that each participant will be limited to five minutes. The Department will notify registrants indicating the specific location and time slot reserved for them. An individual may make only one presentation at the public hearings. If we receive more registrations than we are able to accommodate, the Department reserves the right to reject the registration of an entity or individual that is affiliated with an entity or individual that is already scheduled to present comments, and to select among registrants to ensure that a broad range of entities and individuals is allowed to present. We will accept walk-in registrations for any remaining time slots on a first-come first-served basis beginning at 8:30 a.m. on the day of the public hearing at the Department's on-site registration table.

Speakers may also submit written comments. In addition, for anyone who does not present at a public hearing, the Department will accept written comments through May 31, 2012. (See the **ADDRESSES** sections of this notice for submission information.)

Schedule for Negotiations

We anticipate that any committee established after the public hearings will begin negotiations in September 2012, with the committee meeting for up to three sessions of approximately three days each at roughly monthly intervals. The committee will meet in the Washington, DC area. The dates and locations of these meetings will be published in a subsequent document in the **Federal Register**, and will be posted on the Department's Web site at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html.*

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: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1098a.

Dated: April 26, 2012.

David A. Bergeron,

Deputy Assistant Secretary for Policy, Planning, and Innovation, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–10488 Filed 4–30–12; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R9–OAR–2011–0130; FRL 9667–7]

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 second public hearing and extension of public comment period.

SUMMARY: In addition to the public hearing previously scheduled for this action, EPA is holding a second public hearing at a different location earlier in the day on May 3, 2012. The public hearings are 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.'' EPA also is extending the closing date of the public comment period for the proposed rule to June 4, 2012 to allow for 30 days of public comment following the public hearings.

DATES: The second public hearing is on May 3, 2012. Any comments on this proposal are due by June 4, 2012.

ADDRESSES: *Public hearings:* EPA will hold a second public hearing at the Big Auditorium in the Moapa Band of Paiutes Administration Building on 1 Lincoln Street (cross street is Reservation Road) in Moapa, Nevada.

In a previous **Federal Register** notice published on April 18, 2012 (77 FR 23191), EPA announced a public hearing in Ron Dalley Theater at the Moapa Valley Empowerment High School on 2400 St. Joseph Street in Overton, Nevada, with an open house at the same location. This hearing will proceed as scheduled. Additional information about both hearings is provided in **SUPPLEMENTARY INFORMATION.**

Public comments: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2011–0130 by one of the following methods:

1. *Federal Rulemaking portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: Webb.Thomas@epa.gov.*
3. *Fax:* 415–947–3579 (Attention: Thomas Webb).
4. *Mail:* Thomas Webb, EPA Region 9, Planning Office, Air Division, 75 Hawthorne Street, San Francisco, California 94105.
5. *Hand Delivery or Courier:* Such deliveries are only accepted Monday through Friday, 8:30 a.m.–4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

For detailed instructions concerning how to submit comments on this proposed rule, see the previous **Federal Register** notice of proposed rulemaking published on April 12, 2012 (77 FR 21896, 21897). The EPA Region 9 web site for the rulemaking, which includes the proposal and information about the public hearings, 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: *Public hearings:* The public hearings are to provide the public with an opportunity to present oral comments regarding proposed Regional Haze State and Federal Implementation Plans for the determination of Best Available Retrofit Technology at the Reid Gardner Generating Station in the State of Nevada. The proposed rule requires 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.

Details about the two hearings are as follows:

1. In a previous **Federal Register** notice published on April 18, 2012, EPA announced a public hearing in Ron Dalley Theater at the Moapa Valley Empowerment High School on 2400 St. Joseph Street in Overton, Nevada from 6:30 p.m. to 8:30 p.m. on May 3, 2012, with an open house at the same location from 5 to 6 p.m. This hearing will proceed as scheduled. We are holding two public hearings on the same day at different times and locations for the convenience of the public.

2. EPA will hold a second public hearing at the Big Auditorium in the Moapa Band of Paiutes Administration Building on 1 Lincoln Street (cross street is Reservation Road) in Moapa, Nevada. The formal hearing will begin at 1 p.m. and end at 4 p.m. An informational open house at the same location will precede the public hearing from 11:30 a.m. to 12:30 p.m. We will not record public comments at the open house.

The proposed rule (77 FR 21896, Apr. 12, 2012) for which EPA will hold the public hearings is available at *http://www.epa.gov/region9/air/actions/nv.html#reid* and also in the docket identified below. The public hearings 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 hearings. At the public hearings, 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 hearings. We will include verbatim transcripts, in English, of the hearing and written statements in the rulemaking docket.

Extension of comment period: EPA is extending the public comment period for the proposed rule to align with the dates of the public hearings. The comment period will now end on June 4, 2012, 30 days after the public hearings.

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 25, 2012.

Deborah Jordan,

Air Division Director, Region IX.

[FR Doc. 2012–10589 Filed 4–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0174; FRL–9343–6]

Sulfuryl Fluoride; Second Request for Comment on Proposed Order Granting Objections to Tolerances and Denying Request for a Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Order; request for comment.

SUMMARY: In this notice, EPA is requesting comment on several issues that were raised in comments on EPA's proposed resolution of objections and a stay request with regard to sulfuryl fluoride and fluoride tolerances promulgated in 2004 and 2005 under section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA is requesting that interested parties address various legal issues that were raised by several commenters as well as provide further documentation for submissions regarding the impacts of the withdrawal of the sulfuryl fluoride and fluoride tolerances.

DATES: Comments must be received on or before July 30, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0174, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0174. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Meredith Laws, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–7038; email address: *laws.meredith@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, pesticide manufacturer, or consumer. Potentially affected entities may include, but are not limited to:

- Food manufacturing (NAICS code 311), e.g., grain and oilseed milling; animal food manufacturing; flour milling; bread and bakery product manufacturing; cookie, cracker, and pasta manufacturing; snack food manufacturing.
- Pesticide manufacturing (NAICS code 32532), *e.g.,* pesticide manufacturers; commercial applicators.
- Community Food Services (NAICS code 624210), *e.g.,* food banks.
- Farm Product Warehousing and Storage (NAICS code 493130), *e.g.,* grain elevators, private and public food warehousing and storage.

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Request for Additional Comment

A. What action is the agency taking?

In this notice, EPA is requesting additional comment on several issues that were raised in comments on EPA's proposed resolution of objections and a stay request with regard to sulfuryl fluoride and fluoride tolerances promulgated in 2004 and 2005 under section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA). (January 19, 2011, 76 FR 3422). In that notice, EPA proposed to grant the objections to the tolerances based on a conclusion that aggregate exposure to fluoride (from all sources including drinking water, dental products, and food) does not meet the safety standard in FFDCA section 408, although EPA notes that fluoride exposure that occurs as a result of sulfuryl fluoride use accounts for a relatively small portion of overall aggregate exposure (approximately 3 to 4 percent of total fluoride exposure). In the notice, EPA proposed to withdraw the sulfuryl fluoride and fluoride tolerances under an implementation schedule that would provide time for sulfuryl fluoride users to transition to new pest control alternatives. The notice also specified that the proposed tolerance withdrawal, if finalized, would become effective 60 days from the date of the final order, and would follow the implementation schedule detailed in the final order. EPA notes that during the pendency of the Agency's consideration of the objections to the sulfuryl fluoride and fluoride tolerances, the tolerances remain in effect. Neither the January 2011 proposed order nor this notice constitute final agency action.

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

The procedure for filing objections to tolerance actions and EPA's authority for acting on such objections is contained in section 408(g) of FFDCA (21 U.S.C. 346a(g) and regulations at 40 CFR part 178. That same authority governs hearing and stay requests.

C. On what matters is EPA requesting additional comment?

EPA is seeking additional comment in two general areas. First, several commenters argued that, as a legal matter, EPA had a greater degree of discretion in how to interpret the standard in section 408(b) than indicated by EPA's proposal. EPA believes a fuller discussion of these arguments would aid its decision-making. Second, EPA has been contacted by several organizations regarding their comments bearing on the availability of alternatives to sulfuryl fluoride and the impacts of removal of the sulfuryl fluoride and fluoride tolerances. In discussions with these organizations, EPA noted that additional documentation was needed to support assertions made in the comments in question. In light of this, as well as due to the importance of this action, EPA has surveyed the comments and identified several issues related to availability of alternatives and impacts from withdrawal of the sulfuryl fluoride and fluoride tolerances that were raised by one or more commenters but were not always sufficiently documented. EPA is reopening the comment period to allow all commenters or others to provide additional information on the following issues.

1. *Legal issues.* There are three legal issues that EPA believes warrant comment: whether the *de minimis* doctrine is applicable here given the limited fluoride exposure from pesticidal sources; whether EPA's aggregation of exposure to a pesticide and other related substances can include non-pesticidal substances, especially where pesticidal exposure is proportionally small compared to exposure to related substances; and whether EPA's obligations under other statutory authority should be considered in implementing FFDCA section 408.

i. *De minimis doctrine.* Several commenters have asserted that EPA's proposed action would lead to absurd and undesirable consequences because removing the sulfuryl fluoride and fluoride tolerances will result in no greater than a minimal reduction in fluoride exposure but could have major impacts with regard to pest control for various stored commodities as well as complicating compliance by the United States with its obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) and Title VI of the Clean Air Act (CAA) addressing Stratospheric Ozone Protection. In fact, Dow AgroSciences LLC argues that ''if sulfuryl fluoride were not in use as a fumigant, there would be no change in the number of children in the U.S. currently exposed to excessive levels of fluoride * * *.'' (EPA–HQ–OPP–2005–0174–0228).

In brief, these commenters are objecting to the fluoride exposures EPA has taken into account in assessing fluoride risk under FFDCA section 408. Under that provision, 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)). ''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)). Other provisions in section 408 enlarge on the obligation to aggregate and cumulate exposures to the pesticide as well as other related substances. See 21 U.S.C. 346a(b)(2)(C)(i)(III) (requiring assessment of risk to infants and children based on cumulative effects of the pesticide and other substances that have a common mechanism of toxicity), 346a(b)(2)(D)(v) (requiring consideration of cumulative effects of the pesticide and other substances that have a common mechanism of toxicity), 346a(b)(2)(D)(vi) (requiring consideration of aggregate exposure to the pesticide and other related substances). In implementing this safety standard for the sulfuryl fluoride and fluoride tolerances, EPA has summed fluoride exposures from all sources, not just pesticidal sources, in evaluating the safety of the tolerances. The commenters have challenged this approach arguing that the *de minimis* doctrine would allow EPA to soften its approach to the aggregation of fluoride exposures and thus avoid potentially absurd consequences. As to absurd results, Dow AgroSciences LLC notes the ''insignificant exposure profile [of sulfuryl fluoride], the adverse impacts on public health that would follow its elimination, and the *de minimis* treatment that EPA has afforded sources of similar amounts of fluoride exposure.''

Under the *de minimis* doctrine, an agency need not apply the language of the statute in a literal manner if this leads to ''patently absurd results that will undermine Congress' broader purposes,'' *Public Citizen* v. *FTC,* 869

F.2d 1541, 1557 n. 33 (D.C. Cir. 1989), and the covered matter can ''fairly be considered *de minimis,'' Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360 (D.C. Cir. 1979). Essential to exercise of a *de minimis* exception is that Congress cannot have been ''extraordinarily rigid,'' *Alabama Power Co.* v. *Costle,* 636 F.2d at 360; the exception cannot ''thwart a statutory command; it must be interpreted with a view to 'implementing the legislative design;' '' *Public Citizen* v. *Young,* 831 F.2d 1108, 1113 (D.C. Cir. 1987) (quoting *Alabama Power Co.* v. *Costle,* 636 F.2d at 360–61); and regulation under the terms of the statute must ''yield a gain of trivial or no value,'' *Alabama Power Co.* v. *Costle,* 636 F.2d at 360–61. See *EDF* v. *EPA,* 82 F.3d 451, 466–467 (D.C. Cir. 1996); *Ohio* v. *EPA,* 997 F.2d 1520, 1534–35 (D.C. Cir. 1993).

EPA seeks comment on how, if at all, the three elements of the *de minimis* doctrine would apply in the context of EPA's proposal to withdraw the sulfuryl fluoride and fluoride tolerances. First, has Congress imposed the aggregation requirement with extraordinary rigidity? In responding to this question it would be helpful if commenters would address the numerous references in FFDCA section 408 to the aggregation and cumulation of exposures, including the multiple references to the aggregation and cumulation of exposures to pesticides and other substances. See 21 U.S.C. 346a(b)(2)(C)(i)(III), 346a(b)(2)(D)(v), and 346a(b)(2)(D)(vi). Second, does not aggregating fluoride from pesticidal and non-pesticidal sources thwart or implement the statutory design? In other words, is the withdrawal of the sulfuryl fluoride and fluoride tolerances a ''patently absurd result[]'' that would thwart purposes of FFDCA section 408 or does it implement the statutory design? Finally, does fluoride exposure from pesticides truly amount to no greater than a *de minimis* risk? In approaching this question, it should be considered that EPA's risk assessments show that for the most highly exposed communities, total pesticidal fluoride amounts are approximately 3 to 4 percent of total fluoride exposure and 2 to 8 percent of the fluoride reference dose (RfD), depending on the age groups considered. See *Kentucky Waterways Alliance* v. *Johnson,* 540 F.3d 466, 492 (6th Cir. 2008). More broadly, any decision regarding whether fluoride exposure from pesticides is *de minimis* would potentially be precedential regarding other pesticides, and thus EPA requests comment generally on what factors should be considered in determining whether a pesticide's contribution to aggregate exposure is *de minimis.*

ii. *Exposure to other related substances.* FIFRA section 408(b)(1)(A)(ii) defines the safety finding for the establishment of tolerances as requiring a determination 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.'' FIFRA section 408(b)(2)(D)(vi) requires EPA in establishing tolerances to ''consider, among other relevant factors * * * available information concerning the aggregate exposure of consumers (and major identifiable subgroups of consumers) to the pesticide chemical and to other related substances * * *.'' Dow AgroSciences LLC argues (1) that the ''other related substances'' referenced in FIFRA section 408(b)(2)(D)(vi) are only other related pesticidal substances; and (2) that, even if the term ''other related substances'' includes non-pesticidal substances, aggregation of pesticide alone must have a ''meaningful impact on the end point of concern.'' EPA requests comment on whether such an interpretation is consistent with the language of these two provisions, as well as the other provisions of the statute that discuss aggregation and cumulation of pesticides and other related substances. See 21 U.S.C. 346a(b)(2)(C)(i)(III), 346a(b)(2)(D)(v).

iii. *Reconciling all environmental statutes and treaty obligations.* The Natural Resources Defense Council (NRDC) argues in its comments that EPA has an obligation to reconcile its action on sulfuryl fluoride under FFDCA section 408 with its duties under the Clean Air Act and the Montreal Protocol relating to the phase-out of methyl bromide. (EPA–HQ–OPP–2005–0174–0150). Specifically, NRDC asserts that EPA must consider the ''full range of the health consequences of its actions'' under FFDCA section 408. EPA requests comment on whether the presence of other statutory duties would allow EPA to approve a pesticide tolerance that was otherwise unsafe under FFDCA section 408, if failing to approve the tolerance would lead to greater net damages to the environment. In responding to this question, commenters should address FFDCA section 408(b)(2)(B) that describes the circumstances under which EPA may take such health-health tradeoffs into account. Also, EPA requests comment on the question of what are the ''full range of the health consequences'' of withdrawing the sulfuryl fluoride and fluoride tolerances. If EPA were to accept NRDC's legal premise, the facts surrounding the ''range of health consequences'' would be important to any EPA decision.

2. *Alternatives and impacts.* EPA has identified several issues related to availability of alternatives and impacts from withdrawal of the sulfuryl fluoride and fluoride tolerances that were raised by one or more commenters but were not always sufficiently documented. EPA would recommend commenters consider the following descriptions of the types of documentation that would aid EPA in compiling adequate record materials on the issues in question:

i. Please provide complete and accurate references (i.e., peer-reviewed articles, personal contacts, consultants, other) for any and all data and information included, mentioned, referred to, and/or cited in comments. For example, provide sources of information for costs of heat treatment, costs of construction, phosphine resistance, phosphine corrosion, efficacy of alternatives, etc. Any information relied on to make any inference, reach a conclusion, or derive a quantitative estimate should be accompanied by a complete and accurate reference. Some of the commenters already provided references for their information; others did not. Please note that without accurate references, the Agency may not be able to locate the information to update and/or revise impacts where appropriate.

ii. If cost estimates for warehouse construction, fumigation chamber construction, or other types of construction were included in a comment, please provide the full details of the calculations and all assumptions used to derive the estimates, and please provide a contact name and number for the person or company that created the estimates, in case the Agency has further questions.

iii. Regarding the corrosive effects of phosphine to equipment, what types of machines are damaged by phosphine, what is the nature of the damage, how many phosphine treatments does it take to damage them, how much does the equipment cost, and, if possible, how could the equipment be moved or retrofitted so that the damage does not occur?

iv. Please provide complete and accurate references to any law or regulation on food safety cited in a comment. For example, some comments mentioned mandatory fumigation, pasteurization, etc. of food products. Please provide specific references to any

and all statutes and/or regulations that require such treatments.

v. Several applicators mentioned that sulfuryl fluoride was safer than phosphine for applicators. Please explain why sulfuryl fluoride application is safer, using specific examples where possible.

vi. Several comments mentioned the inability of heat to penetrate finished product. Please contrast this with the ability for fumigant gas to penetrate the products.

vii. If any specific customer requests for fumigation to address a particular pest infestation are mentioned in a comment, please provide examples of those requests.

viii. If any claims are made that sulfuryl fluoride is needed so that food can meet phytosanitary conditions in foreign markets, please provide examples of those requirements (e.g., import requirements of other countries), please explain why quarantine methyl bromide cannot be used to meet the requirements, and please provide details on the pounds of product fumigated with sulfuryl fluoride for export each year to countries with these requirements.

ix. Many comments from groups that process and store commodities, such as nuts and dried fruit, noted that there was a need for fast turnaround times in fumigation to meet market demand. If the industry never requested a methyl bromide critical use exemption, please explain how fast fumigation was conducted prior to the introduction of sulfuryl fluoride, why the transition to sulfuryl fluoride occurred, and why it would now not be possible to switch back to previous methods. Several comments indicated that there would be human health concerns from lack of an effective fumigant. If available, please provide specific examples (with complete and accurate references) of public health issues caused by lack of fumigants.

x. As to claims that there are commercially viable, chemical or non-chemical, alternatives for commodities and/or structures, please provide literature citations and/or personal contacts for the efficacy of these alternatives and the costs and technical feasibility of transition. In addition, please provide any available information on how using the alternatives is expected to affect the cost of the end product.

xi. As to claims that pest problems for which U.S. industries currently employ sulfuryl fluoride are successfully controlled in countries where neither sulfuryl fluoride nor methyl bromide is used, please provide data, literature citations and/or personal contacts for the efficacy and costs of these chemical or non-chemical alternatives.

xii. As to claims of economic or other types of impacts as a result of EPA's proposed order, recognizing that EPA has not yet issued a final order or taken final agency action, please provide specific information, data, and/or personal contacts to substantiate these claims.

X. Regulatory Assessment Requirements

This notice seeks additional comment on the Agency's proposed order regarding objections filed under section 408 of FFDCA. The proposed order is part of an adjudication and not a rule. The regulatory assessment requirements imposed on rulemaking do not, therefore, apply to this notice.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply to this notice because this is not a rule for purposes of 5 U.S.C. 804(3).

List of Subjects in 40 CFR Part 180

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

Dated: April 24, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2012–10493 Filed 4–30–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0039; 92220–1113–0000–C6]

RIN 1018–AX94

Endangered and Threatened Wildlife and Plants; Removal of the Gray Wolf in Wyoming From the Federal List of Endangered and Threatened Wildlife and Removal of the Wyoming Wolf Population's Status as an Experimental Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our October 5, 2011, proposal to remove the gray wolf (*Canis lupus*) in Wyoming from the List of Endangered and Threatened Wildlife. This proposal relied heavily on Wyoming's wolf management plan and noted that conforming changes to State law and regulation would be required to allow Wyoming's plan to be implemented as written. Wyoming recently completed four documents that clarify Wyoming's approach to wolf management should we delist the gray wolf in Wyoming, including revised State statutes, revised gray wolf management regulations (chapter 21), revised gray wolf hunting season regulations (chapter 47), and an Addendum to the Wyoming Gray Wolf Management Plan. We are reopening the comment period for the proposal to allow all interested parties an additional opportunity to comment on the proposed rule in light of these documents. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: We will consider all comments received or postmarked on or before May 16, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Search for FWS–R6–ES–2011–0039, which is the docket number for this rulemaking. On the search results page, under the Comment Period heading in the menu on the left side of your screen, check the box next to ''Open'' to locate this document. Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2011–0039; Division of Policy and Directives

Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see ''Public Comments'' in **SUPPLEMENTARY INFORMATION** for more information).

FOR FURTHER INFORMATION CONTACT: For information on wolves in the northern Rocky Mountains see *http://www.fws.gov/mountain-prairie/species/mammals/wolf/,* or contact U.S. Fish and Wildlife Service, Mountain-Prairie Region Office, Ecological Services Division, 134 Union Blvd., Lakewood, CO 80228; telephone 303–236–7400. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on the October 5, 2011, proposal (76 FR 61782) to remove the gray wolf (*Canis lupus*) in Wyoming from the List of Endangered and Threatened Wildlife in light of four recently revised documents that clarify Wyoming's approach to wolf management should we delist the gray wolf in Wyoming, including: revised State statutes; a revised gray wolf management regulations (chapter 21); a revised gray wolf hunting season regulations (chapter 47); and an Addendum to the Wyoming Gray Wolf Management Plan. Copies of the revised State statute, Wyoming's ''Gray Wolf Management'' regulations (chapter 21), ''Gray Wolf Hunting Seasons'' regulations (chapter 47), and the Addendum to the Wyoming Gray Wolf Management Plan are available: on the Internet at *http://www.regulations.gov* or *http://www.fws.gov/mountain-prairie/species/mammals/wolf/;* or upon request from the Mountain-Prairie Region Office, Ecological Services Division (see **FOR FURTHER INFORMATION CONTACT**). We will consider information and recommendations from all interested parties.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov*, your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the Mountain-Prairie Region Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On October 5, 2011, we proposed to remove the gray wolf in Wyoming from the List of Endangered and Threatened Wildlife (76 FR 61782). This proposal relied heavily on Wyoming's 2011 wolf management plan (Wyoming Game and Fish Commission (WGFC) 2011) and noted that conforming changes to State law and regulation would be required to allow Wyoming's plan to be implemented as written. These changes have now been finalized by Wyoming.

Following publication of the proposal, we began discussions with Wyoming on necessary or advisable revisions to its State statutes. On January 9, 2012, we notified the Governor of Wyoming that draft legislative language, developed by the State in consultation with the Service, should provide an acceptable legal basis for implementing the State's Gray Wolf Management Plan (Ashe 2012a). This legislation was passed by the Wyoming legislature during the 2012 session and, on March 7, 2012, was signed by the Governor of Wyoming and became law.

Wyoming also developed an Addendum to the Wyoming Gray Wolf Management Plan to address concerns raised by the independent peer review panel that evaluated our proposed rule and its supporting information. The addendum, developed by the State in consultation with the Service, provides additional clarification and detail about the Wyoming Game and Fish Department's approach to managing wolves. On March 5, 2012, Wyoming released the addendum for public review and comment. The Wyoming Game and Fish Commission approved a final version of the addendum on March 22, 2012.

In early 2012, we began discussions with Wyoming on necessary or advisable revisions to its State regulations including Wyoming's ''Gray Wolf Management'' regulations (chapter 21) and ''Gray Wolf Hunting Seasons'' regulations (chapter 47). On March 9, 2012, we notified the Governor of Wyoming that we regard the draft revised regulations, developed by the State in consultation with the Service, to be consistent with State law and Wyoming's conditionally approved Wolf Management Plan (Ashe 2012b). On March 9, 2012, the Wyoming Game and Fish Department made the proposed regulations available for public review and comment. The Wyoming Game and Fish Commission approved a final version of these revised regulations at their April 25–26, 2012, meeting.

Highlights of Recently Released Wyoming Management Documents

Population Management—The Addendum to the Wyoming Gray Wolf Management Plan reaffirms Wyoming's commitment to manage the wolf population with a buffer above the agreed-upon population minimums of at least 10 breeding pairs and at least 100 wolves in Wyoming outside of Yellowstone National Park and the Wind River Indian Reservation at the end of the calendar year (WGFC 2012, pp. 3–5). The addendum adopts this approach, as it would provide the greatest assurance that minimum agreed-upon population targets can be confidently exceeded on an annual basis, and that Wyoming would not risk managing wolves near minimum recovery levels (WGFC 2012, p. 5). Furthermore, Wyoming clarified that the buffer would be applied solely within Wyoming's portion of the population in the Wyoming Trophy Game Management Area (WTGMA) (i.e., wolves in Yellowstone National Park and the Wind River Indian Reservation would not constitute the buffer) (WGFC 2012, p. 5). Regarding the size of the buffer, no specific number or range was offered. Instead, Wyoming noted that the buffer would be determined through an adaptive management approach and may fluctuate based on natural population dynamics and the effects of specific management actions (WGFC 2012, p. 4).

The Addendum to the Wyoming Gray Wolf Management Plan also reaffirms and clarifies Wyoming's intention to use an adaptive management framework based on intensive monitoring efforts to ensure minimum population objectives are never compromised (WGFC 2012, pp. 5–7). The addendum explains that, because of additional human-caused mortality, Wyoming would monitor the wolf population more intensively than the Service has in the past, and that this effort would become more intense as the

population approaches minimum population objectives (WGFC 2012, p. 5). Regarding management responses, the addendum clarifies that if the minimum population objectives are approached, the State would sequentially limit: Control actions for unacceptable impacts to ungulates; harvest levels; control for damage to private property; and lethal take permits (WGFC 2012, p. 7). The last item in this sequential list (lethal take permits) is discussed further below. Regarding hunting specifically, the addendum notes that Wyoming would employ an iterative, adaptive, and public process whereby season structures, hunt areas, and quotas are evaluated and adjusted based on the response of the wolf population to prior management actions (WGFC 2012, pp. 4–7). Furthermore, the addendum notes Wyoming's authority to revise, reduce, or close hunting seasons if necessary (WGFC 2012, pp. 6–7).

The Addendum to the Wyoming Gray Wolf Management Plan also confirms the State's intention to manage wolf numbers to gradually reduce the wolf population over a series of years (WGFC 2012, p. 6). This will give the State an opportunity to understand how to best manage wolves in Wyoming, while not risking relisting of wolves under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (WGFC 2012, p. 6). Within the WTGMA, at the end of 2011, there were at least 177 wolves in at least 29 packs (including 16 breeding pairs), as well as at least 4 lone wolves; within the seasonal WTGMA, at the end of 2011, there were at least 10 wolves in at least 2 packs (including 1 breeding pair), as well as at least 5 lone wolves (Jimenez 2012, in litt.). If we delist the gray wolf in Wyoming, the State intends to authorize a hunting quota of 52 wolves in 2012, and once reproduction is accounted for, the State believes this would reduce the population by about 10 percent within the WTGMA (Mills 2012, pers. comm.). Specifically, Wyoming estimates the population within the WTGMA would be around 170 wolves and 15 breeding pairs at the end of 2012 (Mills 2012, pers. comm.). We note that this first year goal is comfortably above the minimum agreed-upon population targets.

In the permanent predator area, we estimated there were at least 22 wolves in at least 5 packs (including 2 breeding pairs), and at least 6 lone wolves at the end of 2011 (Jimenez 2012, in litt.). Additionally, 1 pack with 3 wolves (the Owl Creek pack on the Wind River Indian Reservation) borders and likely spends a significant portion of its time in the predator area (Jimenez 2012, in litt.). We believe few of the wolf packs in predator portions of Wyoming would persist to the end of 2012, although some individuals from these packs could survive as lone animals. Similarly, some of the current lone wolves in the predator area would be killed. Because none of the packs resident to the WTGMA are known to spend a significant portion of their time in the predator portions of Wyoming (Jimenez 2012, in litt.), the predator designation would not be expected to meaningfully impact wolves in the WTGMA (Jimenez 2012, pers. comm.).

Regarding genetics, Wyoming's gray wolf management regulations indicate the State is committed to managing gray wolves in Wyoming to ensure that genetic diversity and connectivity issues do not threaten the population (Chapter 21, section 4(a)(ii)). This regulation goes on to say this commitment would be accomplished by encouraging effective migrants into the population in accordance with the Wyoming Gray Wolf Management Plan (Chapter 21, section 4(a)(ii)). The Addendum to the Wyoming Gray Wolf Management Plan indicates the Wyoming Game and Fish Department would strive for a minimum genetic target of ~1 effective migrant per generation (WGFC 2012, pp. 6–7). If this minimum target is not achieved, the Wyoming Game and Fish Department would first consider changes to the monitoring program, if the increased monitoring is likely to overcome the failure to document the desired level of gene flow (WGFC 2012, p. 6). If the Wyoming Game and Fish Department determines increased monitoring is unlikely to detect adequate levels of genetic interchange, or they determine that sufficient interchange is not occurring regardless of monitoring efforts, they would alter management, including reducing mortality quotas in dispersal corridors or reducing total mortality quotas over a series of years to increase the probability that migrants into the population survive and reproduce (WGFC 2012, pp. 6–7). Translocation of wolves between subpopulations would only be used as a stop-gap measure, if necessary to increase genetic interchange (WGFC 2012, p. 7). These efforts would be coordinated with Montana and Idaho (WGFC 2012, p. 7).

Variations or Clarifications From What Was Described in the Proposed Rule

Lethal Take Permits—Consistent with the Wyoming Gray Wolf Management Plan (WGFC 2011, pp. 22–23, 32), the proposed rule explained that the Wyoming Game and Fish Department ''may'' issue lethal take permits in chronic depredation areas. However, Wyoming law (W.S. 23–1–304(n)) states that permits ''shall be issued'' to landowners or livestock owners in cases where wolves are harassing, injuring, maiming, or killing livestock or other domesticated animals, and where wolves occupy geographic areas where chronic wolf predation occurs. This mandatory approach to issuance of lethal take permits is a significant change from both current management and our summary of anticipated State management provided in the proposed rule. Another meaningful change from current Federal management is Wyoming's allowance for lethal take permits for ''harassment.'' While these factors indicate lethal take permits could become a significant source of mortality if we delist the gray wolf in Wyoming, numerous safeguards are in place that limit their potential to meaningfully and detrimentally impact the population.

For example, State statute requires that permits be issued, and renewed as necessary, in 45-day increments (W.S. 23–1–304(n)), and State regulations limit the take allowance for each permit to a maximum of 2 gray wolves, and specify that each permit can only apply to a specified limited geographic or legally described area (Chapter 21, section 7(b)(ii)). These requirements ensure application of this source of take is limited in time and geography. Similarly, State regulations indicate that purported cases of wolf harassment, injury, maiming, or killing must be verified by the Wyoming Game and Fish Department (Chapter 21, section 6(b)). We believe this requirement for Wyoming Game and Fish Department verification would limit potential abuse for this source of mortality. Finally, and most importantly, State law (W.S. 23–1–304(n)) and the implementing regulation (Chapter 21, section 7(b)(iii)) clarify that existing permits would be cancelled, and issuance of new permits would be suspended, if the Wyoming Game and Fish Department determines further lethal control ''could'' compromise the State's ability to maintain a population of at least 10 breeding pairs and at least 100 wolves in Wyoming outside of Yellowstone National Park and the Wind River Indian Reservation at the end of the calendar year. Importantly, the word ''could'' (as opposed to would or will) provides authority for the Wyoming Game and Fish Department to manage for a buffer above the minimum target and limit control from lethal take permits, if necessary, to maintain an adequate minimum buffer. However, the

Addendum to the Wyoming Gray Wolf Management Plan explains that the State law's mandatory approach to issuance of lethal take permits requires that Wyoming's adaptive management framework limit other discretionary sources of mortality before it limits this source of mortality (WGFC 2012, p. 7).

On the whole, the available information indicates that, if we delist the gray wolf in Wyoming, Wyoming's approach to lethal take permits may impact population abundance (particularly at a localized level where wolf-livestock conflict is high), but that Wyoming has instituted sufficient safeguards to ensure that this source of mortality would not compromise the State's ability to maintain a population of at least 10 breeding pairs and at least 100 wolves in Wyoming outside of Yellowstone National Park and the Wind River Indian Reservation at the end of the calendar year.

Management on the Wind River Indian Reservation—Another issue incorrectly characterized in the proposed rule is wolf management within the Wind River Indian Reservation. Specifically, the proposed rule noted that wolves would be classified as game animals within the Wind River Indian Reservation's boundaries. This assumption was reflected in the proposal's discussion of the percentage of Wyoming where wolves would be protected or managed as a game animal, as this calculation considered the entire reservation as game. However, the Addendum to the Wyoming Gray Wolf Management Plan clarifies that, if we delist the gray wolf in Wyoming, wolves would be classified as predators on non-Indian fee titled lands within the Wind River Indian Reservation's boundaries (WGFC 2012, p. 3). This altered interpretation would have minimal impact on wolf management and abundance, as these inholdings tend to be concentrated on the eastern side of the reservation outside of reported areas of wolf activity (Shoshone and Arapaho Tribal Fish and Game Department 2007, Figure 1). Furthermore, this change in our understanding is likely of little biological consequence as the proposed rule noted an expectation that the reservation would likely support only a ''very modest * * * number of wolves.'' Therefore, this change does not alter our perspective on the viability of the Wyoming wolf population should delisting move forward.

Management Authority and Hunting—Following publication of the proposed rule, many members of the public expressed confusion about what it means to be included in the WTGMA and whether hunting would occur within National Park Service and National Wildlife Refuge System units. First, let us clarify that nothing in the proposed rule would alter, or in any way affect, the jurisdiction or authority of the State of Wyoming, the National Park Service, and the U.S. Fish and Wildlife Service with respect to the regulation of hunting in any unit of the National Park System or National Wildlife Refuge System. Whatever jurisdiction or authority the State and the respective Services had to authorize, prohibit, or regulate hunting in such areas prior to any final rule would be unchanged by the promulgation of that rule (except, of course, that, if adopted, the proposed rule would remove the protections of the Endangered Species Act from wolves wherever they may occur in Wyoming).

Wyoming regulations (Chapter 21, section 2; Chapter 47, section 4) and the Addendum to the Wyoming Gray Wolf Management Plan (WGFC 2012, p. 3) clarify management authority over various portions of the WTGMA. Specifically, Wyoming clarified that the State of Wyoming has no management authority in Yellowstone National Park, on lands administered by the National Park Service within Grand Teton National Park, on National Wildlife Refuges, and on lands within the Wind River Indian Reservation except non-Indian owned fee titled lands (as discussed above) (WGFC 2012, p. 3). Wyoming further clarified that, if we delist the gray wolf in Wyoming, wolves present within Grand Teton National Park and the National Elk Refuge would be designated as trophy game animals solely for the purposes of counting wolves toward the State's agreed-upon management objectives (WGFC 2012, p. 3), and that any planned allowance for hunting would not apply in these areas (Chapter 47, section 4(a)). Although some hunting is currently allowed in the John D. Rockefeller, Jr. Memorial Parkway under the Parkway's enabling legislation and Wyoming law, Wyoming's hunting regulations are clear that gray wolf hunting would be closed in the Parkway for at least 2012 (Chapter 47, section 4(i)).

While such clarifications are important to have a complete understanding of wolf management, if we delist the gray wolf in Wyoming, these characterizations of authority and clarifications of intention have little, to no, biological impact on the ability of Wyoming's regulatory framework to satisfy its agreed-upon management objectives.

Service Assessment

The Service has reviewed the recently finalized Wyoming wolf management documents (including revised State statutes, revised gray wolf management regulations (chapter 21), revised gray wolf hunting season regulations (chapter 47), and an Addendum to the Wyoming Gray Wolf Management Plan), and concludes that the revisions to these documents are consistent with the conditionally approved Wyoming Gray Wolf Management Plan. Based on our review, we believe Wyoming's regulatory framework would likely maintain a population of at least 10 breeding pairs and at least 100 wolves in Wyoming outside of Yellowstone National Park and the Wind River Indian Reservation at the end of the calendar year and, when considered in the context of management across the entire State and the entire Northern Rocky Mountain (NRM) region, that the regulatory framework would likely maintain Wyoming's share of a recovered NRM gray wolf population and contribute to the continued maintenance of the larger NRM gray wolf population above minimum recovery levels.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we intend to subject this proposal to peer review. Specifically, the peer review will evaluate the proposal in light of the four recently completed documents that clarify Wyoming's approach to wolf management should we delist the gray wolf in Wyoming, including: Revised State statutes; revised gray wolf management regulations (chapter 21); revised gray wolf hunting season regulations (chapter 47); and an Addendum to the Wyoming Gray Wolf Management Plan. We anticipate this peer review will be completed and provided to the Service during the public comment period. Once available, we intend to post the peer review comments online at *http://www.regulations.gov* and *http://www.fws.gov/mountain-prairie/species/mammals/wolf/*. We will consider all comments and information provided by the public and peer reviewers during this comment period in preparation of a final determination on our proposed delisting. Accordingly, the final decision may differ from our proposal.

References Cited

A complete list of references cited is available: On the Internet at *http://www.regulations.gov* or *http://www.*

fws.gov/mountain-prairie/species/mammals/wolf/; or upon request from the Mountain-Prairie Region Office, Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are staff members of the Mountain-Prairie Region Office, Ecological Services Division, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 17, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–10407 Filed 4–30–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2011–0042; MO 92210–0–0009]

RIN 1018–AV86

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Chupadera Springsnail (Pyrgulopsis chupaderae) and Proposed Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our August 2, 2011, proposed rule to list the Chupadera springsnail (*Pyrgulopsis chupaderae*) as endangered and designate critical habitat under the Endangered Species Act of 1973, as amended. We are reopening the comment period to allow all interested parties an additional opportunity to comment on the proposed rule and previously completed drafts of the economic analysis and environmental assessment. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before May 16, 2012. If you use the Federal eRulemaking Portal to submit your comments (see **ADDRESSES**), you must submit your comments by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule, draft economic analysis, and draft environmental assessment on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2011–0042, or by mail from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R2–ES–2011–0042, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2011–0042; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Wally Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113; telephone (505–761–4781). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800–877–8339).

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2011 (76 FR 46218), we published a proposed rule to list as endangered and designate critical habitat for the Chupadera springsnail. We proposed to designate approximately 1.9 acres (ac) (0.7 hectares (ha)) in two units located in Socorro County, New Mexico, as critical habitat. That proposal had a 60-day comment period, ending October 3, 2011. We received no requests for a public hearing; therefore, no public hearing will be held. On January 20, 2012 (77 FR 2943), we reopened the public comment period on our August 2, 2011, proposed rule to allow additional public comment on the proposed rule, and we made available, and requested public comments on, the draft economic analysis, draft environmental assessment, and the associated required determinations for the proposed designation of critical habitat. Our January 20, 2012, publication had a 30-day comment period, ending February 21, 2012.

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing and proposed critical habitat for the Chupadera springsnail that published in the **Federal Register** on August 2, 2011 (76 FR 46218). We will consider information and recommendations from all interested parties. We intend that any final action resulting from this proposal be as accurate as possible and based on the best available scientific and commercial data.

If you previously submitted comments or information on the proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning this proposed listing and critical habitat will take into consideration all written comments and any additional information we receive.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2011–0042, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2011–0042, or by mail from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 20, 2012.

Gregory E. Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–10451 Filed 4–30–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120412411–2411–01]

RIN 0648–BB75

Atlantic Highly Migratory Species; North and South Atlantic Swordfish Quotas and Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendation 11–02, which maintains the U.S. North Atlantic swordfish base quota allocation, limits the annual underharvest carryover to 25 percent of the base quota, and requires an annual quota transfer to Morocco. ICCAT Recommendation 11–02 also includes an alternative swordfish minimum size of 25-inches cleithrum-caudal keel (CK).

This proposed rule also considers changes to swordfish minimum size requirements, including the 25-inch CK alternative swordfish minimum size and whether the bill of a swordfish must be attached when measuring swordfish using the existing lower jaw fork length minimum size requirement. The rule also includes regulatory modifications and clarifications regarding swordfish fishery season closures and the North Atlantic swordfish quota reserve category.

Finally, this proposed rule would also adjust the North and South Atlantic swordfish quotas for the 2012 fishing year to account for 2011 underharvests and landings, as required by ICCAT Recommendations 11–02 and 09–03, and implemented in regulations at 50 CFR 635.27. This proposed rule could affect commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received by 5 p.m., local time, on June 5, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0094 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0094 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Margo Schulze-Haugen, 1315 East West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.
- *Fax:* 301–713–1917, Phone: 301–427–8503; Attn: Margo Schulze-Haugen.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

NMFS will hold one conference call and three public hearings on this proposed rule on May 22, 23, 25, and 31, 2012. The public hearings will be held in Fort Lauderdale, FL; Silver Spring, Maryland; and Manahawkin, New Jersey. For specific locations, dates and times see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the supporting documents—including the draft Environmental Assessment (EA), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP)—are available from the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting LeAnn Hogan at 301–427–8503.

FOR FURTHER INFORMATION CONTACT: Steve Durkee by phone: 202–670–6637, or LeAnn Hogan or Delisse Ortiz by phone: 301–427–8503 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: North and South Atlantic swordfish are managed under the dual authority of the Magnuson-Stevens Act and ATCA, which authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary and appropriate to implement ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) final regulations, effective November 1, 2006, implementing the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), which details management measures for Atlantic HMS fisheries. The implementing regulations for the Consolidated HMS FMP and its amendments are at 50 CFR part 635.

ICCAT is responsible for the conservation of tuna and tuna-like species in the Atlantic Ocean and adjacent seas. ICCAT recommendations are binding on Contracting Parties, non-Contracting Cooperating Parties, Entities and Fishing Entities (CPCs), unless Parties object pursuant to the treaty. All ICCAT recommendations are available on the ICCAT Web site at *http://www.iccat.int/en/.* In November 2011, ICCAT adopted Recommendation 11–02 for North Atlantic swordfish. This recommendation maintains the U.S. baseline quota of 2,937.6 metric tons (mt) dressed weight (dw) for 2012 and 2013. Previous North Atlantic swordfish recommendations included a quota transfer of 18.8 mt dw from the United States to Canada; however, Recommendation 11–02 eliminates this quota transfer and includes a transfer of 112.8 mt dw from the United States to Morocco to support joint scientific

research and Morocco's efforts to eliminate the use of driftnets. Recommendation 11–02 also includes a provision for the submission of annual swordfish management plans and a change to the underharvest carryover provisions. The recommendation limits the amount of underharvested quota that can be carried over by a CPC allocated a baseline quota greater than 500 mt to 25 percent of the baseline quota. All other CPCs are limited to an underharvest carryover limit of 50 percent of their baseline quota. This recommendation also includes an option for countries to use a CK minimum size measurement of 25 inches. This recommendation was adopted by ICCAT based on the most recent North Atlantic swordfish stock assessment.

In this proposed rule, NMFS considers changes to the HMS regulations at 50 CFR part 635 consistent with ICCAT Recommendation 11–02. Specifically, NMFS proposes regulatory changes to the adjusted quotas and minimum sizes that would affect commercial and recreational vessels that catch Atlantic swordfish. Under ATCA, the United States promulgates regulations as may be necessary and appropriate to implement binding recommendations of ICCAT. NMFS prepared a draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), which present and analyze anticipated environmental, social, and economic impacts of each alternative contained in this proposed rule. A summary of the alternatives considered and related analyses are provided below. The complete list of alternatives and related analyses is provided in the draft EA/RIR/IRFA. A copy of the draft EA/RIR/IRFA prepared for this proposed rule is available from NMFS (see **ADDRESSES**).

ICCAT North Atlantic Swordfish Quota Implementation

In this action, NMFS proposes to maintain the U.S. base quota of 2,937.6 mt dw and implement both of the other quota-related measures in ICCAT Recommendation 11–02 for North Atlantic swordfish. The first measure requires an annual quota transfer of 112.8 mt dw from the United States to Morocco to support joint scientific research and Morocco's efforts to eliminate the use of driftnets. The second measure limits the amount of underharvested quota relevant ICCAT parties can carryover to the subsequent fishing year. Previously, the ICCAT allowed underharvests of up to 50 percent of the annual base quota (1,468.8 mt dw for the United States); however, ICCAT Recommendation 11–02 limits this carryover to 25 percent of the base quota (734.4 mt dw for the United States). Due to the quota transfer and reduced underharvest carryover limit, the maximum U.S. North Atlantic swordfish adjusted quota would be reduced to 3,559.2 mt dw (2,937.6 mt dw base quota + 734.4 mt dw underharvest − 112.8 mt dw transfer) compared to 4,406.4 mt dw under previous recommendations. These North Atlantic swordfish quotas would be maintained until the quotas are changed by ICCAT.

This proposed action would likely have neutral ecological and economic impacts in the short-term because the United States is unlikely to achieve 100 percent quota utilization in the short-term. Consequently, minor changes to the adjusted quota through international quota transfers or through reduced underharvest carryover limits are unlikely to impact total annual revenues from the fishery, swordfish catch rates or mortality levels. In the long-term, however, the proposed action could have minor beneficial ecological impacts on the North Atlantic swordfish stock as the U.S. swordfish fishery nears 100 percent quota utilization.

With regard to long-term socioeconomic impacts, a lower adjusted quota could have minor adverse impacts assuming the U.S. swordfish fishery nears 100 percent quota utilization. At that time, an adjusted quota that reflects the annual quota transfer to Morocco and the lower underharvest carryover limit would lead to a lower available quota relative to the current adjusted quota. This lower level of adjusted quota would result in a decrease in total possible fishery-wide annual revenues. If NMFS deducts the 112.8 mt dw quota transfer from the U.S. base quota of 2,937.6 mt dw and limits underharvest carryover to 25 percent, the total U.S. adjusted quota could reach 3,559.2 mt dw (7,846,612 lbs dw). Assuming an average ex-vessel price of $4.31 per pound and 100 percent quota utilization, total possible gross revenues across the domestic fishery would be estimated to be $33,818,898 compared to $41,868,844 under the current adjusted quota of 4,406.4 mt dw. Therefore, this proposed action could result in annual gross revenues that are $8,049,946 less ($41,868,844 − $33,818,898) than the possible annual gross revenues under the current adjusted quota of 4,406.4 mt dw. However, the quota transfer to Morocco and the reduction in the underharvest carryover limit are binding ICCAT measures and the United States is required to implement these measures as necessary and appropriate to comply with ICCAT Recommendation 11–02 and ATCA.

Swordfish Minimum Size Measures

In this action, NMFS proposes to implement the swordfish minimum size provision of the 2011 ICCAT North Atlantic swordfish Recommendation 11–02. This alternative minimum size is 25 inches CK and would replace the existing 29-inch CK minimum size that is in place for the U.S. Atlantic swordfish fishery. The 25-inch CK minimum size is equivalent to a greater number of 47-inch LJFL swordfish as opposed to the 29-inch CK minimum size and was calculated to provide a scientifically-based equivalent measurement for dressed swordfish. Since the 25-inch CK minimum size is equivalent to the 47-inch LJFL minimum size, NMFS does not expect any ecological impacts to result from this action. The alternative CK minimum size would simplify and facilitate compliance and enforcement of the minimum size requirements. Simplifying enforcement and compliance could lead to an increase in the number of fish legally retained, but NMFS expects that this increase would be modest and well within the ICCAT SCRS minimum size requirements. Implementing the proposed 25-inch CK minimum size could better address the operational needs of the U.S. swordfish fleet while not leading to negative ecological impacts to swordfish stocks because any retention would still be within the specified quota limits.

Implementing the 25-inch CK minimum size would likely have moderate beneficial socioeconomic impacts in both the short and long-term. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches LJFL. If a fisherman catches a swordfish that meets the 47-inch LJFL minimum size, but not the current 29-inch CK minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard legal fish that do not meet the 29-inch CK minimum size. Similarly, dealers sometimes will not accept fish that meet the 47-inch LJFL measurement but not the 29-inch CK minimum size. Even when these swordfish are landed with the head naturally attached, some dealers have expressed concern that, once the head is

removed, the fish could be in violation of minimum size requirements. For these reasons, implementing the ICCAT alternative minimum CK size of 25 inches could lead to increased retention of fish that measure at or slightly above 47 inches LJFL, since this CK minimum size is equivalent to a greater number of 47-inch LJFL fish than the existing 29-inch CK minimum size. The increase in retained catch could lead to increased revenues for both fishermen and dealers. This increase would occur without any corresponding impact to the swordfish stock since all retained catch would continue to measure at least 47 inches LJFL which is the scientifically-determined sustainable minimum size.

In this action, NMFS also proposes to allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw. Due to morphological differences between individual swordfish, fishermen occasionally retain swordfish that meet the 47-inch LJFL minimum size, but not the current 29-inch CK minimum size. In these cases, the fishermen must leave the head of the swordfish naturally attached in order to maintain the carcass in a form that can be measured using the LJFL minimum size measurement. Scenarios such as this could continue even if NMFS implements the new ICCAT minimum CK length of 25 inches, although they would likely become less common. Currently, there is some confusion as to whether the head is still ''naturally attached'' if the bill is removed. The bill imposes a storage capacity cost, poses some safety concerns, and is not necessary for determining whether a swordfish is undersized. NMFS proposes to explicitly allow fishermen to remove the bill of the swordfish and still consider the head naturally attached, provided the bill is removed forward of the anterior tip of the lower jaw. Consequently, the LJFL minimum size standard could still be used. NMFS expects that this action would not have any ecological impacts on the Atlantic swordfish stock. Keeping the bill of a swordfish attached to the carcass is unnecessary when performing minimum size measurements as long as the lower jaw remains intact. Both the LJFL and CK minimum size measurements use two end points posterior to the bill; therefore, removing the bill would not have any impact on determining compliance with minimum size measurements. The action would not provide any additional impacts to the swordfish stock from increased catch or effort or contribute to the harvest of undersized individuals.

Allowing the LJFL minimum size to be applied to swordfish without a bill would likely result in short and long-term minor beneficial socioeconomic impacts. Neither the LJFL nor the CK minimum size require the bill of the swordfish to be attached; therefore, the bill is unnecessary in determining if a swordfish is of legal size. However, the bill of a swordfish can complicate fishing operations by presenting safety concerns and imposing storage capacity costs. If NMFS allows fishermen to continue to employ the LJFL measurement in the absence of the bill, commercial vessels could more efficiently pack the swordfish catch, leaving more room for additional product. This proposed action provides increased flexibility for fisherman, increases safety, and allows for more efficient packing while not impacting the ability to determine if the fish meets the LJFL minimum size requirement. While NMFS is proposing to change the CK minimum size and allow for a swordfish to be measured using the LJFL measurement, even with its bill removed, NMFS also considered several other minimum size alternatives. These alternatives include eliminating the LJFL as an authorized size measurement and using only a CK measurement, and reinstating the 33 pound live weight measurement. These alternatives are fully described in the draft EA/RIR/IRFA.

Administrative Changes

This proposed rule also makes several modifications to the regulatory text for clarification or management purposes. The current regulatory language found in § 635.27 (c)(2)(i) explicitly authorizes the inseason transfer of North Atlantic swordfish quota among the directed, incidental, and reserve categories. This rule proposes to allow NMFS to transfer quota from the directed category to the incidental or reserve quota categories as well. In this action, NMFS also analyzes the impacts of scientific research and exempted fishing permits on Atlantic swordfish and considers using quota in the reserve category to account for fishery-independent research landings. Therefore, the North Atlantic swordfish reserve category description is simplified and the annual reserve category allocation is explicitly stated to be 50 mt dw in § 635.27(c)(1)(i)(D). Additionally, the regulatory language is modified so that ICCAT-negotiated quota transfers will be removed from the North Atlantic swordfish baseline quota rather than the reserve category.

2012 North and South Atlantic Swordfish Specifications

North Atlantic Swordfish Quota

At the 2011 ICCAT meeting, Recommendation 11–02 was adopted, maintaining the North Atlantic swordfish total allowable catch (TAC) of 13,700 metric tons (mt) whole weight (ww) (10,301 mt dressed weight (dw)) through 2013. Of this TAC, the United States baseline quota is 2,937.6 mt dw (3,907.0 mt ww) per year. ICCAT Recommendation 11–02 also includes a new 112.8 mt dw annual quota transfer to Morocco and limits the underharvest carryover to 25 percent of the baseline quotas. Therefore, the United States may carry over a maximum of 734.4 mt dw of underharvests from the previous year (2011) to be added to the 2012 baseline quota. This proposed rule would adjust the U.S. baseline quota for the 2012 fishing year to account for the annual quota transfer to Morocco and the 2011 underharvest. The 2012 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The preliminary North Atlantic swordfish underharvest for 2011 was 2,750.1 mt dw, which exceeds the maximum carryover cap of 734.4 mt dw. Therefore, NMFS is proposing to carry forward the maximum amount allowed per ICCAT Recommendation 11–02. The baseline quota reduced by the 112.8 mt dw annual quota transfer to Morocco and increased by the underharvest carryover maximum of 734.4 mt dw equals 3,559.2 mt dw, which is the proposed adjusted quota for the 2012 fishing year. From that proposed adjusted quota, the directed category would be allocated 3,209.2 mt dw and would be split equally into two seasons in 2012 (January through June, and July through December). The reserve category would be allocated 50 mt dw for inseason adjustments and research, and 300 mt dw would be allocated to the incidental category, which includes recreational landings and catch by incidental swordfish permit holders for the 2012 fishing season, per § 635.27(c)(1)(i)(B) (Table 1). These landings are based on preliminary data. As late reports are received and the data undergo quality control processes, some data may change. Any changes will be described in the final rule, as appropriate.

South Atlantic Swordfish Quota

ICCAT Recommendation 06–03 established the South Atlantic swordfish TAC at 17,000 mt ww for 2007, 2008, and 2009. Of this, the United States received 75.2 mt dw (100 mt ww). As with the North Atlantic swordfish recommendation, ICCAT

Recommendation 06–03 established a cap on the amount of underharvest that can be carried forward. For South Atlantic swordfish, the United States is limited to carrying forward 100 percent (75.2 mt dw). The most recent South Atlantic swordfish measure, Recommendation 09–03, is a 3-year measure that reduced the TAC to 15,000 mt dw but maintains the previous years' U.S. quota share of 75.2 mt dw (100 mt ww) and underharvest carryover limit through 2012.

ICCAT Recommendation 09–03 also transfers a total of 75.2 mt dw (100 mt ww) of the U.S. South Atlantic swordfish quota to other countries. These transfers are 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Cote d'Ivore, and 18.8 mt dw (25 mt ww) to Belize. In 2011, U.S. fishermen did not land any South Atlantic swordfish, therefore, 75.2 mt dw of underharvest is available to carry over to 2012 and can cover the entire 75.2 mt dw of annual international quota transfers outlined above. Therefore, the 2012 adjusted quota for South Atlantic swordfish is 75.2 mt dw (Table 1).

Impacts resulting from the 2012 North Atlantic swordfish specifications are analyzed in the Environmental Assessment (EA) accompanying this rule. The impacts are summarized above in the ICCAT North Atlantic Swordfish Quota Implementation section. The impacts resulting from the 2012 South Atlantic swordfish specifications were analyzed in the EA that was prepared for the 2007 Swordfish Quota Specification Final Rule published on October 5, 2007 (72 FR 56929). The quota adjustments would not increase overall quotas and are not expected to increase fishing effort, protected species interactions, or environmental effects beyond those considered in the 2007 EA. Therefore, because there would be no changes to the South Atlantic swordfish management measures in this proposed rule, or the affected environment or any environmental effects that have not been previously analyzed, NMFS has determined that the South Atlantic swordfish specifications portion of this proposed rule and impacts to the human environment as a result of the quota adjustments do not require additional NEPA analysis beyond that discussed in the 2007 EA.

TABLE 1—2012 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS

North Atlantic swordfish quota (mt dw)		2012
Baseline Quota		2,937.6
Quota Transfer to Morocco		(−)112.8
Total Underharvest from Previous Year+		2,750.1
Underharvest Carryover from Previous Year+		734.4
Adjusted Quota		3,559.2
Quota Allocation	Directed Category	3,209.2
	Incidental Category	300
	Reserve Category	50
South Atlantic swordfish quota (mt dw)		**2012**
Baseline Quota		75.2
International Quota Transfers*		(−)75.2
Total Underharvest from Previous Year+		75.2
Underharvest Carryover from Previous Year+		75.2
Adjusted quota		75.2

+Underharvest is capped at 25 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic.
*Under 09–03, 100 mt ww of the U.S. underharvest and base quota, as necessary, was transferred to Namibia (37.6 mt dw, 50 mt ww), Cote d'Ivore (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

Public Hearings

Comments on this proposed rule may be submitted via *http://www.regulations.gov,* mail, or fax and comments may also be submitted at a public hearing. NMFS solicits comments on this proposed rule by May 31, 2012. During the comment period, NMFS will hold 3 public hearings and one conference call for this proposed rule. The hearing locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Steve Durkee at 202–670–6637, at least 7 days prior to the meeting.

Location	Date	Time	Address
Conference call	May 22, 2012	2:30–5:30 p.m.	Conference line: 888–957–9840, Passcode: 3094714.
Ft. Lauderdale, FL	May 23, 2012	5:00–8:00 p.m.	Broward County Main Library, 100 S. Andrews Avenue, Fort Lauderdale, FL 33301.
Silver Spring, MD	May 25, 2012	2:00–5:00 p.m.	NMFS Science Center, 1301 East-West Highway, Silver Spring, MD 20910.
Manahawkin, NJ	May 31, 2012	5:00–8:00 p.m.	Stafford Branch Library, 129 N. Main Street, Manahawkin, NJ 08050.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (*e.g.,* alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending

members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

NMFS prepared a draft EA for this rule that discusses the impact on the environment that would occur as a result of this proposed action. In this proposed action, NMFS is considering implementation of ICCAT Recommendation 11–02 including quota allocation, international quota transfers, and modifications to minimum size requirements per the alternative ICCAT minimum size and requests from commercial fishery participants. This draft EA also analyzes the impacts of deducting fishery independent research landings of swordfish from the reserve category quota. A copy of the EA is available from NMFS (see **ADDRESSES**).

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

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule would have on small entities if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to implement recommendations of ICCAT pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to consider changes to the HMS regulations at 50 CFR part 635 consistent with ICCAT recommendations. In this action, NMFS proposes to adjust the 2012 Atlantic swordfish quotas and implement ICCAT Recommendation 11–02, which includes quota allocation, underharvest carryover provisions, international quota transfer requirements, and a new alternative minimum size measurement for Atlantic swordfish, consistent with ATCA, the 2006 Consolidated HMS FMP and other applicable laws. The regulatory changes would affect vessels that catch Atlantic swordfish, including commercial vessels that deploy PLL gear or hold HMS Angling and Charter/Headboat permits. In compliance with ATCA, NMFS is required to implement domestic regulations consistent with recommendations adopted by ICCAT as may be necessary and appropriate.

Section 603(b)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. In accordance with the Small Business Administration (SBA) size standards, NMFS used the following thresholds to determine if an entity regulated under this action would be considered a small entity: Average annual receipts less than $4.0 million for fish-harvesting; average annual receipts less than $6.5 million for charter/party boats; 100 or fewer employees for wholesale dealers; or 500 or fewer employees for seafood processors. Using these thresholds, NMFS determined that all HMS permit holders are small entities. Specifically, this proposed action would apply to all participants in the Atlantic HMS commercial and recreational fisheries that retain Atlantic swordfish. As of October 2011, 245 vessels held a directed or incidental commercial swordfish permit and are reasonably expected to use PLL gear, 78 held a commercial handgear permit, 23,138 held an Atlantic HMS Angling permit, and 4,194 vessels held an Atlantic HMS Charter/Headboat permit. Vessels holding these permits could be affected by this action.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603 (b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and other participants in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS does not believe that the proposed regulations would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 603(c), agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in the draft EA for the proposed action. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first, second, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternatives to achieve the desired objective.

NMFS has prepared this IRFA to analyze the impacts on small entities of the alternatives for implementing ICCAT Recommendation 11–02 for all domestic fishing categories that fish for Atlantic swordfish. The IRFA assesses the impacts of the various alternatives on the vessels that participate in the Atlantic HMS commercial and recreational fisheries that retain Atlantic swordfish, all of which are considered small entities. Six alternatives were considered and analyzed and include: (1) No Action; (2) Implement the 2011 ICCAT North Atlantic swordfish Recommendation 11–02, which

includes an annual quota transfer of 112.8 mt dw from the United States to Morocco and an annual underharvest carryover limit of 25 percent of the base quota (annual carryover limit of 734.4 mt dw); maintain status quo for North Atlantic quotas—Preferred Alternative; (3) Implement the alternative swordfish CK minimum size measurement of 25 inches per the 2011 ICCAT North Atlantic swordfish Recommendation 11–02—Preferred Alternative; (4) Use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum length standard in U.S. domestic fisheries; (5) Allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw– Preferred Alternative; and (6) Reintroduce the 33 pound minimum weight standard.

Under Alternative 1, NMFS would not implement any of the measures contained in the 2011 ICCAT North Atlantic swordfish Recommendation 11–02, including the quota allocation, underharvest carryover limit, international quota transfer, or CK minimum size measurement. Alternative 1 would likely have net direct minor adverse socioeconomic impacts in the short-term. No impacts would be expected if NMFS does not implement the quota portion of ICCAT Recommendation 11–02; however, direct, minor, adverse socioeconomic short-term impacts could result if NMFS does not implement the alternative CK minimum size. The U.S. quota specified in ICCAT Recommendation 11–02 is unchanged from previous years; therefore, the base quota would not be affected. The only effect of non-action would be that the transferred quota would not be deducted from the U.S. base quota. Since the United States has not harvested the entire allocated swordfish quota and is unlikely to do so in the short-term, deducting the transferred quota from the domestic base quota is unlikely to result in changes to annual revenue or revenue to individual vessels. Similarly, if NMFS does not reduce the annual carryover limit from 50 percent to 25 percent, the higher annual adjusted quota is unlikely to be utilized and is unlikely to result in changes in landings or revenue to individual vessels. However, if NMFS does not implement the alternative CK minimum size, there could be direct, minor, adverse socioeconomic short-term impacts. The 25-inch CK minimum size is equivalent to the existing 47-inch LJFL minimum size. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches LJFL. If a fisherman catches a swordfish that meets the 47-inch LJFL minimum size but not the current 29-inch CK minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard fish that legally meet the 47-inch LJFL measurement but do not meet the 29-inch CK minimum size. Similarly, dealers sometimes will not accept fish that meet the 47-inch LJFL measurement but not the 29-inch CK minimum size. These fish are landed with the head naturally attached, but once removed, some dealers have expressed concern that they may be found out of compliance with minimum size regulations in the absence of proof that the fish was landed with the head and met the 47-inch LJFL measurement. For these reasons, if NMFS does not implement the alternative CK minimum size, fishermen would continue to discard (and not land) some fish that meet the LJFL minimum size but not the current CK minimum size, resulting in direct short-term minor adverse socioeconomic impacts. Quantifying the economic impact to individual vessels is difficult without estimates of the number of legal fish that are discarded; however, fish in this size range are often encountered by pelagic longline, handgear, and incidental (including squid trawl) swordfish permit holders. These permit holders would likely experience minor adverse economic impacts if the CK minimum size was not changed to 25 inches.

In the long-term, Alternative 1 could have net, direct, minor beneficial socioeconomic impacts. Due to a variety of swordfish revitalization efforts within and outside of the Agency, NMFS expects that U.S. fishermen could achieve near 100 percent quota utilization. If NMFS does not take action to reduce the base quota due to the annual quota transfer to Morocco nor reduce the adjusted quota by limiting underharvest carryover, the domestic fishery could land more swordfish resulting in higher annual revenues. The United States is allocated 2,937.6 mt dw of North Atlantic swordfish. If 112.8 mt dw of quota is not transferred to Morocco, and if up to 50 percent of the base quota can be carried over, the total U.S. adjusted quota could reach 4406.4 mt dw (9,714,349 lb dw). Assuming an average ex-vessel price of $4.31 per pound and 100 percent quota utilization, the total possible annual gross revenues across the domestic fishery would be estimated to be $41,868,844 under Alternative 1. In 2011, there were 178 directed swordfish permit holders, 67 incidental swordfish permit holders, and 78 swordfish handgear permit holders. The Incidental HMS Squid Trawl Permit, which allows for limited retention of swordfish caught in the *Illex* squid trawl fishery, became effective toward the end of 2011; therefore, NMFS does not yet have a reliable estimate of the number of vessels that have or will avail themselves of this permit. Due to quota tracking complexities, NMFS does not have a proportional breakdown of the total landings by permit type; however, the average annual ex-vessel revenue across all swordfish permit types is $129,625 per vessel ($41,868,844/(178 directed swordfish permit holders, 67 incidental swordfish permit holders, and 78 swordfish handgear permit holders)). Since retention limits are higher for directed permit holders than incidental permit holders, actual per vessel revenue would likely be higher for directed permit holders and lower for incidental permit holders. Handgear permit holders do not have a retention limit; however, the gear used by these permit holders is less efficient, therefore, actual per vessel revenue is somewhere in between directed and incidental permit holders. As in the short-term, fishermen might still discard fish that meet the LJFL minimum size but not the current minimum size, precluding ex-vessel revenue from these landings; however, the larger quota would likely offset this impact. Under ATCA, the United States shall promulgate regulations as may be necessary and appropriate to implement binding recommendations of ICCAT and because this alternative would not implement ICCAT Recommendation 11–02, NMFS does not prefer this alternative at this time.

Alternative 2 would implement the ICCAT Recommendation 11–02 provisions pertaining to quota allocation, the underharvest carryover limit, and the quota transfer to Morocco. Alternative 2 would likely have direct neutral socioeconomic impacts in the short-term. As noted in the ecological impact discussion for Alternative 1, the United States is unlikely to achieve 100 percent quota utilization in the short-term. Consequently, minor changes to the base quota through international quota transfers or to the adjusted quota through reduced underharvest carryover limits are unlikely to impact swordfish fishing effort levels or annual revenues. In the long-term, however, Alternative 2

could have direct minor adverse socioeconomic impacts assuming the U.S. swordfish fishery nears 100 percent quota utilization. At that time, an adjusted quota that reflects the annual international quota transfer to Morocco and the lower underharvest carryover limit could lead to a lower available quota than the level possible under Alternative 1. This lower level of adjusted quota would result in a decrease in the total possible fishery-wide annual revenue. If NMFS deducts the 112.8 mt dw quota transfer from the U.S. base quota of 2,937.6 mt dw and limits underharvest carryover to 25 percent, the total U.S. adjusted quota could reach 3,559.2 mt dw (7,846,612 lbs dw). Assuming an average ex-vessel price of $4.31 per pound and 100 percent quota utilization, total possible gross revenues across the domestic fishery would be estimated to be $33,818,898 under Alternative 2. Therefore, Alternative 2 could result in annual gross revenues that are $8,049,946 less ($41,868,844—$33,818,898) than the possible annual gross revenues under Alternative 1. This potential decrease in average annual ex-vessel revenue across all swordfish permit types is $24,922 per vessel ($8,049,946/(178 directed swordfish permit holders, 67 incidental swordfish permit holders, and 78 swordfish handgear permit holders)). Since retention limits are higher for directed permit holders than incidental permit holders, actual per vessel revenue loss would likely be higher for directed permit holders and lower for incidental permit holders. Handgear permit holders do not have a retention limit; however, the gear used by these permit holders is less efficient, therefore, actual per vessel revenue loss is somewhere in between directed and incidental permit holders. The United States, however, is required to implement these measures in order to be in compliance with ICCAT recommendation 11–02 under ATCA; therefore, NMFS prefers this alternative at this time.

Under Alternative 3, NMFS would implement the swordfish minimum size portion of the 2011 ICCAT swordfish Recommendation 11–02, which allows a 25-inch CK measurement. This alternative would likely have direct, moderate, beneficial socioeconomic impacts in both the short- and long-term. The 25-inch CK minimum size is equivalent to the existing 47-inch LJFL minimum size. Currently, fishermen do not have a minimum size measurement that allows for the retention of dressed swordfish that measure at or slightly above 47 inches LJFL. If a fisherman catches a swordfish that meets the 47-inch LJFL minimum size but not the current 29-inch CK minimum size, the fisherman must either land the fish with the head naturally attached or discard the fish. Due to storage capacity limitations and uncertainty in minimum size regulations, fishermen sometimes choose to discard fish that legally meet the 47-inch LJFL measurement but do not meet the 29-inch CK minimum size. Similarly, dealers sometimes will not accept fish that meet the 47-inch LJFL measurement but not the 29-inch CK minimum size. These fish are landed with the head naturally attached, but once removed, some dealers have expressed concern that a minimum size violation could occur in the absence of proof that the fish was landed with the head and met the 47-inch LJFL measurement. For these reasons, implementing the ICCAT alternative minimum CK size of 25 inches could lead to increased retention of previously discarded legal fish that measure at or slightly above 47 inches LJFL, since this CK minimum size is equivalent to a greater number of 47-inch LJFL fish. Fish in this size range are the most frequently encountered fish; therefore, increased landings of fish in this size range are not trivial. The increase in retained catch could lead to increased annual revenues for both fishermen and dealers, resulting in direct, moderate, beneficial socioeconomic impacts in both the short- and long-term. Quantifying the economic impact to individual vessels is difficult without estimates on the number of legal fish that are discarded; however, fish in this size range are often encountered by pelagic longline, handgear, and incidental (including squid trawl) swordfish permit holders. These permit holders would likely experience minor beneficial economic impacts if the CK minimum size is changed to 25 inches. Because this alternative provides these benefits to fishermen but does not lead to increased mortality of undersized swordfish, NMFS prefers this alternative at this time.

Under Alternative 4, NMFS would use the CK measurement as the sole minimum size and discontinue the use of the LJFL minimum size in U.S. domestic fisheries. This alternative would be unlikely to have any direct socioeconomic impacts in the short- or long-term, provided that the new ICCAT alternative CK minimum size of 25 inches is implemented under Alternative 4. The current LJFL minimum size of 47 inches and the proposed CK minimum size of 25 inches equate to the same size fish in the majority of instances. Therefore, the LJFL minimum size could be redundant with the CK minimum size. Removal of the LFJL minimum size and use of only the CK measurement could simplify enforcement and compliance with minimum size requirements. Additionally, since the two minimum sizes refer to the same size fish, removal of the LJFL minimum size is unlikely to result in increased landings for individual vessels. However, removing one of the minimum size measurements could reduce flexibility for fishermen in how they choose to measure and land swordfish; therefore NMFS does not prefer this alternative at this time.

Under Alternative 5, NMFS would allow the LJFL minimum size to be applied to swordfish without a bill, provided the bill has been removed forward of the anterior tip of the lower jaw. Adoption of Alternative 5 would likely result in short- and long-term direct, minor, beneficial socioeconomic impacts. Swordfish are currently measured using either the lower jaw and fork of the tail (in the case of LJFL) or the cleithrum and caudal keel (in the case of CK) as endpoints. Neither of these measurement methods require the bill of the swordfish to be attached; therefore, the bill is unnecessary in determining if a swordfish is of legal size. The bill of a swordfish can complicate fishing operations by presenting safety concerns and imposing storage capacity costs. If NMFS allows fishermen to continue to employ the LJFL measurement in the absence of the bill, commercial vessels could more efficiently pack the swordfish catch, leaving more room for additional product. This additional product could increase revenues for both fishermen and dealers, although quantifying the economic benefits on a per-vessel basis is not possible. Because this alternative would simplify fishing operations and provide additional economic benefits for both fishermen and dealers without affecting compliance of minimum size requirements or impacting the sustainability of the stock, NMFS prefers Alternative 5 at this time.

Under Alternative 6, NMFS would reintroduce the 33-pound minimum weight standard. This alternative would be unlikely to have any net direct socioeconomics in the short- or long-term, provided that the new ICCAT alternative CK minimum size of 25 inches is implemented under Alternative 4. NMFS employed the 33-pound minimum weight, in combination with two minimum lengths, until 2009. At that time, NMFS removed the 33-pound minimum weight

and specified landing condition-specific minimum sizes. The impetus for this change was twofold. First, the use of three minimum sizes (weight, LJFL, and CK) complicated minimum size enforcement because all three measurements had to be taken to prove that a fish was undersized. This can require substantial time investments, particularly in cases with thousands of pounds of swordfish. Second, neither enforcement agents nor fishermen could definitively determine the accurate weight and subsequent legality of fish while at sea, presenting both compliance and enforcement problems. To address these enforcement and compliance complexities, NMFS simplified the swordfish minimum size requirements by removing the 33-pound minimum weight and specified landing condition-specific minimum lengths. Reintroducing the minimum dressed weight could provide some benefits and some disadvantages. The 33-pound minimum weight and the proposed 25-inch CK minimum size equate to the same size fish in the majority of instances. The primary benefit is that fishermen might be able to retain more swordfish because some fish meet the minimum weight but not the minimum length. Reintroducing the minimum weight could provide the opportunity to retain these fish. Disadvantages include those discussed above, including the enforcement and compliance difficulties. Since a definitive weight cannot be taken at sea, fishermen are unlikely to be able to determine the legality of swordfish weighing near 33 pounds. This presents uncertainties and compliance difficulties. The possible benefits and possible disadvantages, when taken together, result in neutral socioeconomic impacts across the fishery and to individual vessels. Additionally, since the 33-pound minimum weight and the proposed 25-inch CK minimum size equate to the same size fish in the majority of instances, reintroducing the minimum weight standard could be unnecessary. Since Alternative 7 poses enforcement and compliance concerns, and because the socioeconomic impacts may be neutral compared to the beneficial socioeconomic impacts under Alternatives 4 and 6, NMFS does not prefer this alternative at this time. However, should the enforcement and compliance issues be resolved in the future, NMFS may reconsider reintroduction of the 33-pound minimum weight standard.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: April 26, 2012.

Alan D. Risenhoover,

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

For reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

2. In § 635.2, revise the definitions for ''LJFL'' and ''Naturally attached'' to read as follows:

§ 635.2 Definitions.

* * * * *

LJFL (lower jaw-fork length) means the straight-line measurement of a fish from the anterior tip of the lower jaw to the fork of the caudal fin. The measurement is not made along the curve of the body.

* * * * *

Naturally attached, as it is used to describe shark fins refers to shark fins that remain attached to the shark carcass via at least some portion of uncut skin. As used to describe the head of a swordfish, naturally attached refers to the whole head remaining fully attached to the carcass except for the bill, which may be removed provided it has been removed forward of the anterior tip of the lower jaw.

* * * * *

3. In § 635.20, paragraph (f)(2) is revised to read as follows:

§ 635.20 Size limits.

* * * * *

(f) * * *

(2) If the head of a swordfish is no longer naturally attached, the CK measurement is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a dressed North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 25 inches (63 cm) CK length. A swordfish that is damaged by shark bites may be retained only if the length of the remainder of the carcass is equal to or greater than 25 inches (63 cm) CK length.

* * * * *

4. In § 635.27, paragraphs (c)(1)(i)(A), (c)(1)(i)(D), (c)(2)(ii), and (c)(3)(ii) are revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, or a handgear permit for swordfish, has been issued or is required to be issued is counted against the directed fishery quota. The total baseline annual fishery quota, before any adjustments, is 2,937.6 mt dw for each fishing year. Consistent with applicable ICCAT recommendations, a portion of the total baseline annual fishery quota may be used for transfers to another ICCAT contracting party. The annual directed category quota is calculated by adjusting for over- or underharvests, dead discards, any applicable transfers, the incidental category quota, the reserve quota and other adjustments as needed, and is subdivided into two equal semi-annual: one for January 1 through June 30, and the other for July 1 through December 31.

* * * * *

(D) 50 mt of the annual fishery quota of North Atlantic swordfish may be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery research, or for other purposes consistent with management objectives.

* * * * *

(2) * * *

(ii) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, excess quota may be allocated to the directed fishery quota or to the reserve, as necessary. If NMFS determines that the annual directed catch quota will not be taken before the end of the fishing year, some of the excess quota may be allocated to the incidental fishery quota or to the reserve, as necessary.

* * * * *

(3) * * *

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 25 percent of the baseline quota allocation for that year. Carryover adjustments for the

South Atlantic shall be limited to 100 mt ww (75.2 mt dw) for that year. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication any adjustment or apportionment made under this paragraph.

* * * * *

[FR Doc. 2012–10459 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 84
Tuesday, May 1, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 25, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of publication of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Field Crops Production.

OMB Control Number: 0535–0002.

Summary of Collection: One of the National Agricultural Statistics Services' (NASS) primary functions is to prepare and issue current state and national estimates of crop and livestock production, prices, and disposition. The general authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. NASS collects information on field crops to monitor agricultural developments across the country that may impact on the nation's food supply. To help set these estimates, field crops production data is collected. NASS will use surveys to collect information through a combination of the internet, mail, telephone, and personnel interviews.

Need and Use of the Information: NASS collects information on field crops to monitor agricultural developments across the country that may impact on the nation's food supply. The Secretary of Agriculture uses estimates of crop production to administer farm program legislation and to make decisions relative to the export-import programs. Collecting this information less frequently would eliminate the data needed to keep the Department abreast of changes at the State and national level.

Description of Respondents: Farms; business or other for-profits.

Number of Respondents: 626,490.

Frequency of Responses: Reporting: Weekly, monthly, quarterly, annually.

Total Burden Hours: 146,977.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–10431 Filed 4–30–12; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for June 2012

The following Sunset Review is scheduled for initiation in June 2012 and will appear in that month's Notice of Initiation of Five-Year Sunset Review.

	Department contact
Antidumping Duty Proceedings	
Solid Agricultural Grade Ammonium Nitrate from Ukraine (A–823–810) (2nd Review)	David Goldberger, (202) 482–4136.
Countervailing Duty Proceedings	
No Sunset Review of suspended investigations is scheduled for initiation in June 2012.	
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in June 2012.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 11, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–10442 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not-collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after May 2012, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in

which the Department intends to exercise its discretion in the future.

Opportunity to Request a Review: Not later than the last day of May 2012,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period of review
Antidumping Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, A–423–808	5/1/11–4/30/12
Brazil: Iron Construction Castings, A–351–503	5/1/11–4/30/12
Canada: Citric Acid and Citrate Salt, A–122–853	5/1/11–4/30/12
France: Antifriction Bearings, Ball, A–427–801	5/1/11–9/14/11
Germany: Antifriction Bearings, Ball, A–428–801	5/1/11–9/14/11
India:	
Silicomanganese, A–533–823	5/1/11–4/30/12
Welded Carbon Steel Pipes and Tubes, A–533–502	5/1/11–4/30/12
Indonesia: Polyethylene Retail Carrier Bags, A–560–822	5/1/11–4/30/12
Italy: Antifriction Bearings, Ball, A–475–801	5/1/11–9/14/11
Japan: Gray Portland Cement and Cement Clinker, A–588–815	5/1/11–4/30/12
Kazakhstan: Silicomanganese, A–834–807	5/1/11–4/30/12
Republic of Korea:	
Polyester Staple Fiber, A–580–839	5/1/11–4/30/12
Stainless Steel Plate in Coils, A–580–831	5/1/11–4/30/12
South Africa: Stainless Steel Plate in Coils, A–791–805	5/1/11–4/30/12
Taiwan:	
Circular Welded Carbon Steel Pipes and Tubes, A–583–008	5/1/11–4/30/12
Polyethylene Retail Carrier Bags, A–583–843	5/1/11–4/30/12
Polyester Staple Fiber, A–583–833	5/1/11–4/30/12
Stainless Steel Plate in Coils, A–583–830	5/1/11–4/30/12
The People's Republic of China:	
Aluminum Extrusions, A–570–967	11/12/10–4/30/12
Certain Circular Welded Carbon Quality Steel Line Pipe, A–570–935	5/1/11–4/30/12
Citric Acid and Citrate Salt, A–570–937	5/1/11–4/30/12
Iron Construction Castings, A–570–502	5/1/11–4/30/12
Oil Country Tubular Goods, A–570–943	5/1/11–4/30/12
Pure Magnesium, A–570–832	5/1/11–4/30/12
Turkey:	
Light-Walled Rectangular Pipe and Tube, A–489–815	5/1/11–4/30/12
Circular Welded Carbon Steel Pipes and Tubes, A–489–501	5/1/11–4/30/12
Venezuela: Silicomanganese, A–307–820	5/1/11–4/30/12
Vietnam: Polyethylene Retail Carrier Bags, A–552–806	5/1/11–4/30/12
Countervailing Duty Proceedings	
Brazil: Iron Construction Castings, C–351–504	1/1/11–12/31/11
South Africa: Stainless Steel Plate in Coils, C–791–806	1/1/11–12/31/11
The People's Republic of China:	
Aluminum Extrusions, C–570–968	9/7/10–12/31/11
Citric Acid and Citrate Salt, C–570–938	1/1/11–12/31/11
Vietnam: Polyethylene Retail Carrier Bags, C–552–805	1/1/11–12/31/11

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings:*

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration web site at *http://ia.ita.doc.gov.*

All requests must be filed electronically in Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov. See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263, (July 6, 2011). Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of May 2012. If the Department does not receive, by the last day of May 2012, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 12, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–10443 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application 12–00002]

Export Trade Certificate of Review

ACTION: Notice of Application for an Export Trade Certificate of Review SunWest Foods, Inc.

SUMMARY: The Office of Competition and Economic Analysis, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (''Certificate''). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register**, identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked ''privileged'' or ''confidential business information'' will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, DC 20230, or transmitted by email at *etca@trade.gov.*

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 12–00002.'' A summary of the application follows.

Summary of the Application

Applicant: SunWest Foods, Inc., 1550 Drew Avenue, Suite 150, Davis, California 95618.

Application No.: 12–00002.

Date Deemed Submitted: April 17, 2012.

Members (in addition to applicant): SunWest Milling Company, Inc. (''SWM'') is to be a member that also will be covered by and receive the protections from the proposed Certificate. SWM's principal address is 507 Bannock Street, Biggs, California 95917. SWM and SWF are both privately-held companies owned by the Errecarte family. SWM and SWF are affiliated through common ownership and management.

SunWest seeks a Certificate of Review to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets:

Export Trade

Products: SWF proposes to export under the Certificate, directly and through other suppliers, rice and rice products, including, but not limited to: rough rice; brown rice; milled, under milled, and unpolished rice, coated rice; oiled rice; enriched rice; rice bran; polished rice, head rice; broken rice; second head rice; brewers rice; screenings; and rice flour. The purpose and use of these foods products are for human consumption. The NAICS codes that best describes SWF's goods and services is 424490 (Other Grocery and Related Products Merchant Wholesalers). The NAICS Codes that best describe SWM's services are 311212 (Rice Milling) and 115114 (Postharvest Crop Activities).

Services: All services related to the export of Products.

Technology Rights: All intellectual property rights associated with Products or Services, including, but not limited to: patents, trademarks, services marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and confidential databases and computer programs.

Export Trade Facilitation Services (as They Relate to the Export of Products): Export Trade Facilitation Services, including but not limited to: Consulting and trade strategy, converting harvest rice to marketable finished rice products via the drying, storage, milling, and packaging processes; arranging and coordinating delivery of rice and rice products to port of export; arranging for inland and/or ocean transportation; allocating rice and rice products to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, and freight forwarding; insurance and financing; documentation and services related to compliance with customs' requirements; sales and marketing; export brokerage; foreign marketing and analysis; foreign market development; overseas advertising and promotion; rice and rice products research and design based upon foreign buyer and consumer preferences; inspection and quality control; shipping and export management; export licensing; provisions of overseas sales and distribution facilities and overseas sales staff; legal; accounting and tax assistance; development and application of management information systems; trade show exhibitions; professional services in the area of government relations and assistance with federal and state export assistance programs (e.g., Export Enhancement and Market Promotion programs); collaborating with other rice suppliers and rice marketers; invoicing (billing) foreign buyers; collecting (letters of credit and other financial instruments) payment for rice and rice products; and arranging for payment of applicable commissions and fees.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

To engage in Export Trade in the Export Markets, SunWest Foods, Inc. and its affiliated company, SunWest Milling Company, Inc. (collectively ''SunWest'') may:

1. Exchange information with Suppliers or other entities individually regarding availability of and prices for Products for export, and inventories and near-term production and delivery schedules for purposes of determining the availability of Products for purchase and export, and coordinating export of Products with its distributors, customers, and other Suppliers in the Export Markets;
2. Confer with Suppliers about the possibility of offers to purchase and offers to sell by SunWest for specific export sales opportunities;
3. Process other Supplier's harvest rice to marketable finished Products for Export Markets via drying, storage, milling, and packaging processes;
4. Solicit other Suppliers to offer/sell Products to SunWest for subsequent sales into Export Markets;
5. Solicit other Suppliers to purchase Products from SunWest, but only to the extent such Products are then directly sold into Export Markets;
6. Solicit orders from potential foreign distributors and purchasers for sale of Products in Export Markets;
7. Prepare and submit offers of Products to potential foreign distributors, purchasers, and other entities for sale in Export Markets;
8. Establish the price and quantity of Products for sale in Export Markets and set other terms for any export sale;
9. Negotiate and enter into agreements for sale of Products in Export Markets;
10. Enter into agreements to purchase/sell Products from/to one or more Suppliers to fulfill specific sale obligations, which may include agreements whereby Suppliers agree to deal exclusively with SunWest, for sale of the Products in a particular Export Market or Markets and/or whereby SunWest agrees to purchase exclusively any particular Supplier's (or Suppliers') Products for resale in the Export Market;
11. Assign sales of Products to, and/or divide or share export orders among, Suppliers or other persons based on orders, export markets, territories, customers, or any other basis SunWest deems fit;
12. Broker and take title to the Products;
13. Enter into agreements with one or more Export Trade Intermediaries or export trade purchasers for the purchase of Products, which may be agreements whereby SunWest agrees to deal exclusively with an entity or customer in a particular Export Market, and/or by which that customer or intermediary agrees to deal exclusively with SunWest and/or agrees not to purchase from SunWest's competitors in any Export Market, unless so authorized;
14. Apply for and utilize government export assistance and incentive programs;
15. Refuse to (a) purchase Products, (b) sell Products, (c) provide services, or (d) provide information regarding export sales of Products to any Supplier(s) or other entities for any reason SunWest deems fit;
16. Refuse to (a) sell Products, (b) quote prices of Products, (c) provide services, (d) provide information regarding Products, or (e) market or sell Products to any customers or distributors in the Export Markets, or in any countries or geographic areas in the Export Markets; and
17. Meet with Suppliers or other entities periodically to discuss general matters specific to the activities approved in this Certificate (not related to price and supply arrangements between Applicant and the individual Suppliers) such as relevant facts concerning the Export Markets (e.g., demand conditions, transportation costs and prices in the export markets), or the possibility of joint marketing, bidding or selling arrangements in the Export Markets.

Dated: April 25, 2012.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2012–10414 Filed 4–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 1, 2012.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; (202) 482–2593.

Background

On January 24, 2012, the Department of Commerce (''Department'') published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on Honey from the People's Republic of China (''PRC'') covering the period December 1, 2010, through November 30, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 77 FR 4759 (January 24, 2012).

On April 16, 2012, the American Honey Producers Association and Sioux Honey Association (collectively ''Petitioners'') withdrew their request for an administrative review for the following companies: Anhui Honghui Foodstuff (Group) Co., Ltd., Shanghai Bloom International Trading Co., Ltd., Shanghai Taiside Trading Co., Ltd., Tianjin Eulia Honey Co., Ltd., and Wuhan Bee Healthy Co., Ltd. Petitioners were the only party to request a review of these companies.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Petitioners' request was submitted within the 90 day period and, thus, is timely. Because Petitioners' withdrawal of requests for review is timely and because no other party requested a review of the aforementioned companies, in accordance with 19 CFR 351.213(d)(1), we are partially rescinding this review with respect to Anhui Honghui Foodstuff (Group) Co., Ltd., Shanghai Bloom International Trading Co., Ltd., Shanghai Taiside Trading Co., Ltd., Tianjin Eulia Honey Co., Ltd., and Wuhan Bee Healthy Co., Ltd.[1]

Assessment Rates

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Anhui Honghui Foodstuff (Group) Co., Ltd., Shanghai Bloom International Trading Co., Ltd., Shanghai Taiside Trading Co., Ltd., Tianjin Eulia Honey Co., Ltd., and Wuhan Bee Healthy Co., Ltd., all have separate rates from a prior segment of this proceeding; therefore, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 25, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–10450 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] We note that there are additional companies for which review requests were withdrawn within the 90 day period. *See* Letter to the Department from Petitioners, ''Honey from the People's Republic of China: Petitioners' Partial Withdrawal of Request for Tenth Administrative Review'' (April 16, 2012). However, because these companies do not have a separate rate from a prior segment of this proceeding, we intend to address the disposition of these withdrawal requests in the preliminary results of this review.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty order listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* March 1, 2012.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998), and in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset

Review of the following antidumping duty order:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–570–1104	731–TA–1103 ...	China	Activated Cabron (1st Review)	Jennifer Moats, (202) 482–5047.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statue and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/.*'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules can be found at 19 CFR 351.303.

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*'') amending 19 CFR 351.303(g)(1) and (2) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: April 11, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–10446 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Polyethylene Retail Carrier Bags From Thailand: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from an interested party, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand. The period of review is August 1, 2010, through July 31, 2011. As a result of the withdrawal of the request for review, the Department is rescinding this review.

DATES: *Effective Date:* May 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1757 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2011, the Department published a notice of initiation of an administrative review of the

antidumping duty order on polyethylene retail carrier bags from Thailand. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 76 FR 61076 (October 3, 2011). Based on a request for review from the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC and Superbag Corporation (collectively, the petitioners), we initiated a review of Apple Film Company, Ltd., First Pack Co. Ltd., Hi-Pak Company, Ltd., K International Packaging Co., Ltd., Landblue (Thailand) Co., Ltd., Multibax Public Co., Ltd., Praise Home Industry, Co. Ltd., Siam Flexible Industries Co. Ltd., Sombatchai Plastic Industry, Ltd., Thai Jirun Co., Ltd., Trinity Pac Co. Ltd., T.S.T. Plaspack Co., Ltd., and U. Yong Industry Co., Ltd. *Id.* No other party requested a review.

Rescission of Review

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.'' On October 17, 2011, the petitioners withdrew their request for a review of the order with respect to First Pack Co. Ltd., K International Packaging Co., Ltd., Landblue (Thailand) Co., Ltd., Praise Home Industry, Co. Ltd., Siam Flexible Industries Co., Ltd., Thai Jirun Co., Ltd., and U. Yong Industry Co., Ltd. On December 23, 2011, the petitioners requested we extend the 90-day time limit for the withdrawal of the request for a review. On December 28, 2011, we extended the time limit for the withdrawal of the request for the review until February 29, 2012, based on the extraordinary circumstances leading to their request. On February 21, 2012, the petitioners withdrew their request for a review of the order with respect to Apple Film Company, Ltd., Hi-Pack Company, Ltd., Multibax Public Co., Ltd., Sombatchai Plastic Industry, Ltd., Trinity Pac Co. Ltd., and T.S.T. Plaspack Co., Ltd. Because we received no other requests for review of these companies and the petitioners withdrew their request within the extended time limit for the withdrawal of the request for a review, we are rescinding the administrative review of the order with respect to all companies. This rescission is in accordance with 19 CFR 351.213(d)(1). The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection within 15 days after publication of this notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 26, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–10452 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Panel of Judges

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that there will be a meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award on Wednesday, June 13, 2012. The Panel of Judges is composed of twelve members prominent in the fields of quality, innovation, and performance management and appointed by the Secretary of Commerce, assembled to ensure the integrity of the Baldrige Award selection process. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology and from the Chair of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Overview of the Role of the Judges and Scoring Data Reviewed at the September 2011 Meeting, 2012 Baldrige Award Cycle, Conflict of Interest, Judges' Survey of Applicants, Judging Process Improvement Discussion and Judges' Mentoring Program, and a Baldrige Program Update.

DATES: The meeting will convene on Wednesday, June 13, 2012, at 9:00 a.m. Eastern time and adjourn at 4:00 p.m. Eastern time. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room E, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 7, 2011, that the meeting of the Judges Panel may be closed in accordance with 5 U.S.C. 552b(c)(4) because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential and 5 U.S.C. 552b(c)(9)(B) because for a government agency the meetings are likely to disclose information that could significantly frustrate implementation of a proposed agency action. The meeting, which involves examination of Award applicant data from U.S. companies and other organizations and a discussion of these data as compared to the Award criteria in order to recommend Award recipients, will be closed to the public.

Dated: April 24, 2012.

Phillip Singerman,

Associate Director for Innovation & Industry Services.

[FR Doc. 2012–10438 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers and Panel of Judges

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Malcolm Baldrige National Quality Award Board of Overseers and Panel of Judges will hold a meeting on Thursday, June 14, 2012 from 8:30 a.m. to 3:00 p.m. Eastern time. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology and from the Chair of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Baldrige Program Update, Baldrige Enterprise Update, Judges Panel Update, Baldrige Fellows Program Discussion, and Strategic Planning.

DATES: The meeting will convene on Thursday, June 14, 2012, at 8:30 a.m. Eastern time and adjourn at 3:00 p.m. Eastern time. The meeting will be open to the public.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room E, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Thursday, June 14, 2012. The Board of Overseers is composed of 12 members prominent in the fields of quality, innovation, and performance management and appointed by the Secretary of Commerce, assembled to advise the Director of NIST on the conduct of the Baldrige Award. The Panel of Judges consists of twelve members with balanced representation from U.S. service, manufacturing, education, and health care industries and government. The panel includes members familiar with the quality improvement operations of both for-profit and not-for-profit organizations. The panel recommends Award recipients to the Secretary of Commerce.

All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Robert Fangmeyer no later than 4 p.m. Eastern time, Thursday, June 7, 2012, and he will provide you with instructions for admittance. Non-U.S. citizens must also submit their passport number, country of citizenship, title, employer/sponsor, address and telephone. Mr. Fangmeyer's email address is *robert.fangmeyer@nist.gov* and his phone number is (301) 975–2361.

Dated: April 24, 2012.

Phillip Singerman,

Associate Director for Innovation & Industry Services.

[FR Doc. 2012–10439 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing an Open Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, May 30, 2012, from 8:30 a.m. until 5:30 p.m., Eastern Time, Thursday, May 31, 2012, from 8:30 a.m. until 5:30 p.m., Eastern Time, and Friday, June 1, 2012 from 8:30 a.m. until 1:00 p.m. Eastern Time. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, May 30, 2012, from 8:30 a.m. until 5:30 p.m., Eastern Time, Thursday, May 31, 2012, from 8:30 a.m. until 5:30 p.m., Eastern Time, and Friday, June 1, 2012 from 8:30 a.m. until 1:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held in the Heritage Room, Administration Building, at the National Institute of Standards Technology (NIST), 100, Bureau Drive, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Annie Sokol, Information Technology Laboratory, NIST, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2006, Email address: *annie.sokol@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, May 30, 2012, from 8:30 a.m. until 5:30 p.m., Eastern Time, Thursday, May 31, 2012, from 8:30 a.m. until 5:30 p.m., Eastern Time, and Friday, June 1, 2012 from 8:30 a.m. until 1:00 p.m. Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the Secretary of Commerce, the Director of the Office of Management and Budget, and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html.*

The agenda is expected to include the following items:

—Presentation relating to legislative dates,
—Panel discussion on Joint Cybersecurity Service Program,
—Panel discussion relating to Automated Indicator Sharing,
—Panel discussion on Privacy Research,
—Panel discussion on SEC Security Breach Notification,
—Panel discussion on data feedback to the network,
—Presentation on supply chain and risk management,
—Panel discussion/presentation on Red Team and Blue Team,
—Presentation/Discussion on NIST Research and Secure Mobile Devices,
—Update of National Strategy for Trusted Identities in Cyberspace,
—Presentation on key management,
—Presentation on Testing/Metric, and
—Update on NIST Computer Security Division.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters. The final agenda will be posted on the Web site indicated above. Approximately fifteen seats will be available for the public and media. Pre-registration is required to attend this meeting.

All visitors to the NIST site are required to pre-register to be admitted. Please submit your name, email address and phone number to Annie Sokol by 5:00 p.m. Eastern Time, Tuesday, May 29, 2012. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address by 5:00 p.m. Eastern Time, Thursday, May 24,

2012. Annie Sokol's email address is *annie.sokol@nist.gov* and her telephone number is 301–975–2006.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Friday, June 1, 2012, between 8:45 a.m. and 9:15 a.m.). Speakers will be selected on a first-come, first served basis. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact Ms. Annie Sokol at the telephone number indicated above.

In addition, written statements are invited and may be submitted to the ISPAB at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

Dated: April 24, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–10437 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 120409406–2406–01]

RIN 0648–XA809

Endangered and Threatened Wildlife; 90-Day Finding on a Petition to List Speckled Hind as Threatened or Endangered Under the Endangered Species Act

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

ACTION: Notice of 90-day petition finding.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list speckled hind (*Epinephelus drummondhayi*) as threatened or endangered under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific information indicating that the petitioned action may be warranted.

ADDRESSES: Copies of the petition and related materials are available upon request from the Assistant Regional Administrator, Protected Resources Division, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or online at: *http://sero.nmfs.noaa.gov/pr/ListingPetitions.htm*

FOR FURTHER INFORMATION CONTACT: Jason Rueter, NMFS Southeast Region, 727–824–5312, or Lisa Manning, NMFS Office of Protected Resources, 301–427–8466.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2010, we received a petition from the WildEarth Guardians to list goliath grouper (*Epinephelus itajara*), Nassau grouper (*Epinephelus striatus*), and speckled hind (*Epinephelus drummondhayi*) as threatened or endangered under the ESA. Copies of this petition are available from us (see **ADDRESSES,** above). Due to the scope of the WildEarth Guardians' petition, as well as the breadth and extent of the required evaluation and response, we are providing species-specific findings on this petition. This finding addresses WildEarth Guardians' petition to list speckled hind. A negative finding for goliath grouper was made on June 1, 2011 (76 FR 31592), while the Nassau grouper finding is currently under development.

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a ''positive 90-day finding''), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a ''may be warranted'' finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a ''species,'' which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS and U.S. Fish and Wildlife Service (USFWS) policy clarifies the agencies' interpretation of the phrase ''distinct population segment'' for the purposes of listing, delisting, and reclassifying a species under the ESA (''DPS Policy''; 61 FR 4722; February 7, 1996). A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively; 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered because of any one or a combination of the following five section 4(a)(1) factors: (A) The present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; and (E) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(b)) define ''substantial information'' in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from

authorities, and maps (50 CFR 424.14(b)(2)).

Court decisions clarify the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination whether a petitioned action ''may be'' warranted. As a general matter, these decisions hold that a petition need not establish a ''strong likelihood'' or a ''high probability'' that a species is either threatened or endangered to support a positive 90-day finding.

We evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioner's assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a ''species'' eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (e.g., population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by other organizations or agencies, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society (AFS), or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other federal or state statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do ''not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act'' because NatureServe assessments ''have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide'' (*http://www.natureserve.org/prodServices/statusAssessment.jsp*). Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon, in light of the standards on extinction risk and impacts or threats discussed above.

Speckled Hind Species Description

The speckled hind is a moderately large member of the sea bass or serranid family found in the Atlantic Ocean. Speckled hind inhabit deep-water reefs along the Atlantic coast of the southeast United States from North Carolina, to the Florida Keys, in the waters around Bermuda, and in the northern and eastern Gulf of Mexico (Chuen and Huntsman, 2006). Speckled hind are a deep-water grouper with adults inhabiting offshore rocky ledges and sea mounts in depths of 25–400 m, but most commonly found in waters between 60 and 120 m.

Speckled hind are slow growing, protogynous hermaphrodites (i.e., spawning as a female, then later changing sex and spawning as a male), that reach a maximum size of 43 inches (1,096 mm) total length (TL), and a maximum age of at least 25 years (Matheson and Huntsman 1984). Females mature at 4 to 5 years of age and 18–24 inches (457–610 mm) in length, and transition to males at 7 to 14 years of age (Chuen and Huntsman 2006). Speckled hind form large spawning aggregations from May to October in specific areas throughout their range.

Analysis of the Petition

We evaluated whether the petition presented the information indicated in 50 CFR 424.14(b)(2). The petition states the administrative measures recommended, and provides the scientific and common name of the species. The petition includes a detailed narrative justification for the recommended measure, including some information on numbers of the species, historical geographic occurrences of the species, and threats faced by the species. The petition provides some information relevant to the status of the species. The petition includes supporting references and documentation. Speckled hind is taxonomically a species and thus is an eligible entity for listing under the ESA. The petition states that speckled hind are imperiled and that the primary threat contributing to the speckled hind's endangerment is overfishing, whether intentionally or as bycatch. The petitioner also asserts that the species' biological constraints, such as its reproductive traits (spawning aggregations) and its preferred habitat depth, increase its risk of extinction. The petition states that at least four of the five causal factors in section 4(a)(1) of the ESA are, in combination, adversely affecting the continued existence of speckled hind: (A) Present

or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial and recreational purposes; (D) inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors, including life history characteristics. The petition also requests an inquiry into the validity of a distinct population segment (DPS) for speckled hind.

Information on Extinction Risk and Status

The petition cites classifications made by NMFS, the International Union for Conservation of Nature (IUCN), the American Fisheries Society (AFS), and NatureServe to support its assertion that the speckled hind is imperiled. In 1997, NMFS added speckled hind to its Candidate Species list. At that time, a Candidate Species was defined as any species being considered by the Secretary of Commerce (Secretary) for listing as an endangered or a threatened species, but not yet the subject of a proposed rule (49 FR 38900; October 1, 1984). In 2004, NMFS created the Species of Concern list (69 FR 19975; April 15, 2004) to encompass species for which we have some concerns regarding their status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA. Twenty-five Candidate Species, including speckled hind, were transferred to the Species of Concern list at that time because they were not being considered for ESA listing and were better suited for Species of Concern status due to some concerns and uncertainty regarding their biological status and threats. The Species of Concern status does not carry any procedural or substantive protections under the ESA. Our rationale for including speckled hind on the Species of Concern list included an unknown population size with information that suggested a decline in mean size, mean age, and percentage of males in the South Atlantic.

The IUCN listed speckled hind as critically endangered in 2006, a status assigned to species facing an extremely high risk of extinction in the wild, based on: ''considerable concern about its present and future status given that management action may be too little and not effective,'' and ''Declines in the recent past have been extreme, fishing effort is not known, and there is concern that much other fishing effort is moving offshore and will increasingly impact this species.'' The IUCN explained the critically endangered status for speckled hind instead of a lower status was justified in part because: (a) There was no good evidence of a change in condition since the last assessment was conducted; (b) the species continues to be taken as bycatch and is not protected from this by current regulations; (c) a precautionary approach is being taken; and (d) the species has a suite of life history characteristics that are often associated with higher extinction risk.

The AFS developed its extinction risk criteria for marine fishes in part as a reaction to IUCN's criteria (Musick, 1999). The AFS (Musick *et al.,* 2000) classified speckled hind in the United States as ''endangered,'' which they define as a species with a ''high risk of extinction in the wild in the immediate future (years),'' and states the species is in a ''steady and drastic decline in abundance, [and] males [are] rare (G. R. Huntsman, pers. observ.).'' Finally, the AFS states speckled hind is particularly vulnerable ''to commercial and recreational overfishing (Huntsman et al. 1999).''

NatureServe's vulnerable classification is given to species that are ''at moderate risk of extinction or elimination due to a restricted range, relatively few populations, recent and widespread declines, or other factors.'' NatureServe specifically describes the range and imperilment of speckled hind as: ''range-wide population is not known; the number of occurrences is not known, but may be limited due to intense fishing throughout at least much of the U.S. western Atlantic; absent, disappearing, or becoming increasingly rare throughout range; considered extremely threatened by recreational and commercial fishing throughout most of range,'' as reasons for its vulnerable classification of speckled hind.

While the cited classifications, including our own Species of Concern listing include a discussion of extinction risk for speckled hind, these risks are largely based on data for the South Atlantic portion of the species' range. Identified risks to the species in the South Atlantic include a decline in mean size and mean age in the recent past, and a low percentage of males within the population. Additional information in our files shows that changes in life history (e.g., earlier maturity) of the species may be due to continued over-exploitation in the South Atlantic region and low reproductive resilience due to diminished reproductive capacity (Ziskin, 2008). All of this information applies to the South Atlantic only. Similar evidence of extinction risk for speckled hind in the Gulf of Mexico was not presented in the petition and does not exist in our files.

The petition describes demographic factors specific to speckled hind that could be indicative of its extinction risk. These include a declining population trend with declines in mean size, mean age, and percentage of males. The petition also asserts that the species' low resilience to fishing and its minimum population doubling time are contributing to the species' extinction risk, and information to support this contention is provided.

Population decline can result in extinction risk that is cause for concern in certain circumstances, for instance if the decline is rapid and/or below a critical minimum population threshold and the species has low resilience for recovery from a decline (Musick, 1999). The petition states that fishing has likely resulted in a population decline of speckled hind, and uses commercial landings and recreational catch data from the South Atlantic to document the decline. The petition does not present landings or length data from the Gulf of Mexico.

The lack of data from the Gulf of Mexico is problematic when determining the status of the speckled hind population in the Southeast United States. The speckled hind population in the Southeast United States is thought to be one continuous population extending from the Gulf of Mexico around the Straits of Florida and into the South Atlantic. While there are spawning aggregations and a reproductively active population in the South Atlantic, the South Atlantic also receives a considerable influx of recruits that originated in the Gulf of Mexico and were transported to the South Atlantic region via the Straits of Florida and the Gulf Stream.

In the Gulf of Mexico, data in our files show that landings have been fairly steady with a slight increase from 1991 through 2009 (Southeast Fisheries Science Center (SEFSC) Annual Catch Limit (ACL) dataset, 2011). During this period, landings averaged approximately 61,000 pounds with a low of 25,000 pounds in 1993 and a high of 103,000 pounds in 2004. Additionally, trip intercept program (TIP) data show a slightly increasing trend in mean length for the species in the Gulf of Mexico (SEFSC TIP dataset, 2011). From 1984 to 2011, average mean length of fish sampled from the Gulf of Mexico was 57 cm with a low of 48 cm in 1994 and a high of 65.2 cm in 1997. These data suggest the speckled hind population in the Gulf of Mexico is more stable than in the South Atlantic.

The fisheries data described in the petition include a decline in speckled hind landings in the southeastern

United States from 1986 to 1995 (Parker and Mays, 1998; reproduced in NMFS, 2010), reductions in average size and age in the South Atlantic, and conclusions from a study documenting that speckled hind were caught in North Carolina in the 1970s but not in 2005–2006 (Rudershausen *et al.,* 2008). Information in our files includes a number of reports, mostly associated with our fishery management actions under Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), noting a similar decline in catch of speckled hind in the South Atlantic from 1986 to 2009. The characterization of the IUCN assessment, as well as the landings data in the petition, however, includes a misunderstanding or misrepresentation of landings data. The 1986 to 1995 time series data in Parker and Mays (1998) and in the IUCN assessment refer only to the area between Cape Hatteras, North Carolina and Key West, Florida. For purposes of NMFS' fishery management, this area is within the ''South Atlantic'' region. Within the South Atlantic, there has been a one-fish-per-vessel trip restriction since 1994. While the petition references classifications and conclusions that are based on declines in landings, these references do not acknowledge the regulatory mechanisms that led to this perceived decline in the landings and do not acknowledge a major portion of the landings in the Southeast that come from the Gulf of Mexico. Landings in the South Atlantic in 1993 were approximately 20,270 pounds, but in 1994 (the first year of the one fish per vessel limit) declined to approximately 10,042 pounds, and from 1995–2009 averaged approximately 5,240 pounds (SEFSC ACL dataset, 2011 [1]), indicating the one fish per trip regulation was effective in decreasing harvest of speckled hind in the South Atlantic. Fish not retained are not considered when calculating landings, and discarded catch is often not reported or is under-reported. Thus, the decline in landings for speckled hind reflects the regulations affecting the retention of the species by fishermen and not an actual population trend.

The petition states that with ''millions of licensed fisherpeople in the southeastern United States and Gulf, and the numerous trips these fishers are likely to make during a given season, the vessel limit does little to actually protect this species.'' Although fishers may take numerous trips in a year, those actually targeting speckled hind are extremely rare. For example, from 2005–2010, only 0.0009 percent of recreational trips in the Gulf of Mexico and South Atlantic targeted speckled hind (Marine Recreational Fishing Statistical Survey (MRFSS)). Additionally, the South Atlantic Fishery Management Council (SAFMC) has prohibited the possession of speckled hind entirely since January 31, 2011, eliminating their retention as a target species. While rarely targeted, speckled hind are captured as bycatch when fishermen target other species. Thus, bycatch was a causative agent in the apparent decline of the population in the South Atlantic (Ziskin 2008). However, the SAFMC recognized the potential impacts of bycatch in the South Atlantic and in 2009 created 8 marine protected areas (MPAs) where fishing is prohibited. This was designed to protect vulnerable deep-water species, such as speckled hind. An additional management measure, the closure of fishing for species in the snapper-grouper complex in waters greater than 240 feet, was also initially implemented to curtail bycatch of speckled hind. After further analysis, it has become apparent that the closure provided no benefit to speckled hind because the species is not present in waters greater than 240 ft. Therefore, the SAFMC has proposed an action to rescind the closure of waters greater than 240 feet to fishing for species in the snapper-grouper complex. (The proposed rule for rescinding the closure may be found in the **Federal Register** at 76 FR 78879; December 20, 2011; the final rule is currently under review).

We conclude that the petition and information in our files on demographic factors of speckled hind do not present substantial information to indicate the species may be facing an extinction risk level that is cause for concern.

Distinct Population Segment

The petition requested an inquiry into the validity of a DPS for speckled hind. A DPS is a vertebrate population or group of populations that is discrete from other populations of the species and significant in relation to the entire species. The ESA provides for listing distinct population segments of vertebrate species, such as speckled hind. The petition, however, fails to present any information or rationale for considering DPSs of speckled hind. Additionally, no information exists in our files that would indicate speckled hind populations meet the criteria for identification as DPSs pursuant to the DPS Policy. Available information suggests the population of speckled hind is a continuous population from the Gulf of Mexico, through the Straits of Florida, and into the South Atlantic. Thus, listing speckled hind as distinct populations is not warranted

Information on Threats to the Species

We next evaluated whether the information in the petition and information in our files concerning the extent and severity of one or more of the ESA section 4(a)(1) factors suggest these impacts and threats may be posing a risk of extinction for speckled hind that is cause for concern.

Present and Threatened Destruction, Modification, or Curtailment of Habitat or Range

The petition states ''habitat loss and degradation is a very real threat to these species, ranging from declining coral reef ecosystems to the devastating impacts of the Deepwater Horizon oil spill.'' In support, the petition cites peer-reviewed scientific literature that assesses a number of coral stressors, including coral bleaching, disease, tropical storms, coastal development and pollution, overfishing, ship groundings, and offshore oil and gas exploration and development. While NMFS acknowledges these stressors are leading to the destruction of coral reefs, we do not believe this is having as great an impact on speckled hind as on other more reef-reliant serranids. While the species' distribution does include geographic areas where coral reefs occur, speckled hind inhabit offshore rocky ledges and sea mounts typically in waters 60–120 m deep and are not generally associated with shallower coral reefs. Therefore, these deep-water reefs where speckled hind occur are not susceptible to the myriad of habitat stressors and degraders as their near-shore counterparts.

The petition also cites the species' range overlap with the ''rampant and escalating off-shore oil drilling'' activities. The petition states the recent Deepwater Horizon oil spill highlights the dangers of these activities and the susceptibility of the species to effects from them. Impacts ranging from direct uptake through the gills to oil persistence after a spill are sighted as ''imminent habitat destruction.'' However, no reference is made to how these generalized threats would specifically impact speckled hind, or how the Deepwater Horizon oil spill impacted the speckled hind population or habitat. Additionally, landings data in the Gulf of Mexico indicate no recent change over historic averages for

[1] The landings data for 1986–1995 presented here differ slightly from those on the NMFS Species of Concern fact sheet for speckled hind; an error in our fact sheet was detected by the SEFSC during review of this petition. Correct landings data are presented here.

speckled hind, despite oil and gas activity there.

In summary, the petition and information in our files do not comprise substantial information indicating that the present and threatened destruction, modification, or curtailment of habitat or range may have been, or may continue to be, causing extinction risk of concern for speckled hind.

Overutilization for Commercial and Recreational Purposes

The petition states the ''primary threat to these grouper species is overfishing, both commercially and recreationally. Their slow rate of maturation and growth, large size, and aggregation at specific times and sites for spawning, combined with their high commercial value and value as trophy fish, make them particularly susceptible to depletion from fishers.'' The petition also cites the NMFS (2010) classification of speckled hind as overfished. The most recent Report to Congress on the Status of U.S. Fisheries (NMFS, 2008, 2009) lists speckled hind under SAFMC jurisdiction as undergoing overfishing while the overfished status is unknown; the species' status in the Gulf of Mexico is unknown. A species undergoing overfishing is one where the current fishing mortality exceeds an identified mortality threshold, while an overfished species is one where the current biomass falls short of an identified stock threshold; typically, overfishing leads to a stock becoming overfished. These MSFCMA classifications do not necessarily indicate that a species may warrant listing as a threatened or endangered species, because these classifications do not have any per se relationship to a species' extinction risk. For example, our 2007 status review for the Atlantic white marlin (73 FR 843, January 4, 2008; *http://sero.nmfs.noaa.gov/pr/endangered%20species/pdf/2007_Atlantic_white_marlin_status_%20review.pdf*) explained in detail important distinctions between the terms ''overfished'' from the MSFCMA context, and ''overutilization'' as used in the ESA context. While a stock can be exploited to the point of diminishing returns where the objective is to sustain a harvest of the species, that over-exploitation in and of itself does not imply a continuing downward spiral for a population. A population may equilibrate at an abundance lower than that which would support a desired harvest level, but can still be stable at that level if fishing effort is stable. Additionally, the SAFMC and NMFS have attempted to reduce the fishing mortality with the implementation in 2009 of 8 MPAs designed to protect deep-water species and the 2011 prohibition on harvest of speckled hind.

The petition also expresses concern over potential bycatch mortality. The MSFCMA defines bycatch to mean fish harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards; it does not include fish released alive under a recreational catch and release fishery management program. Release mortality rates for the commercial and recreational speckled hind fisheries are not available, but bycatch mortality, including post-release mortality, is a potential concern for deep-water species due to the likelihood of barotrauma (i.e., injury resulting from expansion of gasses in internal spaces as ambient pressure is reduced during ascent). The SAFMC has noted that under the existing discard logbook program, discards are self reported and involve a high degree of uncertainty. However, it is also suspected that the incidental bycatch of speckled hind may have been responsible for the overfishing of the species. As evidence of this, fishing mortality of speckled hind actually increased despite the 1994 SAFMC one-fish-per-vessel trip limit (Ziskin, 2008). However, management actions implemented in 2009 and 2011 were intended to: (1) Eliminate the overutilization of the species by implementing MPAs intended to protect deep-water species from bycatch mortality (thus reducing fishing mortality associated with bycatch and the one fish per vessel limit) and (2) prohibit all retention of speckled hind, respectively. These management actions make the information presented in the petition incorrect and irrelevant as susceptibility to bycatch has been addressed through these management actions.

In summary, the petition and information in our files comprises substantial information indicating that overutilization may have occurred in the past in the South Atlantic; however, regulations have been implemented in the South Atlantic to address overutilization concerns, and additional measures have been developed and can be quickly implemented through the MSFCMA and Council to provide further protection for speckled hind if it becomes apparent such measures are needed. The petition did not present information on the Gulf of Mexico fishery, and fishery information in our files suggests that the speckled hind population is stable and harvest levels are sustainable. Current, average landings from the Gulf of Mexico are larger than the maximum reported landings from the South Atlantic.

Inadequacy of Existing Regulatory Mechanisms

The petition states that existing regulatory mechanisms are inadequate to prevent endangerment or extinction of speckled hind, focusing on federal fishing regulations. Specifically, the petition identifies the inadequacy of the one-fish-per-vessel limit for all fishers in the South Atlantic and fishers in the Gulf of Mexico recreational fishery, and the lack of an annual catch limit for the Gulf of Mexico commercial fishery. The petition also cites the management of the fishery itself as posing a threat to the species. Citing the IUCN (2010), the petition states:

> the *management* of fishing is itself posing a threat to these species of grouper: An immediate threat to [these] species is related to management of the commercial bottom long-lined [sic] fishery of the southeastern [United States]. The management trend has been to restrict such indiscriminate gear to deeper waters. If this management trend continues, [these grouper] and other deep water species like [them] will experience an even greater impact than they do now because barotrauma (expansion of enclosed gases in the swim bladder-embolism) results in hemorrhage and eventual death as these deepwater fish are brought to the surface (Coleman and Williams 2002; Coleman *et al.* 2004; *See also* Sadovy & Eklund 1999). There is also a trend for the recreational fishery to operate in deeper water as shallow stocks become depleted. Even though there is a daily bag limit for groupers, there are so many recreational fishermen (over 1 million in Florida alone) that the potential impact on [these already depleted populations] is serious.

In federal waters of the Gulf of Mexico, speckled hind is managed by the Gulf of Mexico Fishery Management Council (GMFMC) through their Reef Fish Fishery Management Plan (FMP). In 1990, Amendment 1 to the FMP established a 1.8 million pound (816 mt) commercial quota for deep-water groupers, which includes misty, snowy, yellowedge, speckled hind, and warsaw grouper, and also includes scamp after the shallow-water grouper quota is filled. Since 2004, the deep-water grouper commercial quota has been set at 1.02 million pounds (463 mt) with no size limit. Available species-specific commercial landings reveal the Gulf of Mexico fishery has only exceeded 0.1 million pounds (45 mt) of speckled hind once. Amendment 16B to the FMP, implemented on November 24, 1999, established a one-fish-per-vessel recreational bag limit for speckled hind, and a prohibition on sale of speckled

hind when caught recreationally. Additionally, the GMFMC's objective for a lack of a minimum size in the Gulf of Mexico is to minimize regulatory discards and curb bycatch mortality of this deep-water grouper species (GMFMC, 1999). Allowing fishermen to retain speckled hind that may otherwise become regulatory discards due to size prevents these fish from being thrown back dead due to barotrauma and also excluded from landings statistics. Hence, with respect to the Gulf of Mexico, the Petitioner is incorrect in its assertion that fishery management measures are posing a threat to the species.

In federal waters of the U.S. South Atlantic, speckled hind is managed by the SAFMC through their Snapper-Grouper FMP. Amendment 6 to the Snapper-Grouper FMP, effective on July 27, 1994, included a one-fish-per-vessel, per trip, commercial and recreational possession limit for speckled hind; a prohibition on the sale of speckled hind; and established the *Oculina* Experimental Closed Area, which prohibited fishing for all snapper-grouper species within this area (59 FR 27242; May 26, 1994). Since the implementation of Amendment 6 in 1994, sale of speckled hind has been prohibited; however, commercial vessels were allowed to retain one speckled hind per vessel. Landings of speckled hind on commercial vessels under this prohibition have annually averaged approximately 5,240 pounds (2.4 mt) through 2009. Prior to this action, commercial landings averaged approximately 21,605 pounds (9.8 mt) during the previous 9-year time frame, 1986 through 1994. In January 2011, the SAFMC prohibited all landings of speckled hind, thus no commercial or recreational landings are expected in the future.

The petition, its references, and numerous sources state that establishment of large marine protected areas is likely to be the most effective measure for protection and conservation of speckled hind. Studies have found larger and more abundant grouper in closed areas than in similar, unprotected areas (Sedberry *et al.,* 1999). The petition does not acknowledge that Federal fishery management of speckled hind has involved the use of protected areas since the early 1990s. As discussed above, the *Oculina* Banks, a unique deep-water coral reef ecosystem off the South Atlantic coast of the United States, was protected beginning in 1994, specifically to facilitate rebuilding of deep-water grouper stocks. Amendment 13A to the South Atlantic snapper-grouper FMP, effective on April 26, 2004, extended the prohibition on fishing for or possessing snapper-grouper species within the *Oculina* Experimental Closed Area for an indefinite period (69 FR 15731). On February 12, 2009, Amendment 14 to the South Atlantic snapper-grouper FMP established eight marine protected areas in which fishing for or possession of South Atlantic snapper-grouper species is prohibited (74 FR 1621). Additionally, Amendment 17B to the South Atlantic snapper-grouper FMP prohibited harvest and possession of speckled hind. Similarly, the GMFMC established several large closed areas in the Gulf of Mexico, including the Steamboat Lump and Madison and Swanson marine reserves. Ziskin (2008) stated that the one fish bag limit (in the South Atlantic) seemed insufficient to halt the over-exploitation of the species and that a new management strategy may be necessary to improve the status of the population. Given the SAFMC measures implementing 8 MPAs protecting deep water species in 2009 and the recent (January 2011) ban on any harvest of speckled hind, it appears that the SAFMC has heeded this call. Further, through the MSFCMA and Council process management measures have been and can be implemented quickly to protect speckled hind if such measures are found to be necessary.

In summary, the petition and information in our files indicates that existing regulatory mechanisms are adequate to prevent endangerment for speckled hind. The first regulatory mechanisms to address problems with speckled hind focused on targeted catch of the species. When it was understood that targeted reductions (i.e., a 1-fish per vessel limit) were not enough because of bycatch, new regulatory mechanisms were developed to eliminate any harvest (i.e., zero bag limit) and protect the species from bycatch (i.e., MPA's). Additionally, regulatory mechanisms appear to be flexible in response to information about the population, and thus are not posing an extinction risk for speckled hind.

Other Natural or Manmade Factors

The petition and several referenced studies state that speckled hind are vulnerable to increased risk of extinction, particularly from fishing pressure, due to biological constraints, including its large size, slow growth and maturity rates, susceptibility to barotrauma, lack of population increase, slow population doubling rates, protogynous hermaphroditism, and formation of spawning aggregations that can be easily targeted by fishermen. However, concerns about the inherent vulnerability of deep-water grouper species have been taken into account and have been a recurring justification for Federal fishery management actions implemented under the MSFCMA.

The petition also lists potential small population size of adult speckled hind and human population growth as other natural or manmade factors contributing to speckled hind's vulnerability, but does not provide any supporting information to indicate these generalized concerns are actually negatively affecting speckled hind.

In summary, the petition and information in our files do not present substantial information to suggest that other natural or manmade factors, alone or in combination with other factors such as fishing pressure, may be causing extinction risk of concern in speckled hind.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, we conclude the petition does not present substantial scientific or commercial information indicating the petitioned action may be warranted.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 25, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–10498 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA840

Marine Mammals; File No. 16479

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that The Pacific Whale Foundation [Responsible Party: Gregory Kaufman], 300 Maalaea Road, Suite 211, Wailuku, HI 96793, has requested a change in Principal Investigator to their pending permit application.

DATES: Written, telefaxed, or email comments must be received on or before May 31, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16479 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm. 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

Written comments on these applications should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Joselyd Garcia-Reyes, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

On November 23, 2011, a notice was published in the **Federal Register** (76 FR 72389) that a request for a permit to conduct research on marine mammals had been submitted by the above-named applicant. The Pacific Whale Foundation proposes to conduct vessel based research on humpback whales in Maui County waters, Hawaii to quantify the potential for near misses between vessels and humpback whales, and define the probability of 'surprise encounters' with humpback whales in relation to time of day, environmental variables, vessel behavior, whale abundance, and individual sex and age classes. Up to 567 humpback whales may be approached annually for photo-identification and behavioral observation and all Hawaiian insular false killer whales (*Pseudorca crassidens*) may be incidentally harassed by the research activities.

Under the pending permit application, The Pacific Whale Foundation is requesting a change in Principal Investigator (PI) due to personnel changes within their organization. They request to have Gregory Kaufman be designated as the new PI. No other changes to the permit application are requested.

Dated: April 25, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–10492 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB063

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Northwest Pacific Ocean, March Through May, 2012

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulation, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Lamont-Doherty Earth Observatory (L–DEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting a marine geophysical (seismic) survey in the northwest Pacific Ocean, March through May, 2012.

DATES: Effective March 24 through May 7, 2012.

ADDRESSES: An electronic copy of the IHA and application containing a list of the references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The following associated documents are also available at the same internet address: The National Science Foundation's (NSF) draft Environmental Analysis (EA) pursuant to Executive Order 12114. The EA incorporates an ''Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Northwest Pacific Ocean, March–April, 2012,'' prepared by LGL Limited, on behalf of NSF; and a finding of no significant impact (FONSI) prepared by the NSF. NMFS prepared its own EA and FONSI, which is available at the same Internet address.. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

The NMFS Biological Opinion will be available online at: *http://www.nmfs.noaa.gov/pr/consultation/opinions.htm.*

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protect Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined ''negligible impact'' as ''* * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization. NMFS must publish a notice in the **Federal Register** within 30 days of its determination to issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on October 31, 2011, from L–DEO for the taking by harassment, of marine mammals, incidental to conducting a marine geophysical survey in the northwest Pacific Ocean in international waters. Upon receipt of additional information, NMFS determined the application complete and adequate on December 23, 2011. NMFS made the complete application available for public comment (see **ADDRESSES**) for this IHA.

L–DEO, with research funding from the U.S. National Science Foundation (NSF), plans to conduct the survey from March 24, 2012, through April 16, 2012. Some minor deviation from these dates is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard. Therefore, the authorization is effective from March 24, 2012 to May 7, 2012.

L–DEO received an IHA in 2010 to conduct the same specified activity in the same location. However, due to medical emergencies, L–DEO suspended its operations and was unable to complete the seismic survey. Thus, this 2012 survey will allow L–DEO to acquire data necessary to complete the abbreviated 2010 study.

L–DEO plans to use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*), a seismic airgun array, and a single hydrophone streamer to conduct a geophysical survey at the Shatsky Rise, a large igneous plateau in the northwest Pacific Ocean. The survey will provide data necessary to decipher the crustal structure of the Shatsky Rise; may address major questions of earth history, geodynamics, and tectonics; could impact the understanding of terrestrial magmatism and mantle convection; and may obtain data that could be used to improve estimates of regional earthquake occurrence and distribution. In addition to the operations of the seismic airgun array and hydrophone streamer, L–DEO intends to operate a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) continuously throughout the survey.

L–DEO, the *Langseth's* operator, will conduct all planned seismic data acquisition activities, with on-board assistance by the scientists who will conduct the study. The scientific team for this survey consists of Drs. Jun Korenaga (Yale University, New Haven, CT) and William Sager (Texas A&M University, College Station, TX).

NMFS expects that acoustic stimuli resulting from the operation of the single airgun or the 36-airgun array has the potential to harass marine mammals, incidental to the conduct of the seismic survey. NMFS expects these disturbances to be temporary and result in a temporary modification in behavior and/or low-level physiological effects (Level B harassment only) of small numbers of certain species of marine mammals.

NMFS does not expect that the movement of the Langseth, during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (4.6 knots (kts); 8.5 kilometers per hour (km/h); 5.3 miles per hour (mph)) during seismic acquisition.

NMFS outlined the purpose of the program in a previous notice for the proposed IHA (77 FR 4765, January 31, 2012). The activities to be conducted have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including vessel and acoustic source specifications, the reader should refer to the notice of the proposed IHA (77 FR 4765, January 31, 2012), the application, and associated documents referenced above this section.

Description of the Specified Geographic Region

L–DEO will conduct the survey in international waters in the northwest Pacific Ocean. The study area will encompass an area on the Shatsky Rise bounded by approximately 33.5–36 degrees (°) North by 156–161° East. Water depths in the survey area range from approximately 3,000 to 5,000 meters (m) (1.9 to 3.1 mi).

Comments and Responses

NMFS published a notice of receipt of the L–DEO application and proposed IHA in the **Federal Register** on January 31, 2012 (77 FR 4765). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) only. The Commission's comments are online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are their comments and NMFS' responses.

Comment 1: The Commission recommends that, before issuing the requested IHA, NMFS require L–DEO to re-estimate the proposed exclusion zones (EZ) and buffer zones and associated takes of marine mammals using site-specific information—if the EZs and buffer zones and numbers of takes are not re-estimated, require L–DEO to provide a detailed justification: (1) For basing the EZs and buffer zones for the proposed survey in the northwest Pacific Ocean on empirical data collected in the Gulf of Mexico (GOM) or on modeling that relies on measurements from the GOM; and (2) that explains why simple ratios were used to adjust for tow depth.

Response: The *Langseth* will conduct the survey in water depths where site-specific source signature requirements are neither warranted nor practical. Site signature measurements are normally

conducted commercially by shooting a test pattern over an ocean bottom instrument in shallow water. This method is neither practical nor valid in water depths as great as 3,000 meters (m) (9,842.5 feet (ft)). The alternative method of conducting site-specific attenuation measurements would require a second vessel, which is impractical both logistically and financially. Sound propagation varies noticeably less between deep water sites than between shallow water sites (because of the reduced signature of bottom interaction), thus decreasing the importance of site-specific estimates.

Based on these reasons, and the information provided by L–DEO in their application and environmental analysis, NMFS is satisfied that the data supplied are sufficient for NMFS to conduct its analysis and support its determinations and therefore no further effort is needed by the applicant. While exposures of marine mammals to acoustic stimuli are difficult to estimate, NMFS is confident that the levels of take provided by L–DEO in their IHA application and EA, and authorized herein are estimated based upon the best available scientific information and estimation methodology. The 160-decibel (dB) zone used to estimate exposure is appropriate and sufficient for purposes of supporting NMFS' analysis and determinations required under section 101(a)(5)(D) of the MMPA and its implementing regulations.

Appendix A in the environmental analysis includes information from the calibration study conducted on the *Langseth* in 2007 and 2008. This information is available in the EA on NSF's Web site at *http://www.nsf.gov/geo/oce/envcomp/index.jsp.* Appendix A describes the modeling process and compares the model results with results of the 2007 to 2008 *Langseth* calibration experiment in shallow, intermediate, and deep water. The conclusions identified in Appendix A show that the model represents the actual produced levels, particularly within the first few kilometers, where the predicted EZs (*i.e.,* safety radii) lie. At greater distances, local oceanographic variations begin to take effect, and the model tends to over predict. Further, since the modeling matches the observed measurement data, the authors have concluded that the models can continue to be used for defining EZs, including for predicting mitigation radii for various tow depths. The data results from the studies were peer reviewed, and calibration results, although viewed as conservative, were used to determine the cruise-specific EZs.

At present, the L–DEO model does not account for site-specific environmental conditions. The calibration study of the L–DEO model predicted that using site-specific information may actually provide less conservative EZ radii at greater distances. The Final Programmatic Environmental Impact Statement for Marine Seismic Research Funded by the National Science Foundation or Conducted by the U.S. Geological Survey prepared pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) did incorporate various site-specific environmental conditions in the modeling of the Detailed Analysis Areas.

The IHA issued to L–DEO, under section 101(a)(5)(D) of the MMPA provides monitoring and mitigation requirements that will protect marine mammals from injury, serious injury, or mortality. L–DEO is required to comply with the IHA's requirements. These analyses are supported by extensive scientific research and data. NMFS is confident in the peer-reviewed results of the L–DEO scientific calibration studies which, although viewed as conservative, are used to determine cruise-specific EZs and which factor into exposure estimates. NMFS determined that these reviews are the best scientific data available for review of the IHA application and to support the necessary analyses and determinations under the MMPA, Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) and NEPA.

Based on NMFS' analysis of the likely effects of the specified activity on marine mammals and their habitat, NMFS has determined that the EZs identified in the IHA are appropriate for the survey and that additional field measurement is not necessary at this time. While exposures of marine mammals to acoustic stimuli are difficult to estimate, NMFS is confident that the levels of take authorized have been estimated based upon the best scientific information and estimation methodology. The 160-dB zone used to estimate exposure is appropriate and sufficient for purposes of supporting NMFS' analysis and determinations required under section 101(a)(5)(D) of the MMPA and its implementing regulations.

Comment 2: The Commission recommends that, before issuing the requested IHA, NMFS use species-specific maximum densities (*i.e.,* estimated by multiplying the existing density estimates by a precautionary correction factor) and then re-estimate the anticipated number of takes.

Response: For purposes of this IHA, NMFS is using the best (*i.e.,* average or mean) densities to estimate the number of authorized takes for L–DEO's seismic survey in the northwestern Pacific Ocean as NMFS is confident in the assumptions and calculations used to estimate density for this survey area. NMFS makes a decision on whether to use maximum or best densities on a case-by-case basis, depending on the nature and robustness of existing data. NMFS has used best densities to estimate the number of incidental takes in IHAs for several seismic surveys in the past. The results of the associated monitoring reports show that the use of the best estimates is appropriate for and does not refute NMFS' determinations.

Comment 3: The Commission recommends that, before issuing the requested IHA, NMFS condition the authorization to prohibit the use of a shortened pause before ramping-up after a power-down or shut-down of the airguns based on the presence of a marine mammal in the EZ and the *Langseth's* movement (speed and direction).

Response: The IHA specifies the conditions under which the *Langseth* will resume full-power operations of the airguns. During periods of active seismic operations, there are occasions when the airguns need to be temporarily shut-down (*e.g.,* due to equipment failure, maintenance, or shut-down) or when a power-down is necessary (*e.g.,* when a marine mammal is seen to either enter or about to enter the EZ). In these instances, should the airguns be inactive or powered-down for more than eight minutes, then L–DEO would follow the ramp-up procedures identified in the ''Mitigation'' section (discussed later in this document) where airguns will be re-started beginning with the smallest airgun in the array and increase in steps not to exceed 6 dB per 5 minutes over a total duration of approximately 30 minutes. NMFS and NSF believe that the 8-minute period in question is an appropriate minimum amount of time to pass after which a ramp-up process should be followed. In these instances, should it be possible for L–DEO to reactivate the airguns without exceeding the 8-minute period (*e.g.,* equipment is fixed or a marine mammal is visually observed to have left the EZ for the full source level), then L–DEO would reactivate the airguns to the full operating source level identified for the survey (in this case, 6,600 in^3) without need for initiating ramp-up procedures. In the event a marine mammal enters the EZ and L–DEO initiates a power-down, and the protected species observers do not visually observe the marine mammal leaving the EZ, then L–DEO must wait 15 minutes (for

species with shorter dive durations—small odontocetes and pinnipeds) or 30 minutes (for species with longer dive durations—mysticetes and large odontocetes) after the last sighting before initiating a 30-minute ramp-up. However, ramp-up will not occur as long as a marine mammal is detected within the EZ, which provides more time for animals to leave the EZ, and accounts for the position, swim speed, and heading of marine mammals within the EZ.

Comment 4: The Commission recommends that, before issuing the requested IHA, NMFS extend the 30-minute period following a marine mammal sighting in the EZ to cover the maximum dive times of all species likely to be encountered.

Response: NMFS recognizes that several species of deep-diving cetaceans are capable of remaining underwater for more than 30 minutes (*e.g.,* sperm whales and several species of beaked whales); however, for the following reasons NMFS believes that 30 minutes is an adequate length for the monitoring period prior to the ramp-up of airguns:

(1) Because the *Langseth* is required to monitor before ramp-up of the airgun array, the time of monitoring prior to the start-up of any but the smallest array is effectively longer than 30 minutes (ramp-up will begin with the smallest airgun in the array and airguns will be added in sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per 5-minute period over a total duration of about 30 minutes;

(2) In many cases PSVOs are observing during times when L–DEO is not operating the seismic airguns and would observe the area prior to the 30-minute observation period;

(3) The majority of the species that may be exposed do not stay underwater more than 30 minutes; and

(4) All else being equal and if deep-diving individuals happened to be in the area in the short time immediately prior to the pre-ramp-up monitoring, if an animal's maximum underwater dive time is 45 minutes, then there is only a one in three chance that the last random surfacing would occur prior to the beginning of the required 30-minute monitoring period and that the animal would not be seen during that 30-minute period.

Finally, seismic vessels are moving continuously (because of the long, towed array and streamer) and NMFS believes that unless the animal submerges and follows at the speed of the vessel (highly unlikely, especially when considering that a significant part of their movement is vertical [deep-diving]), the vessel will be far beyond the length of the EZ within 30 minutes, and therefore it will be safe to start the airguns again.

Under the MMPA, incidental take authorizations must include means of effecting the least practicable impact on marine mammal species and their habitat. Monitoring and mitigation measures are designed to comply with this requirement. The effectiveness of monitoring is science-based, and monitoring and mitigation measures must be ''practicable.'' NMFS believes that the framework for visual monitoring will: (1) Be effective at spotting almost all species for which take is requested; and (2) that imposing additional requirements, such as those suggested by the Commission, would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the EZs and thus further minimize the potential for take.

Comment 5: The Commission recommends that, before issuing the requested IHA, NMFS provide additional justification for its preliminary determination that the proposed monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified EZs and buffer zones, including:

(1) Identifying those species that it believes can be detected with a high degree of confidence using visual monitoring only;

(2) Describing detection probability as a function of distance from the vessel;

(3) Describing changes in detection probability under various sea state and weather conditions and light levels; and

(4) Explaining how close to the vessel marine mammals must be for Protected Species Visual Observers (PSVOs) to achieve high nighttime detection rates.

Response: NMFS believes that the planned monitoring program will be sufficient to detect (using visual monitoring and passive acoustic monitoring (PAM)), with reasonable certainty, marine mammals within or entering identified EZs. This monitoring, along with the required mitigation measures, will result in the least practicable adverse impact on the affected species or stocks and will result in a negligible impact on the affected species or stocks of marine mammals. Also, NMFS expects some animals to avoid areas around the airgun array ensonified at the level of the EZ.

NMFS acknowledges that the detection probability for certain species of marine mammal varies depending on the animal's size and behavior, as well as sea state and weather conditions and light levels. The detectability of marine mammals likely decreases in low light (*i.e.,* darkness), higher Beaufort sea states and wind conditions, and poor weather (*e.g.,* fog and/or rain). However, at present, NMFS views the combination of visual monitoring and PAM as the most effective monitoring and mitigation techniques available for detecting marine mammals within or entering the EZ. The final monitoring and mitigation measures are the most effective feasible measures and NMFS is not aware of any additional measures which could meaningfully increase the likelihood of detecting marine mammals in and around the EZ. Further, public comment has not revealed any additional monitoring and mitigation measures that could be feasibly implemented to increase the effectiveness of detection.

NSF and L–DEO are receptive to incorporating proven technologies and techniques to enhance the current monitoring and mitigation program. Until proven technological advances are made, nighttime mitigation measures during operations include combinations of the use of PSVOs for ramp-ups, PAM, night vision devices, and continuous shooting of a mitigation airgun. Should the airgun array be powered-down, the operation of a single airgun would continue to serve as a sound deterrent to marine mammals. In the event of a complete shut-down of the airgun array at night for mitigation or repairs, L–DEO suspends the data collection until 30 minutes after nautical twilight-dawn (when PSVOs are able to clear the EZ). L–DEO will not activate the airguns until the entire EZ is visible for at least 30 minutes.

In cooperation with NMFS, L–DEO will be conducting efficacy experiments of NVDs during a future *Langseth* cruise. In addition, in response to a recommendation from NMFS, L–DEO is evaluating the use of forward-looking thermal imaging cameras to supplement nighttime monitoring and mitigation practices. During other low-power seismic and seafloor mapping surveys, L–DEO successfully used these devices while conducting nighttime seismic operations.

Comment 6: The Commission recommends that, before issuing the requested IHA, NMFS consult with the funding agency (*i.e.,* NSF) and individual applicants (*e.g.,* L–DEO) to develop, validate, and implement a monitoring program that provides a scientifically sound, reasonably accurate assessment of the types of marine mammal taking and the number of marine mammals taken.

Response: Several studies have reported on the abundance and distribution of marine mammals inhabiting the Pacific Ocean, and L–DEO has incorporated this data into their analyses used to predict marine mammal take in their application. NMFS believes that L–DEO's current approach for estimating abundance in the survey area (prior to the survey) is the best available approach.

There will be significant amounts of transit time during the cruise, and PSVOs will be on watch prior to and after the seismic portions of the survey, in addition to during the survey. The collection of this visual observational data by PSVOs may contribute to baseline data on marine mammals (presence/absence) and provide some generalized support for estimated take numbers, but it is unlikely that the information gathered from this single cruise alone would result in any statistically robust conclusions for any particular species because of the small number of animals typically observed.

NMFS acknowledges the Commission's recommendations and is open to further coordination with the Commission, NSF (the vessel owner), and L–DEO (the ship operator on behalf of NSF), to develop, validate, and implement a monitoring program that will provide or contribute towards a more scientifically sound and reasonably accurate assessment of the types of marine mammal taking and the number of marine mammals taken. However, the cruise's primary focus is marine geophysical research and the survey may be operationally limited due to considerations such as location, time, fuel, services, and other resources.

Comment 7: The Commission recommends that, before issuing the requested IHA NMFS require the applicant to:

(1) Report the number of marine mammals that were detected acoustically and for which a power-down or shut-down of the airguns was initiated;

(2) Specify if such animals also were detected visually;

(3) Compare the results from the two monitoring methods (visual versus acoustic) to help identify their respective strengths and weaknesses; and

(4) Use that information to improve mitigation and monitoring methods.

Response: The IHA requires that PSAOs on the *Langseth* do and record the following when a marine mammal is detected by PAM:

(i) Notify the on-duty PSVO(s) immediately of a vocalizing marine mammal so a power-down or shut-down can be initiated, if required;

(ii) Enter the information regarding the vocalization into a database. The data to be entered include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position, and water depth when first detected, bearing if determinable, species or species group (*e.g.,* unidentified dolphin, sperm whale), types and nature of sounds heard (*e.g.,* clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information.

NMFS acknowledges the Commission's request for a comparison between L–DEO's visual and acoustic monitoring programs and we will work with the NSF (the vessel owner) and L–DEO (the ship operator on behalf of NSF) to analyze the results of the two monitoring methods to help identify their respective strengths and weaknesses. The results of our analyses may provide information to improve mitigation and monitoring for future seismic surveys.

L–DEO reports on the number of acoustic detections made by the PAM system within the post-cruise monitoring reports as required by the IHA. The report also includes a description of any acoustic detections that were concurrent with visual sightings, which allows for a comparison of acoustic and visual detection methods for each cruise. The post-cruise monitoring reports also include the following information: The total operation effort in daylight (hours), the total operation effort at night (hours), the total number of hours of visual observations conducted, the total number of sightings, and the total number of hours of acoustic detections conducted.

LGL Ltd., Environmental Research Associates (LGL), a contractor for L–DEO, has processed sighting and density data, and their publications can be viewed online at: *http://www.lgl.com/index.php?option=com_content&view=article&id=69&Itemid=162&lang=en.* Post-cruise monitoring reports are currently available on NMFS' MMPA Incidental Take Program Web site and on the NSF Web site (*http://www.nsf.gov/geo/oce/envcomp/index.jsp*) should there be interest in further analysis of this data by the public.

Comment 8: The Commission recommends that, before issuing the requested IHA, NMFS work with NSF to analyze those data to help determine the effectiveness of ramp-up procedures as a mitigation measure for seismic surveys after the data are compiled and quality control measures have been completed.

Response: The IHA requires that PSVOs on the *Langseth* make observations for 30 minutes prior to ramp-up, during all ramp-ups, and during all daytime seismic operations and record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction of the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace; and

(ii) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or power-down), Beaufort sea state and wind force, visibility, and sun glare.

One of the primary purposes of monitoring is to result in ''increased knowledge of the species'' and the effectiveness of monitoring and mitigation measures; the effectiveness of ramp-up as a mitigation measure and marine mammal reaction to ramp-up would be useful information in this regard. NMFS has asked NSF and L–DEO to gather all data that could potentially provide information regarding the effectiveness of ramp-ups as a mitigation measure. However, considering the low numbers of marine mammal sightings and low numbers of ramp-ups, it is unlikely that the information will result in any statistically robust conclusions for this particular seismic survey. Over the long term, these requirements may provide information regarding the effectiveness of ramp-up as a mitigation measure, provided animals are detected during ramp-up.

Description of the Marine Mammals in the Area of the Specified Activity

Thirty-four marine mammal species may occur in the Shatsky Rise survey area, including 26 odontocetes (toothed cetaceans), seven mysticetes (baleen whales) and one species of pinniped during March through May. Six of these species are listed as endangered under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), including the blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), humpback (*Megaptera novaeangliae*), north Pacific right (*Eubalaena japonica*), sei (*Balaenoptera borealis*),and sperm (*Physeter macrocephalus*) whales.

Based on available data, it is unlikely that the western north Pacific gray whale (*Eschrichtius robustus*), the pygmy killer (*Feresa attenuata*), the ginkgo-toothed (*Mesoplodon ginkgodens*), the Stejneger's (*M. stejnegeri*), or the Hubb's (*M. carlhubbsi*) beaked whale would occur in the survey area. Based on available data, L–NMFS does not expect to L–DEO to encounter the western north Pacific gray whale within the study area as gray whales are known to prefer nearshore coastal waters. However, NMFS has authorized take for the species to account for an estimated mean group size that may potentially be exposed to sounds from the seismic survey. L–DEO did not request and NMFS did not authorize take of four species: pygmy killer whale or ginkgo-toothed, Stejneger's, or Hubb's beaked whales; because of the low likelihood of encountering these species during the cruise. Thus, the issued IHA only addresses requested take authorizations for 30 species: seven mysticetes, 22 odontocetes, and one species of pinniped. The species of marine mammals expected to be most common in the survey area (all delphinids) include the short-beaked common (*Delphinus delphis*), striped (*Stenella coeruleoalba*), and Fraser's (*Lagenodelphis hosei*) dolphins, and Dall's porpoise (*Phocoenoides dalli*).

NMFS has presented a more detailed discussion of the status of these stocks and their occurrence in the northwestern Pacific Ocean in the notice of the proposed IHA (77 FR 4765, January 31, 2012).

Potential Effects on Marine Mammals

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the survey area. The effects of sounds from airgun operations might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007).

Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected, but NMFS expects the disturbance to be localized and short-term.

The notice of the proposed IHA (77 FR 4765, January 31, 2012) included a discussion of the effects of sounds from airguns on mysticetes and odontocetes including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. NMFS refers the reader to L–DEO's application and environmental analysis and NMFS' EA for additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels.

Anticipated Effects on Marine Mammal Habitat

NMFS included a detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates in the notice of the proposed IHA (77 FR 4765, January 31, 2012). While NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible which NMFS considered in further detail in the notice of the proposed IHA (77 FR 4765, January 31, 2012) as behavioral modification. The main impact associated with the activity would be temporarily elevated noise levels and the associated direct effects on marine mammals.

Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

L–DEO has based the mitigation measures described herein, to be implemented for the proposed seismic survey, on the following:

(1) Protocols used during previous L–DEO seismic research cruises as approved by NMFS;

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L–DEO and/or its designees would implement the following mitigation measures for marine mammals:

(1) Proposed exclusion zones (EZ);

(2) Power-down procedures;

(3) Shutdown procedures; and

(4) Ramp-up procedures.

Exclusion Zones—L–DEO uses safety radii to designate EZs and to estimate take for marine mammals. The 180-dB and 190-dB level shut-down criteria are applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); and L–DEO used these levels to establish the EZs. If the PSVO detects marine mammal(s) within or about to enter the appropriate EZ, the *Langseth* crew will immediately power-down the airgun array, or perform a shut down if necessary (see Shut-down Procedures). Table 1 shows the distances at which three sound levels (160-, 180-, and 190-dB) are expected to be received from the 36-airgun array and a single airgun in deep water.

TABLE 1—MEASURED (ARRAY) OR PREDICTED (SINGLE AIRGUN) DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160 AND 180 dB RE: 1 μPa_{rms} THAT COULD BE RECEIVED IN DEEP WATER USING A 36-AIRGUN ARRAY, AS WELL AS A SINGLE AIRGUN TOWED AT A DEPTH OF 9 M (29.5 FT) DURING THE PROPOSED SURVEY IN THE NORTHWEST PACIFIC OCEAN, DURING MARCH–MAY, 2012.

[Distances are based on model results provided by L–DEO.]

Source and volume	Water depth	Predicted RMS distances (m)		
		160 dB	180 dB	190 dB
Single Bolt airgun	Deep (> 1,000 m)	385	40	12

TABLE 1—MEASURED (ARRAY) OR PREDICTED (SINGLE AIRGUN) DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160 AND 180 dB RE: 1 μPa_{rms} THAT COULD BE RECEIVED IN DEEP WATER USING A 36-AIRGUN ARRAY, AS WELL AS A SINGLE AIRGUN TOWED AT A DEPTH OF 9 M (29.5 FT) DURING THE PROPOSED SURVEY IN THE NORTHWEST PACIFIC OCEAN, DURING MARCH–MAY, 2012.—Continued

[Distances are based on model results provided by L–DEO.]

Source and volume	Water depth	Predicted RMS distances (m)		
		160 dB	180 dB	190 dB
36-Airgun Array	Deep (> 1,000 m)	3,850	940	400

Power-down Procedures—A power-down involves decreasing the number of airguns in use such that the radius of the 180-dB (or 190-dB) zone is decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power-down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, L–DEO will operate one airgun (40 cubic inches (in^3)). The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shutdown occurs when the *Langseth* suspends all airgun activity.

If the PSVO detects a marine mammal outside the EZ, which is likely to enter the EZ, L–DEO will power-down the airguns before the animal enters the EZ. Likewise, if a mammal is already within the EZ, when first detected L–DEO will power-down the airguns immediately. During a powerdown of the airgun array, L–DEO will operate the 40-in^3 airgun. If a marine mammal is detected within or near the smaller EZ around that single airgun (Table 1), L–DEO will shut down the airgun (see next section).

Following a power-down, L–DEO will not resume airgun activity until the marine mammal has cleared the safety zone. L–DEO will consider the animal to have cleared the EZ if:

- A PSVO has visually observed the animal leave the EZ; or
- A PSVO has not sighted the animal within the EZ for 15 minutes for species with shorter dive durations (*i.e.,* small odontocetes or pinnipeds), or 30 minutes for species with longer dive durations (*i.e.,* mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales); or
- The vessel has moved outside the EZ (*e.g.,* if a marine mammal is sighted close to the vessel and the ship speed is 8.5 km/h (5.3 mph), it would take the vessel approximately eight minutes to leave the vicinity of the marine mammal).

During airgun operations following a power-down or shutdown whose duration has exceeded the time limits specified previously, L–DEO will ramp up the airgun array gradually (see Shutdown and Ramp-up Procedures).

Shut-down Procedures—L–DEO will shut down the operating airgun(s) if a marine mammal is seen within or approaching the EZ for the single airgun. L–DEO will implement a shut-down:

(1) If an animal enters the EZ of the single airgun after L–DEO has initiated a power- down; or

(2) If an animal is initially seen within the EZ of the single airgun when more than one airgun (typically the full airgun array) is operating.

L–DEO will not resume airgun activity until the marine mammal has cleared the EZ, or until the PSVO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as described in the preceding section.

Considering the conservation status for north Pacific right whales, L–DEO will shut down the airgun(s) immediately in the unlikely event that this species is observed, regardless of the distance from the *Langseth.* L–DEO will only begin a ramp-up if the right whale has not been seen for 30 minutes.

Ramp-up Procedures—L–DEO will follow a ramp-up procedure when the airgun subarrays begin operating after a specified period without airgun operations or when a power-down has exceeded that period. L–DEO estimates that, for the present cruise, this period will be approximately 8 minutes. This period is based on the 180-dB radius (940 m; 3,083 ft) for the 36-airgun array towed at a depth of 9 m (29.5 ft) in relation to the minimum planned speed of the *Langseth* while shooting (8.5 km/h; 5.3 mph; 4.6 kts). L–DEO has used similar periods (8–10 min) during previous L–DEO surveys. L–DEO will not resume operations if a marine mammal has not cleared the EZ as described earlier.

Ramp-up will begin with the smallest airgun in the array (40-in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding six dB per 5-minute period over a total duration of approximately 30 minutes. During ramp-up, the PSVOs will monitor the EZ, and if he/she sights a marine mammal, L–DEO will implement a power-down or shut down as though the full airgun array were operational.

If the complete EZ is not visible to the PSVO for at least 30 minutes prior to the start of operations in either daylight or nighttime, L–DEO will not commence the ramp-up unless at least one airgun (40-in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that L–DEO will not ramp up the airgun array from a complete shut-down at night or in thick fog, because the outer part of the EZ for that array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. L–DEO will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable EZs during the day or close to the vessel at night.

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS' evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on NMFS' evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Monitoring

L–DEO will conduct marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the IHA. L–DEO's Monitoring Plan is described below this section. L–DEO understands that this monitoring plan will be subject to review by NMFS, and that refinements may be required. L–DEO has planned the monitoring work as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. L–DEO is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-Based Visual Monitoring

L–DEO will position PSVOs aboard the seismic source vessel to watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. PSVOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shut down (*i.e.,* greater than approximately eight minutes for this proposed cruise). When feasible, the PSVOs will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSVO observations, the *Langseth* will power-down or shut down the airguns when marine mammals are observed within or about to enter a designated EZ. The EZ is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations on the Shatsky Rise, at least four protected species observers (PSO) (*i.e.,* either a PSVO and/or a protected species acoustic observer (PSAO)) will be based aboard the *Langseth.* L–DEO will appoint the PSOs with NMFS' concurrence. The PSOs will conduct observations during ongoing daytime operations and nighttime ramp-ups of the airgun array. During the majority of seismic operations, two PSVOs will be on duty from the observation tower to monitor marine mammals near the seismic vessel. Use of two simultaneous PSVOs will increase the effectiveness of detecting animals near the source vessel. However, during mealtimes and bathroom breaks, it is sometimes difficult to have two PSVOs on effort, but at least one PSVO will be on watch during bathroom breaks and mealtimes. PSVOs will be on duty in shifts of no longer than four hours in duration.

Two PSVOs will also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third PSAO will monitor the PAM equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two PSVOs on duty from the observation tower, and a third PSAO on PAM. Other crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction on how to do so.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the observer will have a good view around the entire vessel. During daytime, the PSVOs will scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars.

When the PSVOs observe marine mammals within or about to enter the designated EZ, the *Langseth* will immediately power-down or shut-down the airguns if necessary. The PSVO(s) will continue to maintain watch to determine when the animal(s) are outside the EZ by visual confirmation. Airgun operations will not resume until the animal is confirmed to have left the EZ, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

Passive Acoustic Monitoring

Passive Acoustic Monitoring (PAM) will complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in conjunction with visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. The PSAO will monitor the system in real time so that he/she can advise the PSVO when cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (*i.e.,* hydrophones) and software. The ''wet end'' of the system consists of a towed hydrophone array that is connected to the vessel by a tow cable. The tow cable is 250 m (820.2 ft) long, and the hydrophones are fitted in the last 10 m (32.8 ft) of cable. A depth gauge is attached to the free end of the cable, and the cable is typically towed at depths less than 20 m (65.6 ft). L–DEO will deploy the array from a winch located on the back deck. A deck cable will connect the tow cable to the electronics unit in the main computer lab where the acoustic station, signal

conditioning, and processing system will be located. The acoustic signals received by the hydrophones are amplified, digitized, and then processed by the Pamguard software. The system can detect marine mammal vocalizations at frequencies up to 250 kilohertz.

One PSAO, an expert bioacoustician with primary responsibility for PAM, will be aboard the *Langseth* in addition to the four PSVOs. The PSAO will monitor the towed hydrophones 24 hours per day during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, PAM may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary PAM streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone.

One PSAO will monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. The PSAO monitoring the acoustical data will be on shift for one to six hours at a time. The other PSVOs are expected to rotate through the PAM position, although the expert PSAO will be on PAM duty more frequently.

When a vocalization is detected while visual observations are in progress, the PSAO on duty will contact the PSVO immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), and to allow a power-down or shut down to be initiated, if required. The information regarding the call will be entered into a database. Data entry will include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (*e.g.,* unidentified dolphin, sperm whale), types and nature of sounds heard (*e.g.,* clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

PSVO Data and Documentation

PSVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power-down or shut-down of the airguns when a marine mammal is within or near the EZ.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations and power-downs or shut-downs will be recorded in a standardized format. Data will be entered into an electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power-down or shut-down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

L–DEO will submit a report to NMFS and NSF within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals and turtles near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), L–DEO shall immediately cease the specified activities and immediately report the incident to the Acting Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the NMFS Pacific Islands Regional Stranding Coordinator at 808–944–2269 (*David.Schofield@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with L–DEO to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. L–DEO may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that L–DEO discovers an injured or dead marine mammal, and the lead PSVO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition

as described in the next paragraph), L–DEO will immediately report the incident to the Acting Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the NMFS Pacific Islands Regional Stranding Coordinator at 808–944–2269 (*David.Schofield@noaa.gov*). The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with L–DEO to determine whether modifications in the activities are appropriate.

In the event that L–DEO discovers an injured or dead marine mammal, and the lead PSVO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), L–DEO will report the incident to the Acting Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the NMFS Pacific Islands Regional Stranding Coordinator at 808–944–2269 (*David.Schofield@noaa.gov*), within 24 hours of the discovery. L–DEO will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

NMFS anticipates and authorizes take by Level B harassment only as a result of the marine geophysical survey in the northwestern Pacific Ocean. Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause marine mammals in the survey area to be exposed to sounds at or greater than 160 dB or cause temporary, short-term changes in behavior. There is no evidence that the planned activities could result in injury, serious injury or mortality within the specified geographic area for which L–DEO seeks the IHA. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe L–DEO's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the proposed seismic program. The estimates are based on a consideration of the number of marine mammals that could be disturbed appreciably by operations with the 36-airgun array to be used during approximately 1,216 km (755.6 mi) of survey lines on the Shatsky Rise in the northwestern Pacific Ocean.

L–DEO assumes that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES and SBP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the MBES and SBP given their characteristics (*e.g.,* narrow downward-directed beam) and other considerations described previously. Such reactions are not considered to constitute ''taking'' (NMFS, 2001). Therefore, L–DEO provides no additional allowance for animals that could be affected by sound sources other than airguns.

Density data on 18 marine mammal species in the Shatsky Rise area are available from two sources using conventional line transect methods: Japanese sighting surveys conducted since the early 1980s, and fisheries observers in the high-seas driftnet fisheries during 1987–1990 (see Table 3 in L–DEO's application).

For the 16 other marine mammal species that could be encountered in the proposed survey area, data from the western North Pacific right whale are not available (see Table 3 in L–DEO's application). L–DEO is not aware of any density estimates for three of those species—Hubb's (*Mesoplodon carlhubbsi*), Stejneger's (*Mesoplodon stejnegeri*), and gingko-toothed beaked whales (*Mesoplodon ginkgodens*). For the remaining 13 species out of the 16, (see Table 3 in L–DEO's application), density estimates are available from other areas of the Pacific: 11 species from the offshore stratum of the 2002 Hawaiian Islands survey (Barlow, 2006) and two species from surveys of the California Current ecosystem off the U.S. west coast between 1991 and 2005 (Barlow and Forney, 2007). Those estimates are based on standard line-transect protocols developed by NMFS' Southwest Fisheries Science Center (SWFSC).

Densities for 14 species are available from Japanese sighting surveys in the Shatsky Rise survey area. Miyashita (1993a) provided estimates for six dolphin species in this area that have been taken in the Japanese drive fisheries. The densities used here are Miyashita's (1993a) estimates for the Eastern offshore survey area (30–42° N, 145°–180° E). Kato and Miyashita (1998) provided estimates for sperm whale densities from Japanese sightings data during 1982 to 1996 in the western North Pacific (20–50° N, 130°–180° E), and Hakamada *et al.* (2004) provided density estimates for sei whales during August through September in the JARPN II sub-areas 8 and 9 (35–50° N, 150–170° E excluding waters in the Exclusive Economic Zone of Russia) during 2002 and 2003. L–DEO used density estimates during 1994 through 2007 for minke whales at 35–40° N, 157–170° E from Hakamada *et al.* (2009), density estimates during 1998 through 2002 for Bryde's whales at 31–43° N, 145–165° E from Kitakado *et al.* (2008), and density estimates during 1994–2007 for blue, fin, humpback, and North Pacific right whales at 31–51°N, 140–170°E from Matsuoka *et al.* (2009).

For four species (northern fur seal, Dall's porpoise, Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), northern right-whale dolphin (*Lissodelphis borealis*)), estimates of densities in the Shatsky Rise area are available from sightings data collected by observers in the high-seas driftnet fisheries during 1987 through 1990 (Buckland *et al.,* 1993). Those data were analyzed for 5° × 5° blocks, and the densities used here are from blocks for which available data overlap the proposed survey area. In general, those data represent the average annual density in the northern half of the Shatsky Rise survey area (35–40° N).

The densities mentioned above had been corrected by the original authors for detectability bias and, with the exception of Kitakado *et al.* (2008) and Hakamada *et al.* (2009), for availability bias. Detectability bias is associated with diminishing sightability with increasing lateral distance from the track line [f(0)]. Availability bias refers to the fact that there is less than a 100 percent probability of sighting an animal that is present along the survey track line, and it is measured by g(0).

There is some uncertainty about the accuracy of the density data from the

Japanese Whale Research Program under Special Permit (JARPN/JARPN II). For example, The available densities in Miyashita (1993a) and Buckland *et al.* (1993) are from the 1980s; although these densities represent the best available information for the Shatsky Rise area at present, they will be biased if abundance or distributions of those species have changed since the data were collected. Therefore, there is uncertainty with respect to the expected marine mammal densities during this time. However, the approach used here is based on the best available data.

The estimated numbers of individuals potentially exposed are based on the 160-dB re: 1 μPa criterion for all cetaceans (see Table 2 in this notice). It is assumed that marine mammals exposed to airgun sounds that strong might change their behavior sufficiently to be considered ''taken by harassment.''

L–DEO's estimates of exposures to various sound levels assume that the proposed surveys will be completed; in fact, the ensonified areas calculated using the planned number of line-kilometers have been increased by 25 percent to accommodate turns, lines that may need to be repeated, equipment testing, etc. As is typical during ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. Furthermore, any marine mammal sightings within or near the designated exclusion zone will result in the shutdown of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to 160-dB re: 1 μPa sounds are precautionary, and probably overestimate the actual numbers of marine mammals that might be involved. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

L–DEO estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re: 1 μPa on one or more occasions by considering the total marine area that would be within the 160-dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160-dB radius around the operating airguns, including areas of overlap. In the proposed survey, the majority of seismic lines are widely spaced in the survey area, so few individual mammals would be exposed numerous times during the survey. The area including overlap is only 1.01 times the area excluding overlap, so a marine mammal that stayed in the survey area during the entire survey could be exposed only once. However, it is unlikely that a particular animal would stay in the area during the entire survey.

The number of different individuals potentially exposed to received levels greater than or equal to 160 re: 1 μPa was calculated by multiplying:

(1) The expected species density, times;

(2) The anticipated area to be ensonified to that level during airgun operations excluding overlap, which is approximately 10,971 square kilometers (km^2) (4,235.9 square miles (mi^2)).

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo GIS, using the GIS to identify the relevant areas by ''drawing'' the applicable 160-dB buffer (see Table 1 in this document) around each seismic line, and then calculating the total area within the buffers. Areas of overlap were included only once when estimating the number of individuals exposed. Applying this approach, approximately 9,229 km^2 (3,563 mi^2) (11,536 km^2; 4, 454 mi^2 including the 25 percent contingency) would be within the 160-dB isopleth on one or more occasions during the survey. Because this approach does not allow for turnover in the mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. However, the approach assumes that no cetaceans will move away from or toward the trackline as the *Langseth* approaches in response to increasing sound levels prior to the time the levels reach 160-dB, which will result in overestimates for those species known to avoid seismic vessels.

The total estimate of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re: 1 μPa during the survey is 7,375 (see Table 2). That total includes 74 baleen whales, 39 of which are endangered: 5 humpback whales or 0.53% of the regional population, 21 sei whales (0.21%), 9 fin whales (0.05%), and 4 blue whales (0.13%). In addition, 12 sperm whales (also listed as endangered under the ESA) or 0.04% of the regional population could be exposed during the survey, and 108 beaked whales including Cuvier's, Longman's, Baird's, and Blainville's beaked whales. Most (96 percent) of the cetaceans potentially exposed are delphinids; short-beaked common, striped, pantropical spotted, and Pacific white-sided dolphins are estimated to be the most common species in the area, with estimates of 3,569 (0.12% of the regional population), 1,374 (0.24%), 812 (0.19%), and 420 (0.04%) exposed to greater than or equal to 160 dB re: 1 μPa, respectively.

TABLE 2—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO DIFFERENT SOUND LEVELS DURING L–DEO'S SEISMIC SURVEY IN THE NORTHWESTERN PACIFIC OCEAN DURING MARCH THROUGH MAY, 2012

Species	Estimated number of individuals exposed to sound levels ≥160 dB re: 1 FPa[1]	Requested or adjusted take authorization	Approximate percent of regional population[3]
North Pacific right whale	0	[2] 2	0.23
Humpback whale	5	5	0.53
Minke whale	29	29	0.12
Bryde's whale	6	6	0.03
Sei whale	21	21	0.21
Fin whale	9	9	0.05
Blue whale	4	4	0.13
Sperm whale	12	12	0.04
Pygmy sperm whale	37	37	N.A.
Dwarf sperm whale	90	90	<0.01
Cuvier's beaked whale	78	78	0.39
Baird's beaked whale	10	10	N.A.
Longman's beaked whale	5	[3] 18	N.A.

TABLE 2—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO DIFFERENT SOUND LEVELS DURING L–DEO'S SEISMIC SURVEY IN THE NORTHWESTERN PACIFIC OCEAN DURING MARCH THROUGH MAY, 2012—Continued

Species	Estimated number of individuals exposed to sound levels ≥160 dB re: 1 FPa[1]	Requested or adjusted take authorization	Approximate percent of regional population[3]
Blainville's beaked whale	15	15	0.06
Rough-toothed dolphin	36	36	0.02
Bottlenose dolphin	277	277	0.16
Pantropical spotted dolphin	812	812	0.19
Spinner dolphin	10	[2] 32	<0.01
Striped dolphin	1374	1374	0.24
Fraser's dolphin	53	[2] 286	0.02
Short-beaked common dolphin	3569	3569	0.12
Pacific white-sided dolphin	420	420	0.04
Northern right whale dolphin	5	5	<0.01
Risso's dolphin	125	125	0.01
Melon-headed whale	15	[2] 89	0.03
False killer whale	24	24	0.15
Killer whale	2	73	0.02
Short-finned pilot whale	58	[2] 65	0.11
Dall's porpoise	253	253	0.02
Northern fur seal	21	21	<0.01

[1] Estimates are based on densities in Table 3 of L–DEO's application and an ensonified area (including 25% contingency 11,536 km^2).
[2] Requested Take Authorization increased to mean group size from density sources in Table 3 of L–DEO's application.
[3] Regional population size estimates are from Table 4 of L–DEO's application; NA means not available.

Encouraging and Coordinating Research

L–DEO and NSF will coordinate the planned marine mammal monitoring program associated with the seismic survey in the northwestern Pacific Ocean with other parties that may have interest in the area and/or be conducting marine mammal studies in the same region during the seismic survey.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (*i.e.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

For reasons stated previously in this document, the specified activities associated with the marine seismic survey are not likely to cause permanent threshold shift (PTS), or other non-auditory injury, serious injury, or death because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the incorporation of the required monitoring and mitigation measures (described previously in this document);

(3) The fact that cetaceans would have to be closer than 940 m (3,084 ft) in deep water when the 36-airgun array is in use at 9 m (29.5 ft) tow depth, and 40 m (131.2 ft) in deep water when the single airgun is in use at 9 m from the vessel to be exposed to levels of sound believed to have even a minimal chance of causing PTS; and

(4) The likelihood that marine mammal detection ability by trained PSVOs is high at close proximity to the vessel.

No injuries, serious injuries, or mortalities are anticipated to occur as a result of the L–DEO's marine seismic survey, and none are authorized by NMFS. NMFS anticipates that only short-term behavioral disturbance would occur due to the brief duration of the survey activities. Table 2 of this document outlines the number of requested Level B harassment takes that are anticipated as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section in this notice), the activity is not expected to impact rates of recruitment or survival for any affected species or stock. Additionally, the seismic survey will not adversely impact marine mammal habitat.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.,* 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While seismic operations are anticipated to occur on consecutive days, the entire duration of the survey is not expected to last more than approximately 23 days (*i.e.,* 7 days of seismic operations, 16 days of transit) and the *Langseth* will be continuously moving along planned tracklines that are geographically spread-out. Therefore, the seismic survey will be increasing sound levels in the marine environment in a relatively small area surrounding the vessel, which is constantly travelling over far distances,

for a relatively short time period (*i.e.,* one week) in the study area.

Of the 34 marine mammal species under NMFS' jurisdiction that are known to occur or likely to occur in the study area, six of these species are listed as endangered under the ESA: The blue, fin, humpback, north Pacific right, sei, and sperm whales. These species are also categorized as depleted under the MMPA. L–DEO has requested authorized take for the six listed species. To protect these animals (and other marine mammals in the study area), L–DEO must cease or reduce airgun operations if animals enter designated zones. No injury, serious injury, or mortality is expected to occur, and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival. Further, the activity would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving.

As mentioned previously, NMFS estimates that 30 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. As stated previously, L–DEO did not request and NMFS did not authorize take of four species: Pygmy killer whale or ginkgo-toothed, Stejneger's, or Hubb's beaked whales; because of the low likelihood of encountering these species during the cruise.

For each species, these numbers are small (each, less than one percent) relative to the regional population size. NMFS provided the population estimates for the marine mammal species that may be taken by Level B harassment in Table 2 of this document.

NMFS' practice has been to apply the 160 dB re: 1 μPa received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provides a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]).

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a marine seismic survey on the Shatsky Rise in the northwestern Pacific Ocean, March to May, 2012, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. See Table 2 in this document for the requested authorized take numbers of marine mammals.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas and the short duration of the research activities, have led NMFS to determine that this action will have a negligible impact on the species in the specified geographic region.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that L–DEO's planned research activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine seismic survey will have a negligible impact on the affected species or stocks of marine mammals; and that impacts to affected species or stocks of marine mammals have been mitigated to the lowest level practicable.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (Shatsky Rise, northwestern Pacific Ocean) that implicate MMPA section 101(a)(5)(D).

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, several are listed as endangered under the ESA, including the blue, fin, humpback, north Pacific right, sei, and sperm whales. L–DEO did not request take of endangered western north Pacific gray whales because of the low likelihood of encountering these species during the cruise.

Under section 7 of the ESA, NSF has initiated formal consultation with the NMFS', Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this proposed seismic survey. NMFS' Office of Protected Resources, Permits and Conservation Division, also initiated formal consultation under section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, to obtain a Biological Opinion (BiOp) evaluating the effects of issuing an IHA for threatened and endangered marine mammals and, if appropriate, authorizing incidental take. In March, 2012, NMFS issued a BiOp and concluded that the action and issuance of the IHA are not likely to jeopardize the continued existence of blue, fin, humpback, north Pacific right, sei, and sperm whales. The BiOp also concluded that designated critical habitat for these species would not be affected by the survey. NSF and L–DEO must comply with the Relevant Terms and Conditions of the Incidental Take Statement (ITS) corresponding to NMFS' BiOp issued to NSF, L–DEO, and NMFS' Office of Protected Resources. L–DEO must also comply with the mitigation and monitoring requirements included in the IHA in order to be exempt under the ITS in the BiOp from the prohibition on take of listed endangered marine mammal species otherwise prohibited by section 9 of the ESA.

National Environmental Policy Act (NEPA)

To meet NMFS' National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements for the issuance of an IHA to L–DEO, NMFS has prepared an Environmental Assessment (EA) titled ''Issuance of an Incidental Harassment Authorization to the Lamont-Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the Northwest Pacific Ocean, March through May, 2012.'' This EA incorporated the NSF's Environmental Analysis Pursuant To Executive Order 12114 (NSF, 2010) and an associated report (Report) prepared by LGL Limited Environmental Research Associates (LGL) for NSF, titled, ''Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Northwest Pacific Ocean, March–April, 2012,'' by reference pursuant to 40 CFR 1502.21 and NOAA Administrative Order (NAO) 216–6 § 5.09(d). NMFS provided relevant environmental information to the public through the notice for the proposed IHA (77 FR 4765, January 31, 2012) and has considered public comments received in response prior to finalizing its EA and deciding whether or not to issue a Finding of No Significant Impact (FONSI).

NMFS has concluded that issuance of an IHA would not significantly affect the quality of the human environment and has issued a FONSI. Because the NMFS has made a FONSI, it is not necessary to prepare an environmental impact statement for the issuance of an

IHA to L–DEO for this activity. The EA and FONSI for this activity are available upon request (see **ADDRESSES**).

Authorization

As a result of these determinations, NMFS has issued an IHA to L–DEO for the take of small numbers of marine mammals, by Level B harassment incidental to conducting a marine geophysical survey in the northwest Pacific Ocean, March through May, 2012, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: April 25, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–10495 Filed 4–30–12; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the proposed revision of its VISTA Progress Report Supplement (VPRS) (OMB Control Number 3045–0048) which will expire on July 31, 2014.

This revision reflects the Corporation's intent to modify selected sections of the collection instrument to reflect changes in the performance measures as approved by OMB and which will capture appropriate data for the Corporation's required performance measurement reporting.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by July 2, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attn. Kelly Daly, Program Development Specialist, 1201 New York Avenue NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's reception desk on the 10th floor at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday except Federal holidays.

(3) By fax to: (202) 606–3475, Attention Kelly Daly, Program Development Specialist.

(4) Electronically through the Corporation's email address system: *vista@americorps.gov* or *www.regulations.gov*.

(5) Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kelly Daly (202–606–6849) or by email at *vista@americorps.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and,
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The VISTA Progress Report Supplement (VPRS) is designed to assure that AmeriCorps VISTA sponsors address and fulfill legislated program purposes, meet agency program management and grant requirements, and assess progress toward project plan goals agreed upon in the signing of the Memorandum of Agreement.

Current Action

The Corporation seeks to revise the current VPRS used by AmeriCorps VISTA sponsors and grantees to report actual outcomes related to new OMB-approved performance measures. The average time of response has been reduced to 8 hours from 9 due to a reduction in the total number of measures for which information is requested and the estimated number of respondents was dropped from 1000 to 900 to better reflect current number of approved AmeriCorps VISTA sponsors.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: VISTA Progress Report Supplement.

OMB Number: 3045–0048.

Agency Number: None.

Affected Public: VISTA sponsors and grantees.

Total Respondents: 900.

Frequency: Annual.

Average Time per Response: 8 hours.

Estimated Total Burden Hours: 7,200 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 24, 2012.

Mary Strasser,

Director, AmeriCorps VISTA.

[FR Doc. 2012–10410 Filed 4–30–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Notice of Advisory Committee Closed Meeting; U.S. Strategic Command Strategic Advisory Group

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. App 2, Section 1), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150, the Department of Defense announces the following closed meeting notice pertaining to the following federal advisory committee: U.S.

Strategic Command Strategic Advisory Group.

DATES: May 17, 2012, from 8 a.m. to 5 p.m. and May 18, 2012, from 8 a.m. to 11:30 a.m.

ADDRESSES: Dougherty Conference Center, Building 432, 906 SAC Boulevard Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Sudduth, Designated Federal Officer, (402) 294–4102, 901 SAC Boulevard, Suite 1F7, Offutt AFB, NE 68113–6030.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda: Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, General C. Robert Kehler, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.* Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: April 26, 2012.

Aaron Siegel,

Alternate OSD Liaison Officer, Department of Defense.

[FR Doc. 2012–10468 Filed 4–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–HA–0139]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 31, 2012.

Title and OMB Number: Active Duty Dental Program Claim Form; OMB Control Number 0720–TBD.

Type of Request: New.

Number of Respondents: 59,000.

Responses per Respondent: 3.

Annual Responses: 177,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 14,750 hours.

Needs and Uses: The information collection requirement is necessary to obtain and record the dental readiness of Service Members using the Active Duty Dental Program and at the same time submit the claim for the dental procedures provided so that claims can be processed and reimbursement made to the provider. Many of these Service Members are not located near a military dental treatment facility and receive their dental care in the private sector. The new form is needed to update the dental readiness of all Service Members so that they can maintain worldwide deployment status and reduces paperwork by combining the dental claim and dental readiness into one form.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: February 15, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–10398 Filed 4–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2011–HA–0019]

Submission for OMB Review; Comment request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 31, 2012.

Title and OMB Number: Electronic Health Record (EHR) Usability Survey; OMB Control Number 0720–TBD.

Type of Request: New.

Number of Respondents: 942.

Responses per Respondent: 4.

Annual Responses: 3768.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 628 hours.

Needs and Uses: The intended use of the information collection is to develop a longitudinal measure of how end-users perceive the usability of the

Department of Defense (DoD) suite of Electronic Health Record (EHR) applications.

Until recently, understanding the performance of EHR systems focused on functionality and user satisfaction. Now the focus has shifted towards understanding the usability of a system. This usability attribute describes the ease with which people can use the system to achieve a goal, and consists of three measurable components: Efficiency, effectiveness, and satisfaction.

As the Military Health Systems (MHS) moves towards developing the next generation of EHR applications, it is important to obtain baseline usability data of our current suite of applications and be able to monitor changes over time as the new EHR is deployed. Over the next five years, the DoD will make a significant investment to deliver a new EHR solution and it will be important to accurately assess the benefits realized as a result of this investment.

Affected Public: Individuals or households; Federal government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: February 15, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–10399 Filed 4–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2010–HA–0177]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 31, 2012.

Title and OMB Number: Traumatic Brain Injury, Post-Traumatic Stress Disorder, and Long-Term Quality of Life Outcomes in Injured Tri-Service U.S. Military Personnel; OMB Control Number 0720–TBD.

Type of Request: New.

Number of Respondents: 4644.

Responses per Respondent: 2.

Annual Responses: 9288.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 3096 hours.

Needs and Uses: The information collection requirement is necessary for the Naval Health Research Center (NHRC) to carry out the research study it has been tasked to perform. This research study will assess the long-term health impact of injury on quality of life outcomes in injured tri-service U.S. military personnel, with a special focus on the effects of traumatic brain injury (TBI) and Post-traumatic Stress Disorder (PTSD).

Information collected will be used to investigate the long-term effects of injury, TBI, and PTSD on the overall physical and psychological health of military personnel injured in overseas contingency operations. Participants will respond to a health-related questionnaire bi-annually for three to six years. Respondents to this study will include both active-duty and separated members of all branches of the U.S. Armed Forces.

Affected Public: Individuals or households.

Frequency: Bi-annual.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: February 15, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–10400 Filed 4–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2009–HA–0161]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 31, 2012.

Title and OMB Number: Application for TRICARE–Provider Status: Corporation Services Provider; OMB Number 0720–0020.

Type of Request: Reinstatement.

Number of Respondents: 200.

Responses per Respondent: 1.

Annual Responses: 200.

Average Burden per Response: 1 hour.

Annual Burden Hours: 200 hours.

Needs and Uses: The information collection will allow eligible providers

to apply for Corporate Services Provider status under the TRICARE program.

Affected Public: Businesses or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: February 15, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–10397 Filed 4–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2010–HA–0175]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 31, 2012.

Title, Associated Form and OMB Number: Health Insurance Claim Form, CMS–1500; OMB Control Number 0720–0001.

Type of Request: Reinstatement.

Number of Respondents: 86,000,000.

Responses per Respondent: 1.

Annual Responses: 86,000,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 21,500,000 hours.

Needs and Uses: This information collection requirement is used by TRICARE to determine reimbursement for health care services or supplies rendered by individual professional providers to TRICARE beneficiaries. The requested information is used to determine beneficiary eligibility, appropriateness and costs of care, other health insurance liability and whether services received are benefits. Use of this form continues TRICARE commitments to use the national standard claim form for reimbursement of services/supplies provided by individual professional providers.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: February 15, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–10393 Filed 4–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2010–HA–0131]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 31, 2012.

Title, Associated Form and OMB Number: Statement of Personal Injury—Possible Third Party Liability, TRICARE Management Activity; DD Form 2527; OMB Control Number 0720–0003.

Type of Request: Reinstatement.

Number of Respondents: 224,399.

Responses per Respondent: 1.

Annual Responses: 224,399.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 56,100 hours.

Needs and Uses: The information is provided by TRICARE (formerly CHAMPUS) beneficiaries suffering from personal injuries and receiving medical care at Government expense. The information is necessary in the assertion of the Government's right to recovery under the Federal Medical Care Recovery Act. The data is used in the evaluation and processing of these claims.

Affected Public: Individuals or households; Federal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DoD Clearance Officer: Ms. Patricia Toppings

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: February 15, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–10394 Filed 4–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–HA–0133]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 31, 2012.

Title and OMB Number: Diagnosis Related Groups (DRG) Reimbursement; OMB Control Number 0720–0017.

Type of Request: Reinstatement.

Number of Respondents: 4,993.

Responses per Respondent: 1.

Annual Responses: 4,993.

Average Burden per Response: 1 hour.

Annual Burden Hours: 4,993.

Needs and Uses: The TRICARE/CHAMPUS contractors will use the information collected to reimburse hospitals for TRICARE/CHAMPUS share of capital and direct medical education cost. Respondents are institutional providers.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: February 15, 2012.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2012–10396 Filed 4–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2010–HA–0132]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 31, 2012.

Title and OMB Number: TRICARE Retiree Dental Program Enrollment Application; OMB Control Number 0720–0015.

Type of Request: Reinstatement.

Number of Respondents: 64,000.

Responses per Respondent: 1.

Annual Responses: 64,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 16,000.

Needs and Uses: The information is necessary to enable the DoD-contracted third party administrator of the program to identify the program's applicants, determine their eligibility for TRICARE Retiree Dental Program enrollment, establish the premium payment amount, and to verify by the applicant's signature that the applicant understands the benefits and rules of the program. The information is provided by Uniformed Services members entitled to retired pay and their eligible family members who are seeking enrollment in the TRICARE Retiree Dental Program.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: February 15, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–10395 Filed 4–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended information collection 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 information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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: Comments regarding this proposed information collection must be received on or before July 2, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Felecia Briggs, HS–83/C–412, Germantown Building, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585–1290, by fax at 301–903–5492, or by email at *felecia.briggs@hq.doe.gov*, or information about the collection instruments may be obtained at: *http://www.hss.doe.gov/pra.html*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to the person listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: The information collection request contains the following: (1) *OMB No:* 1910–0300; (2) *Information Collection Request Title:* Environment, Safety and Health; (3) *Type of Review:* Renewal; (4) *Purpose:* The collections are used by DOE to exercise management oversight and control over its contractors in the ways in which the DOE contractors provide goods and services for DOE organizations and activities in accordance with the terms of their contract; the applicable statutory, regulatory and mission support requirements of the Department. The collections are: Computerized Accident/Incident Reporting System (CAIRS); Occurrence Reporting and Processing System (ORPS); Noncompliance Tracking System (NTS); Radiation Exposure Monitoring System (REMS); Annual Fire Protection Summary Application; Safety Basis Information System; and Lessons Learned System; (5) *Annual Estimated Number of Respondents:* 2,164; (6) Annual Estimated Number of Total Responses: 99,693; (7) *Annual Estimated Number of Burden Hours:* 44,860; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* 0.

Statutory Authority: Section 641 of the Department of Energy Organization Act, codified at 42 U.S.C. 7251, and the following additional authorities: Computerized Accident/Incident Reporting System (CAIRS): DOE Order 231.1B (June 27, 2011).

Occurrence Reporting and Processing System (ORPS): DOE Order 232.2 (August 30, 2011).

Noncompliance Tracking System (NTS): 10 CFR part 820; 10 CFR part 851.

Radiation Exposure Monitoring System (REMS): 10 CFR part 835; DOE Order 231.1B (June 27, 2011).

Annual Fire Protection Summary Application: DOE Order 231.1B (June 27, 2011).

Safety Basis Information System: 10 CFR part 830; DOE O 231.1B (June 27, 2011).

Lessons Learned System: DOE Order 210.2A (April 8, 2011).

Issued in Washington, DC, on April 23, 2012.

Stephen A. Kirchhoff,

Director, Office of Resource Management, Office of Health, Safety and Security.

[FR Doc. 2012–10435 Filed 4–30–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 12–36–LNG]

Cheniere Marketing, LLC; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas on a Short-Term Basis

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on March 30, 2012, by Cheniere Marketing, LLC (CMI), requesting blanket authorization to export liquefied natural gas (LNG) that previously had been imported into the United States from foreign sources in an amount up to the equivalent of 500 Billion cubic feet (Bcf) of natural gas on a short-term or spot market basis for a two-year period commencing on June 1, 2012. CMI seeks authorization to export LNG from the Sabine Pass LNG terminal, owned by Sabine Pass LNG, L.P., in Cameron Parish, Louisiana, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. CMI is requesting this authorization both on its own behalf and as agent for other parties who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, May 31, 2012.

ADDRESSES: *Electronic Filing on the Federal eRulemaking Portal under FE Docket No. 12–36–LNG: http://www.regulations.gov.*

Electronic Filing by email: fergas@hq.doe.gov

Regular Mail

U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Larine Moore or Lisa Tracy, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–4523.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

CMI is a Delaware limited liability company with its principal place of business in Houston, Texas. CMI is a wholly-owned subsidiary of Cheniere

Energy, Inc. (Cheniere Energy), which also is a Delaware corporation with its primary place of business in Houston, Texas. Cheniere Energy is a developer of LNG import terminals and natural gas pipelines on the U.S. Gulf Coast, including the Sabine Pass LNG terminal.

On June 1, 2010, DOE/FE issued Order No. 2795, which granted CMI blanket authorization to export on its own behalf or as agent for others LNG that previously had been imported from foreign sources in an amount up to the equivalent of 500 Bcf of natural gas on a cumulative basis over a two-year period commencing on June 1, 2010.[1] On December 17, 2010, DOE/FE granted CMI blanket authorization to import LNG from various international sources for a two-year term beginning on January 29, 2011.[2] Under the terms of the blanket authorization, the LNG may be imported at any LNG receiving facility in the United States and its territories.

Current Application

In the instant Application, CMI requests blanket authorization to export LNG previously imported into the United States from foreign sources from the Sabine Pass LNG terminal. CMI states that it plans to export LNG that had previously been imported from foreign sources to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy over a two-year period, on a short-term or spot market basis, in an amount up to the equivalent of 500 Bcf of natural gas. CMI proposes to export LNG that is derived from CMI's LNG importing activities and resides in LNG storage tanks at the Sabine Pass LNG terminal. CMI states that the LNG will either be re-exported or regasified for consumption in the domestic natural gas market contingent on U.S. and global market price signals. CMI states that no additional physical modifications to the Sabine Pass LNG terminal are required to accommodate the export authorization requested. CMI further states that there are no other proceedings related to this Application currently pending before DOE or any other federal agency. CMI is not seeking authorization to export domestically produced natural gas or LNG.

Public Interest Considerations

In support of its Application, CMI states that pursuant to section 3 of the NGA, DOE/FE is required to authorize exports to a foreign country unless there is a finding that such exports ''will not be consistent with the public interest.''[3] CMI states that section 3 thus creates a statutory presumption in favor of approval of a finding that the Application is in the public interest, which opponents bear the burden of overcoming.[4] CMI states further, in evaluating an export application, FE applies the principles described in Delegation Order No. 0204–111, which focuses primarily on domestic need for the gas to be exported, and the Secretary's natural gas policy guidelines.[5] Finally, as detailed below, CMI states that their proposal to export LNG to those countries with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy is consistent with Section 3 of the NGA and FE's policy.

CMI states that in DOE/FE Order No. 2795 issued on June 1, 2010, which granted CMI blanket authorization to export up to 500 Bcf (cumulative) of previously imported foreign-sourced LNG, FE determined that there was no domestic reliance on the volumes of imported LNG that CMI would seek to export.[6] CMI also states that, in January 2012, FE made the same finding in granting Dominion Cove Point LNG, LP (Dominion) blanket authority to export from the Cove Point LNG Terminal facilities in Calvert County, Maryland up to 150 Bcf of previously imported LNG.[7] In addition, CMI points out that similarly, on November 22, 2011, DOE/FE granted ConocoPhillips Company (ConocoPhillips) blanket authority to export from the Freeport LNG Development, L.P. Quintana Island terminal up to 500 Bcf of previously imported LNG.[8] CMI notes that in its order, DOE/FE stated that ''the record shows there is sufficient supply of natural gas to satisfy domestic demand from multiple sources at competitive prices without drawing on the LNG which ConocoPhillips seeks to export * * *''[9]

CMI states that in the above-referenced Dominion and ConocoPhillips orders, as well as in other blanket authorizations issued in recent years,[10] DOE/FE has taken administrative notice that a review of the data and analysis prepared by the Energy Information Administration (EIA) shows that over the last several years, domestic natural gas production has increased significantly. CMI also cites more recent data from EIA's *Annual Energy Outlook 2012* (Early Release) Reference case, which estimates that shale gas production will reach 8.1 trillion cubic feet in 2015.[11] CMI asserts that DOE/FE's past findings with regard to similar applications in addition to EIA's most current gas production estimates support the conclusion that the foreign-sourced LNG CMI seeks to export is not needed to meet domestic demand.

CMI is requesting authorization, for itself and as agent for third parties, to periodically export LNG imported under DOE/FE Order No. 2891, as well as LNG of third parties, to any other country with the capacity to import LNG via ocean-going vessel and with which trade is not prohibited by U.S. law or policy, should market conditions in the United States not support domestic sale of those supplies. CMI states that granting CMI's short-term blanket authorization as requested herein would provide CMI with the necessary flexibility it requires to respond to changes in domestic and global markets for natural gas and LNG. CMI states that the additional flexibility sought herein would further encourage CMI to obtain and store spot market LNG cargoes. Natural gas derived from imported LNG will be available to supply local markets when conditions support it, and will thereby serve to moderate U.S. gas price volatility. As such, CMI states that the requested export authorization is consistent with the public interest.

Environmental Impact

CMI states that no modifications to the Sabine Pass LNG terminal would be required for CMI's proposed exportation of LNG. CMI asserts that consequently, granting this Application will not be a federal action significantly affecting the human environment within the meaning of the National Environmental Policy Act (NEPA).[12] CMI further states that an

[1] *Cheniere Marketing, LLC,* DOE/FE Order No. 2795 (June 1, 2010) extends through May 31, 2012.

[2] *Cheniere Marketing, LLC,* DOE/FE Order No. 2891 (December 17, 2010) extends through January 28, 2013.

[3] 15 U.S.C. 717b(a).

[4] *See Panhandle Producers and Royalty Owners Association* v. *Era,* 822 F.2d 1105, 1111 (DC Cir. 1987); *Independent Petroleum Association* v. *ERA,* 870 F .2d 168, 172 (5th Cir. 1989); *Panhandle and Royalty Owners Association* v. *ERA,* 847 F .2d 1168, 1176 (5th Cir. 1988).

[5] *See* 49 FR 6684, February 22, 1984.

[6] *Cheniere Marketing, LLC,* DOE/FE Order No 2795 at 11.

[7] *See Dominion Cove Point LNG, LP,* DOE/FE Order No. 3055 (January 9, 2012) at 11.

[8] *ConocoPhillips Company,* DOE/FE Order No. 3038 (November 22, 2011).

[9] *Id.* at 6.

[10] *See Freeport LNG Development, L.P.,* DOE/FE Order No. 2986 (July 19, 2011); *ENI USA Gas Marketing LLC,* DOE/FE Order No. 2923 (March 3, 2011); *Sempra LNG Marketing, LLC,* DOE/FE Order No. 2885 (December 3, 2010); *Dow Chemical Company,* DOE/FE Order No. 2859 (October 5, 2010).

[11] *See Annual Energy Outlook 2012 Early Release Overview, http://www.eia.gov/forecasts/aeo/er/excel/overview.fig02.data.xls.*

[12] 42 U.S.C. 4321 *et seq.*

environmental impact statement or environmental assessment is not required.

DOE/FE Evaluation

This export application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export application, DOE will consider domestic need for the gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Submitting comments in electronic form on the Federal eRulemaking Portal at *http://www.regulations.gov*, by following the on-line instructions and submitting such comments under FE Docket No. 12–36–LNG. DOE/FE suggests that electronic filers carefully review information provided in their submissions and include only information that is intended to be publicly disclosed; (2) emailing the filing to *fergas@hq.doe.gov*, with FE Docket No. 12–36–LNG in the title line; (3) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in **ADDRESSES**; or (4) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by CMI is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.* In addition, any electronic comments filed will also be available at: *http://www.regulations.gov.*

Issued in Washington, DC, on April 25, 2012.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2012–10444 Filed 4–30–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–624–000.
Applicants: Texas Eastern Transmission, LP.
Description: TETLP 2012 Map Filing to be effective 5/21/2012.
Filed Date: 4/20/12.
Accession Number: 20120420–5235.
Comments Due: 5 p.m. ET 5/2/12.

Docket Numbers: RP12–625–000.
Applicants: Texas Gas Transmission, LLC.
Description: TVA Negotiated Rate Agreement 31033 filing to be effective 4/1/2012.
Filed Date: 4/23/12.
Accession Number: 20120423–5031.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–626–000.
Applicants: MIGC LLC.
Description: MIGC LLC Interactive Web site Filing to be effective 5/1/2012.
Filed Date: 4/23/12.
Accession Number: 20120423–5162.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–627–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Permanent Release Filing to be effective 5/24/2012.
Filed Date: 4/23/12.
Accession Number: 20120423–5176.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–628–000.
Applicants: Questar Pipeline Company.
Description: Non-conforming TSA V. 2.0.0 to be effective 5/24/2012.
Filed Date: 4/24/12.
Accession Number: 20120424–5000.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: RP12–629–000.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company Annual Operational Purchases and Sales Report for 2011.
Filed Date: 4/24/12.
Accession Number: 20120424–5035.

Comments Due: 5 p.m. ET 5/7/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP95–408–079.
Applicants: Columbia Gas Transmission, LLC.
Description: Annual Report on Sharing Profits from Base Gas Sales with Customers of Columbia Gas Transmission, LLC.
Filed Date: 4/23/12.
Accession Number: 20120423–5224.
Comments Due: 5 p.m. ET 5/7/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–10404 Filed 4–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–43–000.
Applicants: Sherbino I Wind Farm LLC.
Description: Clarifying information of Sherbino I Wind Farm LLC.
Filed Date: 4/3/12.
Accession Number: 20120403–5204.
Comments Due: 5 p.m. ET 4/30/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1589–000.
Applicants: Public Service Company of Colorado.
Description: 2012–4–20_Att_O–PSCo Rate Filing to be effective 6/20/2012.
Filed Date: 4/20/12.
Accession Number: 20120420–5213.
Comments Due: 5 p.m. ET 5/11/12.

Docket Numbers: ER12–1590–000.
Applicants: Entergy Arkansas, Inc.
Description: AECI and Cargill PtP Service Agreements to be effective 4/20/2012.
Filed Date: 4/20/12.
Accession Number: 20120420–5214.
Comments Due: 5 p.m. ET 5/11/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–36–000.
Applicants: Consumers Energy Company.
Description: Application for Authority to Issue Short Term Securities.
Filed Date: 4/20/12.
Accession Number: 20120420–5232.
Comments Due: 5 p.m. ET 5/11/12.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH12–11–000.
Applicants: Algonquin Power & Utilities Corp.
Description: Application (Notification of Waiver of Algonquin Power & Utilities Corp.) of Algonquin Power & Utilities Corp.
Filed Date: 4/20/12.
Accession Number: 20120420–5231.
Comments Due: 5 p.m. ET 5/11/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–10403 Filed 4–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–94–000.
Applicants: Fortis Inc., Central Hudson Gas & Electric Corporation, CH Energy Group, Inc., FortisUS Inc., Cascade Acquisition Sub Inc.
Description: Fortis-Central Hudson Section 203 Application for Merger and Disposition of Jurisdictional Facilities and Request for Waivers of Filing Requirements.
Filed Date: 4/23/12.
Accession Number: 20120423–5228.
Comments Due: 5 p.m. ET 6/22/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–165–003.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: G746 Compliance—Errata to be effective 12/21/2011.
Filed Date: 4/24/12.
Accession Number: 20120424–5032.
Comments Due: 5 p.m. ET 5/15/12.

Docket Numbers: ER12–1459–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Attachment L—Credit Policy to be effective 6/6/2012.
Filed Date: 4/23/12.
Accession Number: 20120423–5202.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: ER12–1592–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: OTP–MPC T–T to be effective 4/24/2012.
Filed Date: 4/23/12.
Accession Number: 20120423–5032.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: ER12–1593–000.
Applicants: DATC Midwest Holdings, LLC.
Description: Application for Acceptance of Transmission Rate Formula to be effective 6/19/2012.
Filed Date: 4/20/12.
Accession Number: 20120420–5236.
Comments Due: 5 p.m. ET 5/11/12.

Docket Numbers: ER12–1594–000.
Applicants: PacifiCorp.
Description: UAMPS Horse Butte Communications Installation Agreement to be effective 6/23/2012.
Filed Date: 4/23/12.
Accession Number: 20120423–5104.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: ER12–1595–000.

Applicants: PJM Interconnection, LLC.
Description: 1st Quarter 2012 Updates to PJM Operating Agreement and RAA Membership List to be effective 3/31/2012.
Filed Date: 4/23/12.
Accession Number: 20120423–5173.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: ER12–1596–000.
Applicants: El Paso Electric Company.
Description: Rate Schedule No. 111 EPE Engineering & Procurement Agreement to be effective 4/24/2012.
Filed Date: 4/23/12.
Accession Number: 20120423–5205.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: ER12–1597–000.
Applicants: Ameren Illinois Company.
Description: Medina Valley IA Notice of Succession to be effective 2/3/2012.
Filed Date: 4/23/12.
Accession Number: 20120423–5213.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: ER12–1598–000.
Applicants: Unitil Power Corp.
Description: Unitil Power Corp submits Statement of all billing transactions under the Amended Unitil System Agreement for the period January 1, 2011 to December 31, 2011 etc.
Filed Date: 4/23/12.
Accession Number: 20120423–0202.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: ER12–1599–000.
Applicants: Pacific Gas and Electric Company.
Description: Request for One-time Tariff Waiver of Pacific Gas and Electric Company.
Filed Date: 4/23/12.
Accession Number: 20120423–5229.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: ER12–1600–000.
Applicants: Southwest Power Pool, Inc.
Description: 2413 Exelon Generation Company Market Participant Agreement to be effective 4/1/2012.
Filed Date: 4/24/12.
Accession Number: 20120424–5064.
Comments Due: 5 p.m. ET 5/15/12.

Docket Numbers: ER12–1601–000.
Applicants: PacifiCorp.
Description: WAPA Short Term Firm Point to Point Transmission Service Agreements to be effective 4/19/2012.
Filed Date: 4/24/12.
Accession Number: 20120424–5065.
Comments Due: 5 p.m. ET 5/15/12.

Docket Numbers: ER12–1602–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc.'s Notice of Cancellation.
Filed Date: 4/24/12.
Accession Number: 20120424–5074.
Comments Due: 5 p.m. ET 5/15/12.

Docket Numbers: ER12–1603–000.
Applicants: PGPV, LLC.
Description: mbr tariff to be effective 4/25/2012.
Filed Date: 4/24/12.
Accession Number: 20120424–5104.
Comments Due: 5 p.m. ET 5/15/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–13–000.
Applicants: AEP Texas North Company.
Description: Supplemental Application of AEP Texas North Company.
Filed Date: 4/17/12.
Accession Number: 20120417–5214.
Comments Due: 5 p.m. ET 5/4/12.

Docket Numbers: ES12–24–000.
Applicants: AEP Appalachian Transmission Company, Inc, AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc, AEP Oklahoma Transmission Company, Inc., AEP Southwestern Transmission Company, Inc., AEP West Virginia Transmission Company, Inc.
Description: Supplemental Application of AEP Appalachian Transmission Company, Inc. *et al.*
Filed Date: 4/19/12.
Accession Number: 20120419–5157.
Comments Due: 5 p.m. ET 5/2/12.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC12–6–000.
Applicants: Moore Solar, Inc.
Description: Notification of Self-Certification of Foreign Utility Company Status of Moore Solar, Inc.
Filed Date: 4/23/12.
Accession Number: 20120423–5206.
Comments Due: 5 p.m. ET 5/14/12.

Docket Numbers: FC12–7–000.
Applicants: Sombra Solar, Inc.
Description: Notification of Self-Certification of Foreign Utility Company Status of Sombra Solar, Inc.
Filed Date: 4/23/12.
Accession Number: 20120423–5208.
Comments Due: 5 p.m. ET 5/14/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–10464 Filed 4–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No., 13010–002; Project No., 14272–000]

Mississippi 8 Hydro, LLC; FFP Project 98, LLC, ; Notice Announcing Filing Priority for Preliminary Permit Applications

On April 23, 2012, the Commission held a drawing to determine priority between competing preliminary permit applications with identical filing times. In the event that the Commission concludes that neither of the applicants' plans is better adapted than the other to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Mississippi 8 Hydro, LLC—Project No. 13010–002.
2. FFP Project 98, LLC—Project No. 14272–000.

Dated: April 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–10402 Filed 4–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6803–000]

Schriver, Darryl; Notice of Filing

Take notice that on April, 23, 2012, Darryl Schriver submitted for filing, an amended application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act,

16 U.S.C. 825(b) (2011) and section 45.8 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 45.8 (2011).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 14, 2012.

Dated: April 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–10405 Filed 4–30–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0254; FRL–9344–3]

Fipronil; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Oregon Department of Agriculture to use the pesticide fipronil (CAS No. 120068–37–3) to treat up to 600 acres of rutabagas and turnips to control the cabbage maggot. The applicant proposes a use which is supported by the Interregional (IR)–4 program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 16, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0254, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Delivery: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2012–0254. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov* or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; fax number: (703) 605–0781; email address: *conrath.andrea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Oregon Department of Agriculture has requested the Administrator to issue specific exemptions for the use of fipronil on turnip and rutabaga to control the cabbage maggot. Information in accordance with 40 CFR part 166 was submitted as part of these requests.

As part of the requests, the applicant asserts that an emergency situation exists based upon three factors:

1. A severe increase in cabbage maggot populations;

2. Apparent increasing resistance of the maggot to the registered alternative; and

3. Phytotoxicity of the registered alternative to emerging seedlings.

The applicant states that significant economic losses will be suffered without adequate control of the cabbage maggot in turnip and rutabaga production. The applicant indicates that fipronil has been shown to provide excellent crop safety, and overall provides better control than the registered alternative.

The applicant proposes to make no more than one application at 4.16 fluid oz. of product per acre, to a maximum of 600 acres of rutabagas and turnips, for use of up to a potential maximum of 19.5 gallons of product. Applications would potentially be made from April 1 through September 30, 2012, in the Oregon counties of Clackimas, Marion, Multnomah, and Umatilla.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing a use which is supported by the IR–4 program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. The notice provides an opportunity for public comment on the applications.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Oregon Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 19, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–10315 Filed 4–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9666–1]

Proposed Issuance of a General NPDES Permit for Small Suction Dredging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed issuance of a general permit.

SUMMARY: EPA is re-proposing to issue a National Pollutant Discharge Elimination System (NPDES) General Permit (IDG–37–0000) to placer mining operations in Idaho for small suction dredges (intake nozzle size of 5 inches in diameter or a diametric equivalent or less and with equipment rated at 15 horsepower or less). When issued, the permit will establish effluent limitations, standards, prohibitions and other conditions on discharges from covered facilities. These conditions are based on existing national effluent guidelines, the state of Idaho's Water Quality Standards and material contained in the administrative record. A description of the basis for the conditions and requirements of the proposed general permit is given in the Fact Sheet. This is also notice of the draft § 401 Certification provided by the state of Idaho.

DATES: Interested persons may submit comments on the proposed issuance of the general permit to EPA, Region 10 at the address below. Comments must be postmarked by June 1, 2012.

ADDRESSES: Comments on the proposed General Permit should be sent to Director, Office of Water and Watersheds; USEPA Region 10; 1200 Sixth Avenue, Suite 900, OWW–130;

Seattle, Washington 98101. Comments may also be submitted by fax to (206) 553–0165 or electronically to *godsey.cindi@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the proposed general permit and Fact Sheet are available upon request. Requests may be made to Audrey Washington at (206) 553–0523 or to Cindi Godsey at (907) 271–6561. Requests may also be electronically mailed to: *washington.audrey@epa.gov* or *godsey.cindi@epa.gov.*

These documents may also be found on the EPA Region 10 Web site at *http://1.usa.gov/dredgedocs.*

SUPPLEMENTARY INFORMATION: *Executive Order 12866:* The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., a Federal agency must prepare an initial regulatory flexibility analysis ''for any proposed rule'' for which the agency ''is required by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking.'' The RFA exempts from this requirement any rule that the issuing agency certifies ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the RFA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that this GP, as issued, will not have a significant economic impact on a substantial number of small entities.

Dated: April 20, 2012.

Michael A. Bussell,

Director, Office of Water & Watersheds, Region 10, U.S. Environmental Protection Agency.

[FR Doc. 2012–10337 Filed 4–30–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Developmental Disabilities Annual Protection and Advocacy Systems Program Performance Report.

OMB No.: 0980–0160.

Description: This information collection is required by federal statute. Each State Protection and Advocacy System must prepare and submit a program Performance Report for the preceding fiscal year of activities and accomplishments and of conditions in the State. The information in the Annual Report will be aggregated into a national profile of Protection and Advocacy Systems. It will also provide the Administration on Developmental Disabilities (ADD) with an overview of program trends and achievements and will enable ADD to respond to administration and congressional requests for specific information on program activities. This information will also be used to submit a Centennial Report to Congress as well as to comply with requirements in the Government Performance and Results Act of 1993.

Respondents: Protection & Advocacy Systems.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Developmental Disabilities Protection and Advocacy Program Performance Report	57	1	44	2,508

Estimated Total Annual Burden Hours: 2,508.

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. 2012–10423 Filed 4–30–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Council on Developmental Disabilities Annual Program Performance Report.

OMB No.: 0980–0172.

Description: A Developmental Disabilities Council Annual Program

Performance Report is required by federal statute. Each State Developmental Disabilities Council must submit an annual report for the preceding fiscal year of activities and accomplishments. Information provided in the Program Performance Report will be used (1) in the preparation of the biennial Report to the President, the Congress, and the National Council on Disabilities and (2) to provide a national perspective on program accomplishments and continuing challenges. This information will also be used to comply with requirements in the Government Performance and Results Act of 1993.

Respondents: State Councils.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Council on Developmental Disabilities Program Performance Report ..	56	1	138	7,590

Estimated Total Annual Burden Hours: 7,590.

Additional Information

Copies of the proposed collection may be obtained 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. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.*

Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–10426 Filed 4–30–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Measure Development: Quality of Family-Provider Relationships in Early Care and Education.

OMB No.: New collection.

Description

The Office of Planning, Research and Evaluation (OPRE), the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity as part of the development of an early care and education (ECE) quality measurement tool to assess family-provider relationships that support positive child developmental outcomes and family wellbeing. The major goal of this project is to develop a measure of the quality of family-provider relationships that will be (1) applicable across multiple types of early care and education settings and diverse program structures (including Head Start/Early Head Start); (2) sensitive across cultures associated with racial, ethnic, and socioeconomic characteristics; and (3) reliable in both English and Spanish. At this time, four self-administered surveys (one for center- and home-based care directors, one for child care providers/teachers, and two for parents) and an environmental checklist have been developed, based on a literature review, a review of existing measures, and information collected through focus groups (under OMB Clearance 0970–0356) and cognitive interviews (under OMB Clearance 0970–0355).

To test these measures, two stages of data collection activities are proposed for this information collection request: A pilot test and a field test.

The pilot test data will be used to examine the distribution of the items and to determine whether they behave in a manner consistent with the conceptual model that was developed as part of the project. The pilot test will also test data collection procedures prior to conducting a large-scale field test. Any problematic items or procedures identified by the pilot test will be corrected and revisions submitted to OMB before the field test.

The purpose of the field test is to obtain sufficient data on a diverse population to enable full psychometric testing of the measures and compare subgroups to ensure that the measure can be used in diverse ECE settings.

Respondents: In both the pilot and the field tests, the respondents will include directors of center—based child care programs, home-based child care programs, Early Head Start programs, and Head Start programs; center-based and home-based child care providers and ECE teachers; and parents whose children are enrolled in these diverse types of ECE settings.

ANNUAL BURDEN ESTIMATE—PILOT AND FIELD TESTS

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Screening questions	945	1	0.05	47
Director Survey	143	1	0.08	11
Provider/Teacher Survey	253	1	0.17	43
Parent Survey about FSWs	76	1	0.17	13
Parent Survey about Teachers	475	1	0.17	81
Environmental Checklist	945	1	0.17	161

Estimated Total Annual Burden Hours: 356.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 23, 2012.

Steven Hanmer,

Reports Clearance Officer.

[FR Doc. 2012–10305 Filed 4–30–12; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–P–0025]

Determination That GRIFULVIN V (Griseofulvin Microcrystalline) Tablets, 250 Milligrams, Was 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 GRIFULVIN V (griseofulvin microcrystalline) tablets, 250 milligrams (mg), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for griseofulvin microcrystalline tablets, 250 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Nancy Hayes, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6244, 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 (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

GRIFULVIN V (griseofulvin microcrystalline) tablets, 250 mg, is the subject of ANDA 062279, held by OrthoNeutrogena, and approved on June 2, 1980. GRIFULVIN V is indicated for the treatment of certain ringworm infections (tinea corporis, tinea pedis, tinea cruris, tinea barbae, tinea capitis, and tinea unguium) when caused by a certain genera of fungi.

GRIFULVIN V (griseofulvin microcrystalline) tablets, 250 mg, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Arthur Y. Tsien of Olsson Frank Weeda Terman Bode Matz PC submitted a citizen petition on behalf of a client, dated January 7, 2011 (Docket No. FDA–2011–P–0025), under 21 CFR 10.30, requesting that the Agency determine whether GRIFULVIN V (griseofulvin microcrystalline) tablets, 250 mg, was withdrawn from sale for reasons of safety or effectiveness. After considering the citizen petition and reviewing Agency records, FDA has determined under § 314.161 that GRIFULVIN V (griseofulvin microcrystalline) tablets, 250 mg, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that GRIFULVIN V (griseofulvin microcrystalline) tablets, 250 mg, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of GRIFULVIN V (griseofulvin microcrystalline) tablets, 250 mg, from sale. We have also independently reviewed relevant literature and data for possible postmarketing adverse event reports. We have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list GRIFULVIN V (griseofulvin microcrystalline) tablets, 250 mg, 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 GRIFULVIN V (griseofulvin microcrystalline) tablets, 250 mg, 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 26, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–10466 Filed 4–30–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0316]

Small Entity Compliance Guide: Bottled Water: Quality Standard: Establishing an Allowable Level for di(2-ethylhexyl)phthalate; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Bottled Water: Quality Standard: Establishing an Allowable Level for di(2-ethylhexyl)phthalate—Small Entity Compliance Guide.'' The small entity compliance guide (SECG) is being issued for a final rule published in the **Federal Register** of October 19, 2011, and is intended to set forth in plain language the requirements of the regulation and to help small businesses understand the regulation.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the SECG to the Division of Plant and Dairy Food Safety, Office of Food Safety, Center for Food Safety and Applied Nutrition, (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

Submit electronic comments on the SECG to *http://www.regulations.gov.* Submit written comments on the SECG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lauren Posnick Robin, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1639.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 19, 2011 (76 FR 64810), FDA issued a final rule that amended its bottled water standard of quality regulations by establishing an allowable level for di(2-ethylhexyl)phthalate (DEHP). This final rule is effective April 16, 2012.

FDA examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the final rule will not have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), FDA is making available this SECG stating in plain language the requirements of the regulation.

FDA is issuing this SECG consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). This SECG represents the Agency's current thinking on di(2-ethylhexyl)phthalate in bottled water. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this SECG. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the SECG at either *http://www.fda.gov/RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.* Always access an FDA guidance document by using FDA's Web site listed previously to find the most current version of the guidance.

Dated: April 26, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–10465 Filed 4–30–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0975]

National Maritime Security Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Partially Closed Federal Advisory Committee Meeting.

SUMMARY: The National Maritime Security Advisory Committee (NMSAC) will meet on May 15–16, 2012 in the Washington, DC metropolitan area to discuss various issues relating to national maritime security. The meeting will be partially closed to the public.

DATES: The Committee will meet in a closed session on Tuesday, May 15, 2012 from 9 a.m. to 11:30 a.m. and in open session on Tuesday, May 15, 2012 from 1 p.m. to 4:30 p.m. and Wednesday, May 16, 2012 from 9 a.m. to 12 p.m. This meeting may close early if all business is finished.

All written material and requests to make oral presentations should reach the Coast Guard on or before May 9, 2012.

ADDRESSES: The Committee will meet in closed session at National Maritime Intelligence Center and in open session at the American Bureau of Shipping, 1400 Key Blvd., Suite 800, Arlington, Virginia 22209. Seating is very limited; members of the public wishing to attend the open sessions should register with Mr. Ryan Owens, Alternate Designated Federal Official (ADFO) of NMSAC, telephone 202–372–1108 or *ryan.f.owens@uscg.mil* no later than May 9, 2012. Additionally, the open sessions of this meeting will be broadcasted via a Web-enabled interactive online format and teleconference.

To participate via teleconference, dial 866–717–0091; the pass code to join is 3038389#. Additionally, if you would like to participate in this meeting via the online Web format, please log onto *https://connect.hsin.gov/r11254182* and follow the online instructions to register for this meeting.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. You may submit written

comments no later than May 9, 2012 and identified by docket number [USCG–2011–0975] by using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. We encourage use of electronic submissions because security screening may delay delivery of mail.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Same as mail address above, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.
- *Instructions:* All submissions received must include the words ''Department of Homeland Security'' and docket number [USCG–2011–0975]. All submissions received will be posted without alteration at *www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).
- *Docket:* Any background information or presentations available prior to the meeting will be published in the docket. For access to the docket to read background documents or submissions received by the NMSAC, go to *http://www.regulations.gov* and use ''USCG–2011–0975'' as your search term.

Public comment period will be held during the open portion of the meetings on May 15, 2012, from 4:00 p.m. to 4:30 p.m., and May 16, 2012 from 11:30 a.m. to 12 p.m. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period will end following the last call for comments. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, ADFO of NMSAC, 2100 2nd Street SW., Stop 7581, Washington, DC 20593–7581; telephone 202–372–1108 or email *ryan.f.owens@uscg.mil.* If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). NMSAC operates under the authority of 46 U.S.C. 70112. NMSAC provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Commandant of the Coast Guard, on matters relating to national maritime security.

Agenda of Meeting

Day 1

The agenda for the Committee meeting is as follows:

(1) Classified Security Briefing for NMSAC members only. Closed to the public.

Basis for Closure. In accordance with Section 10(d) of the Federal Advisory Committee Act, it has been determined that this portion of the meeting requires closure as the disclosure of the information would not be in the public interest. There will be briefings from personnel from Coast Guard Intelligence Coordination Center regarding current domestic and international security threats to maritime commerce. Under 5 U.S.C. 552b(c)(1), this information is specifically authorized under criteria established by Executive Order 12968 to be kept secret in the interests of national defense or foreign policy. Accordingly, this portion of the meeting will be closed to the public.

(2) Global Supply Chain Security Initiative. Per the *SAFE Port Act* (Pub. L. 109–347) the Coast Guard consults with the NMSAC on the Global Supply Chain Security Initiative. The Committee will receive an update and provide further guidance/recommendations on this initiative.

(3) Transport Canada/USCG Regulatory Harmonization. The Committee will receive an update from Transport Canada and the USCG on efforts to harmonize Security Regulations across the Northern Border. The Committee will then provide recommendations on these efforts.

(4) Detain On-Board Requirements. NMSAC will receive an update from the chair of the NMSAC working group and vote on recommendations concerning Coast Guard and U.S. Customs and Border Protection (CBP) field guidance pertaining to requirements for vessels to post or contract for guards while in U.S. ports.

(5) Port Security Grant Program and Transportation Worker Identification Credential (TWIC) Readers. The NMSAC will receive an update and provide guidance on efforts to accommodate TWIC readers into the Port Grant Program as a result of the Completion of the TWIC Reader Pilot.

(6) Public Comment Period. NMSAC will hear any other matters raised by the public. Please note that the public will have an opportunity to comment throughout the day on each topic as it is discussed.

Day 2

(7) Maritime Domain Awareness and Information Sharing. The Committee will hold a follow up discussion from its last meeting to discuss the results of the Committee's efforts to poll the maritime industry on what gaps still remain in information sharing between the industry and the Federal Government with a panel of DHS Information Sharing Executives.

(8) Public comment period. NMSAC will hear any other matters raised by the public. Please note that the public will have an opportunity to comment throughout the day on each topic as it is discussed.

Dated: April 13, 2012.

P.F. Thomas,

Captain, U.S. Coast Guard, Acting Director of Prevention Policy.

[FR Doc. 2012–10477 Filed 4–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–212; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

The Department of Homeland Security, 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. This 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 July 2, 2012.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–212. Should USCIS decide to revise Form I–212 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–212.

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), USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, Clearance Office, 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. 1615–0018 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning 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.

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 Permission to Reapply for Admission into the United States after Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–212; 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. The information provided on Form I–212 is used by USCIS to adjudicate applications filed by aliens requesting consent to reapply for admission to the United States after deportation, removal or departure, as provided under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,877 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,754 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 202–272–1470.

Dated: April 19, 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. 2012–10406 Filed 4–30–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2521–12; DHS Docket No. USCIS 2010–0010]

RIN 1615–ZB11

Extension and Redesignation of Somalia for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) is both extending the existing designation of Somalia for temporary protected status (TPS) for 18 months from September 18, 2012 through March 17, 2014, and redesignating Somalia for TPS for 18 months, effective September 18, 2012 through March 17, 2014. The extension allows currently eligible TPS beneficiaries to retain their TPS through March 17, 2014. The redesignation of Somalia allows additional individuals who have been continuously residing in the United States since May 1, 2012, to obtain TPS, if eligible. The Secretary has determined that an extension is warranted because the conditions in Somalia that prompted the TPS designation continue to be met. There continues to be a substantial, but temporary, disruption of living conditions in Somalia based upon ongoing armed conflict and extraordinary and temporary conditions in that country that prevent Somalis who now have TPS from safely returning.

This notice also sets forth procedures necessary for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) to re-register under the extension if they already have TPS or to submit an initial registration application under the redesignation, and to file Applications for Employment Authorization (Forms I–765) with U.S. Citizenship and Immigration Services (USCIS).

Under the redesignation, individuals who currently do not have TPS, or a TPS application pending, may apply for TPS from May 1, 2012 through October 29, 2012. In addition to demonstrating continuous residence in the United States since May 1, 2012, USCIS will determine whether initial applicants for TPS under this redesignation have demonstrated that they have been continuously physically present in the United States since September 18, 2012, the effective date of the redesignation of Somalia, before USCIS grants them TPS.

For individuals who have already been granted TPS under the Somalia designation, the 60-day re-registration period will run from May 1, 2012 through July 2, 2012. USCIS will issue new Employment Authorization Documents (EADs) with a March 17, 2014 expiration date to eligible Somali TPS beneficiaries who timely re-register and apply for EADs under this extension.

DATES: *Extension of TPS:* The 18-month extension of the TPS designation of Somalia is effective September 18, 2012, and will remain in effect through March 17, 2014. The 60-day re-registration period begins May 1, 2012 and will remain in effect until July 2, 2012.

Redesignation of Somalia for TPS: The redesignation of Somalia for TPS is effective September 18, 2012, and will

remain in effect through March 17, 2014, a period of 18 months. The initial registration period for new applicants under the Somalia TPS re-designation will run from May 1, 2012 through October 29, 2012.

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* You can find specific information about this extension of Somalia for TPS and redesignation of Somalia by selecting ''TPS Designated Country—Somalia'' from the menu on the left of the TPS Web page.
- You can also contact the TPS Operations Program Manager at Status and Family Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status inquiries.
- Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this notice.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
Government—U.S. Government
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
USCIS—U.S. Citizenship and Immigration Services

What is Temporary Protected Status (TPS)?

- TPS is an immigration status granted to eligible nationals of a country designated for TPS under the Act (or to persons without nationality who last habitually resided in the designated country).
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization, so long as they continue to meet the requirements of TPS status.
- TPS beneficiaries may also be granted travel authorization as a matter of discretion.
- The granting of TPS does not lead to permanent resident status.
- When the Secretary of Homeland Security (Secretary) terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS (unless that status has since expired or been terminated) or to any other lawfully obtained immigration status they received while registered for TPS.

When was Somalia designated for TPS?

On September 16, 1991, the Attorney General designated Somalia for TPS based on extraordinary and temporary conditions resulting from armed conflict. *See* 56 FR 46804. On September 4, 2001, the Attorney General redesignated Somalia for TPS. *See* 66 FR 46288. The Secretary of Homeland Security has extended Somalia's TPS designation several times based on a determination that the conditions warranting the designation have continued to be met. The last extension for Somalia was announced on November 2, 2010. *See* 75 FR 67383. This announcement is the ninth extension of TPS for Somalia since the redesignation and extension in 2001, and the second redesignation of Somalia for TPS since the original designation in 1991.

What authority does the Secretary have to extend the designation of Somalia for TPS?

Section 244(b)(1) of the Act, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate Government agencies, to designate a foreign state (or part thereof) for TPS.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). *See* section 244(a)(1)(A) of the Act, 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* section 244(b)(3)(A) of the Act, 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation is extended for an additional 6 months (or in the Secretary's discretion for 12 or 18 months). *See* section 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* section 244(b)(3)(B) of the Act, 8 U.S.C. 1254a(b)(3)(B).

What is the Secretary's authority to redesignate Somalia for TPS?

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS. *See* section 244(b)(1) of the Act, 8 U.S.C. 1254a(b)(1); *see also* section 244(c)(1)(A)(i) of the Act, 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that ''the alien has been continuously physically present since the effective date of *the most recent designation of the state*'') (emphasis added). This is one of several instances in which the Secretary and, prior to the establishment of DHS, the Attorney General have simultaneously extended a country's TPS designation and redesignated the country for TPS. *See, e.g.,* 76 FR 29000 (May 19, 2011) (extension and redesignation for Haiti); 69 FR 60168 (Oct. 7, 2004) (extension and redesignation for Sudan); 62 FR 16608 (Apr. 7, 1997) (extension and redesignation for Liberia).

When the Secretary designates or redesignates a country for TPS, she also has the discretion to establish the date from which TPS applicants must demonstrate that they have been ''continuously resid[ing]'' in the United States. *See* section 244(c)(1)(A)(ii) of the Act, 8 U.S.C. 1254a(c)(1)(A)(ii). This discretion permits the Secretary to tailor the ''continuous residence'' date to offer TPS to the group of eligible individuals that the Secretary deems appropriate.

The Secretary has determined that the ''continuous residence'' date for applicants for TPS under the redesignation of Somalia shall be May 1, 2012. Initial applicants for TPS under this redesignation must also show they have been ''continuously physically present'' in the United States since September 18, 2012, which is the effective date of the Secretary's most recent designation, or redesignation, of Somalia. *See* section 244(c)(1)(A)(i) of

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions transferred from the Department of Justice to the Department of Homeland Security ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying HSA, tit. XV, sec. 1517).

the Act, 8 U.S.C. 1254a(c)(1)(A)(i). For each initial TPS application filed under the redesignation, the final determination whether the applicant has met the ''continuous physical presence'' requirement cannot be made until September 18, 2012. USCIS, however, will issue employment authorization documentation, as appropriate, during the registration period in accordance with 8 CFR 244.5(b).

Why is the Secretary extending the TPS designation for Somalia and simultaneously redesignating Somalia for TPS through March 17, 2014?

Over the past year, the Department of Homeland Security (DHS) and the Department of State (DOS) have continued to review conditions in Somalia. Based on this review and after consulting with DOS, the Secretary has determined that an 18-month extension is warranted because the armed conflict is ongoing, and the extraordinary and temporary conditions that prompted the 2001 redesignation persist. The Secretary has further determined that the conditions have not only persisted, but have deteriorated in Somalia, supporting redesignating Somalia for TPS under section 244(b)(1)(A) and (C) of the Act and changing the ''continuous residence'' and ''continuous physical presence'' dates.

Two decades of conflict in Somalia and the country's most severe drought in 60 years have led to what has been referred to as the worst humanitarian crisis in the world. During this reporting period of 2010 and 2011, the number of armed groups involved on both sides of the conflict increased and the areas of intense conflict expanded. A dramatic upsurge in violence and severe drought were related factors contributing to famine experienced by six regions in south-central Somalia during 2011. All these conditions led to a rise in civilian deaths and population displacement, and left more than half the population in need of humanitarian assistance. Distribution of humanitarian aid increased significantly during 2011 and the international community has doubled its pledge for humanitarian aid to Somalia for 2012. However, the delivery of humanitarian aid continues to be impeded by numerous factors, including piracy off the coast of Somalia, difficulty accessing areas affected by seasonal flooding, general insecurity, and most notably threats to aid workers and restrictions on the presence and work of humanitarian agencies.

Conflict between the Transitional Federal Government (TFG) and allied forces on one side and insurgent militias (including al-Shabaab) on the other continued to result in high levels of civilian casualties and population displacement. In early 2010, most of the country was in the hands of Islamist insurgents, with the TFG supported by the African Union Mission in Somalia (AMISOM) controlling only a few blocks of Mogadishu. Human Rights Watch (HRW) reported continual fighting between militant Islamist groups and the TFG raging in Mogadishu (Somalia's capital) throughout 2010, with all parties conducting random attacks causing high civilian casualties. HRW further reported that opposition fighters deployed unlawfully in densely populated civilian neighborhoods and at times used civilians as ''shields'' to fire mortars at TFG and AMISOM. These attacks were conducted so indiscriminately that they frequently destroyed civilian homes, but rarely struck military targets. According to the United Nations (UN) Secretary-General, by early November 2011, the TFG and AMISOM were present across almost all 16 districts of Mogadishu, but many districts remained insecure and terrorist attacks by al-Shabaab occurred almost daily.

During 2010 and 2011, the conflict intensified outside of Mogadishu. The UN Security Council reported that ''the relatively stable northern regions of Puntland and Somaliland have suffered increasing spillover from the conflict to the south in the form of targeted killings and bombings.'' In late 2011, Kenya and Ethiopia provided assistance to the TFG and deployed troops into the border areas those countries share with Somalia to fight al-Shabaab.

An escalation in fighting contributed to high numbers of civilian casualties. An estimated 2,200 civilians were killed in 2010. Around 1,400 civilians were killed in the first half of 2011. Between January and July 2011 some 6,543 individuals were admitted to hospitals in Mogadishu with ''weapon-related injuries.'' In addition to being caught in the middle of fighting, civilians were also targeted by armed groups. According to an August 2011 HRW report, all forces involved in the fighting in Mogadishu ''have been responsible for serious violations of international humanitarian law * * * [including] indiscriminate attacks, extrajudicial killings, arbitrary arrests and detention, and unlawful forced recruitment'' (including forced recruitment of children by al-Shabaab).

Worsening conditions, famine, and conflict led to the displacement of many people within and outside Somalia, with dire consequences for the health and safety of those populations. By the end of 2011, there were an estimated 1.5 million internally displaced people (IDP) within Somalia. Approximately 470,000 Somalis fled to IDP camps at or near Mogadishu. Makeshift IDP camps provided little access to humanitarian aid and placed IDPs at risk of harassment by local militia groups. In December 2011, the UN news agency Integrated Regional Information Networks reported a sharp rise in the number of rapes reported in IDP camps.

The number of Somalis fleeing to neighboring countries drastically increased. The Office of the UN High Commissioner for Refugees (UNHCR) reported that in 2011 new Somali refugee arrivals in neighboring countries increased to 286,487, bringing the total number of Somali refugees in the region to 944,692 as of November 2011. Approximately 1,500 refugees per day crossed the border from Somalia into Ethiopia and Kenya at the peak of the famine. UNHCR expressed alarm at security incidents targeting the refugee complex in Kenya, where four targeted attacks took place between October and December 2011, including the kidnapping of three aid workers.

Conflict, displacement, and factors related to food insecurity—including severe drought, rising food prices, and restrictions on humanitarian aid—were at the root of the ongoing humanitarian crisis in Somalia during 2010 and 2011. In 2010, Amnesty International reported that the threat of piracy, insecurity, restrictions on movement and operations of aid agencies, and corruption were factors that hampered delivery of humanitarian aid to populations in need.

In July 2011 the UN declared a state of famine in parts of southern Somalia. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), by the second half of 2011, tens of thousands had died from famine. In August 2011, OCHA reported that ''Somalia is currently facing the most serious food and nutrition crisis in the world in terms of both scale and severity.'' During this reporting period of 2010 and 2011, Somalia had the highest malnutrition rates in the world. According to the UN Food Security and Nutrition Analysis Unit, 450,000 children were acutely malnourished throughout the country. Only 30 percent of Somalis had access to safe water, the lowest rate globally. Furthermore, food prices had drastically increased in 2011. Local cereal prices in the south had increased 270 percent in some areas. Additionally, local food shortages, an increase in global oil and food prices, and piracy had contributed to an

average increase of 29 percent on all imported commodities. By the end of 2011, the UN reported that an estimated four million Somalis were in urgent need of food aid, humanitarian aid, and other assistance—more than half the country's population; three million of those were in crisis, and 250,000 were suffering from famine and were at risk of starvation.

Despite the humanitarian crisis, al-Shabaab blocked aid distribution. TFG troops reportedly complicated aid distribution by stealing aid. Reports described blanket prohibition on humanitarian aid in al-Shabaab-controlled areas; and in late November 2011, al-Shabaab announced a ban on the operations of 16 relief organizations, including the UN Children's Fund, the World Health Organization and several UN agencies inside Somalia. This ban created concerns about renewed food insecurity and severe malnutrition. It also endangers the ability of Somali people in such areas to recover from the famine, rebuild community resilience, and build reserves for future adverse weather events.

Somalia currently does not have a national government capable of providing a minimum level of human security and law and order for its citizens, and public security is unstable in many parts of Somalia. The TFG has little or no presence outside of Mogadishu, and has limited capacity to provide normal government services in the areas it does control. The TFG's capacity to process, accommodate, and provide assistance to returnees is extremely limited. Somalia faces an uncertain political future as the TFG's mandate is scheduled to end in August 2012.

Based upon this review and after consultation with appropriate Government agencies, the Secretary finds that:

- The conditions that prompted the September 4, 2001 redesignation of Somalia for TPS continue to be met. *See* section 244(b)(3)(A) and (C) of the Act, 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continues to be an ongoing armed conflict and extraordinary and temporary conditions in Somalia that prevent Somali nationals from returning to Somalia in safety. *See* section 244(b)(1)(A) and (C) of the Act, 8 U.S.C. 1254a(b)(1)(A) and (C).
- It is not contrary to the national interest of the United States to permit Somalis (and persons who have no nationality who last habitually resided in Somalia) who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* section 244(b)(1)(C) of the Act, 8 U.S.C. 1254a(b)(1)(C).
- The designation of Somalia for TPS should be extended for an additional 18-month period from September 18, 2012 through March 17, 2014. *See* section 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(C).
- Since the conditions in Somalia have significantly deteriorated which further prevents the safe return of Somali nationals (and persons with no nationality who last habitually resided in Somalia), Somalia should be simultaneously redesignated for TPS effective September 18, 2012 through March 17, 2014. *See* section 244(b)(1)(A) and (C) and (b)(2) of the Act, 8 U.S.C. 1254a(b)(1)(A) and (C) and (b)(2).
- For the redesignation, the Secretary has determined that TPS applicants must demonstrate that they have continuously resided in the United States since May 1, 2012.
- The date by which TPS applicants must demonstrate that they have been continuously physically present in the United States is September 18, 2012, the effective date of the redesignation of Somalia for TPS.
- There are approximately 250 current Somalia TPS beneficiaries who are expected to be eligible to re-register for TPS under the extension.
- It is estimated that fewer than 1,000 additional individuals may be eligible for TPS under the redesignation of Somalia. This population includes potentially eligible Somalis who have limited time remaining as nonimmigrants or who have no other status.

Notice of Extension of the TPS Designation of Somalia and Redesignation of Somalia for TPS

By the authority vested in me as Secretary under section 244 of the Act, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that the conditions that prompted the redesignation of Somalia for temporary protected status on September 4, 2001, not only continue to be met but have significantly deteriorated. *See* section 244(b)(3)(A) of the Act, 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am simultaneously extending the existing TPS designation of Somalia for 18 months from September 18, 2012 through March 17, 2014, and redesignating Somalia for TPS for 18 months effective September 18, 2012 through March 17, 2014. *See* section 244(b)(1)(A) and (C) and (b)(2) of the Act, 8 U.S.C. 1254a(b)(1)(A) and (C) and (b)(2). I have also determined that under the redesignation eligible individuals must have continuously resided in the United States since May 1, 2012. *See* section 244(c)(1)(A)(ii) of the Act, 8 U.S.C. 1254a(c)(1)(A)(ii).

Janet Napolitano,

Secretary.

Required Application Forms and Application Fees To Register or Re-Register for TPS

To register or re-register for TPS for Somalia, an applicant must submit:

1. Application for Temporary Protected Status, Form I–821,

- If you are filing an initial application, you must pay the Form I–821 fee. *See* 8 CFR 244.2(f)(1) and 244.6 and information on initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps.*
- If you are filing a re-registration, you do not need to pay the Form I–821 fee. *See* 8 CFR 244.17; and

2. Application for Employment Authorization, Form I–765.

- If you are applying for initial registration and want an EAD, you must pay the Form I–765 fee only if you are age 14 through 65. No EAD fee is required if you are under the age of 14 or over the age of 65 and applying for initial registration.
- If you are applying for re-registration, you must pay the Form I–765 application fee only if you want an EAD.
- You do not pay the Form I–765 fee if you are not requesting an EAD, regardless of whether you are applying for initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay, you may apply for application and/or biometrics fee waivers by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Fees for Form I–821, Form I–765, and biometric services are also described in 8 CFR 103.7(b).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay, you may apply for a biometrics fee waiver by completing a Form I–912, or by submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric

services fee, please visit the USCIS Web site at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Re-Filing an Initial TPS Application After Receiving a Denial of a Fee Waiver Request

If you request a fee waiver when filing your TPS and EAD application forms and your request is denied, you may re-file your application packet with the correct fees before the filing deadline October 29, 2012. If you attempt to submit your application with a fee waiver request before the initial filing deadline, but you receive your application back with the USCIS fee waiver denial, and there are fewer than 45 days before the filing deadline (or the deadline has passed), you may still refile your application within the 45-day period after the date on the USCIS fee waiver denial notice. Your application will not be rejected even if the deadline has passed, provided it is mailed within those 45 days and all other required information for the application is included. **Note:** If you wish, you may also wait to request an EAD and pay the EAD application fee at a later time after USCIS grants you TPS, if you are found eligible.

Re-Filing a Re-Registration TPS Application After Receiving a Denial of a Fee Waiver Request

USCIS urges all re-registering applicants to file as soon as possible within the 60-day re-registration period so that USCIS can promptly process the applications and issue EADs. Filing early will also allow those applicants who may receive denials of their fee waiver requests to have time to re-file their applications before the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to refile by the re-registration deadline, the applicant may still refile his or her application. This situation will be reviewed under good cause for late re-registration. However, applicants are urged to re-file within 45 days of the date on their USCIS fee waiver denial notice, if at all possible. *See* section 244(c)(3)(C) of the Act; 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* **Note:** Although, as stated above, a re-registering TPS beneficiary age 14 and older must pay the biometrics fee (but not the initial TPS application fee) upon filing a TPS re-registration application, the applicant may wish to wait to request an EAD and pay the EAD application fee after USCIS has approved the individual's TPS re-registration, if he or she is eligible.

Mailing Information

Mail your application for TPS to the proper address in Table 1:

TABLE 1—MAILING ADDRESS

If . . .	Mail to . . .
You are applying for a re-registration or applying for an initial registration:	*U.S. Postal Service:* USCIS, Attn: TPS Somalia, P.O. Box 6943, Chicago, IL 60680–6943. *Non-U.S. Postal Delivery Service:* USCIS, Attn: TPS Somalia, 131 S. Dearborn—3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD or are re-registering for the first time following a grant by the IJ or BIA, please mail your application to the address in Table 1 above. Upon receiving a Receipt Notice from USCIS, please send an email to *TPSijgrant.vsc@uscis.dhs.gov* with the receipt number and stating that you submitted a re-registration and/or request for an EAD based on an IJ/BIA grant of TPS. You can find detailed information on what further information you need to email and email addresses on the USCIS TPS Web page at *http://www.uscis.gov/tps.*

E-Filing

You cannot electronically file your application when registering or re-registering for Somalia TPS. Please mail your application to the mailing address listed in Table 1 above.

Employment Authorization Document (EAD)

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at local offices.

Will my current EAD that is set to expire on September 17, 2012, be automatically extended for six months?

No. This notice does not automatically extend previously issued EADs. DHS has announced the extension of the TPS designation of Somalia and established the re-registration period at an early date to allow sufficient time for USCIS to process EAD requests prior to the September 17, 2012 expiration date. You must apply during the 60-day re-registration period. Failure to apply for TPS during the re-registration period without good cause may result in gaps in work authorization. DHS strongly encourages you to apply as early as possible within the re-registration period.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification, Form I–9?

You can find a list of acceptable document choices on page 5 of the Employment Eligibility Verification, Form I–9. Employers are required to verify the identity and employment authorization of all new employees by using Form I–9. Within three days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under ''List A.'' Employers may not reject a document based on a future expiration date.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

You must present any document from List A or any document from List C on

Form I–9 to reverify employment authorization. Employers are required to reverify on Form I–9 the employment authorization of current employees upon the expiration of a TPS-related EAD but may not specify which List A or List C document employees must present. USCIS anticipates that it will be able to process and issue new EADs for existing TPS Somalia beneficiaries before their current EADs expire on September 17, 2012. However, re-registering beneficiaries are encouraged to file as early as possible within the 60-day re-registration period to help ensure that they receive their EADs promptly.

Can my employer require that I produce any other documentation to prove my status, such as proof of my Somali citizenship?

No. When completing the Form I–9, including reverifying employment authorization, employers must accept any documentation that appears on the lists of acceptable documentation, and that reasonably appears to be genuine and that relates to you. Employers may not request specific documentation, regardless of whether it does or does not appear on the Form I–9. Therefore, employers may not request proof of Somali citizenship when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If presented with EADs that are unexpired on their face, employers should accept such EADs as valid ''List A'' documents so long as the EADs reasonably appear to be genuine and to relate to the employee. See below for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or based on your national origin.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. The USCIS Customer Assistance Office accepts calls in English and Spanish only. For questions about avoiding discrimination during the employment eligibility verification process, employers may call the Department of Justice (DOJ) Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155, which offers language interpretation in numerous languages.

Note to Employees

Employees or applicants may call the DOJ OSC Worker Information Hotline at 1–800–255–7688 (TDD for the hearing impaired is at 1-800-237–2515) for information regarding employment discrimination based on citizenship or immigration status, or based on national origin, or for information regarding discrimination related to the Form I–9 and E-Verify. Language interpretation is available in numerous languages. In order to comply with the law, employers must accept any document or combination of documents acceptable for Form I–9 completion if the documentation reasonably appears to be genuine and to relate to the employee. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employees who receive an initial mismatch in E-Verify must be given an opportunity to challenge the mismatch, and employers are prohibited from taking adverse action against such employees based on the initial mismatch unless and until E-Verify returns a final non-confirmation. For example, employers must allow employees challenging their mismatches to continue to work without any delay in start date or training, and without any change in hours or pay while the final E-Verify determination remains pending. Additional information is available on the OSC Web site at *http://www.justice.gov/crt/about/osc/.*

Note Regarding Federal, State and Local Government Agencies (Such as Departments of Motor Vehicles)

State and local government agencies are permitted to create their own guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. If you are applying for a state or local government benefit, you may need to provide the state or local government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your EAD that has a valid expiration date;

(2) A copy of your Application for Temporary Protected Status, Form I–821 Receipt Notice (Form I–797) for this re-registration;

(3) A copy of your past or current Form I–821 Approval Notice (Form I–797), if you receive one from USCIS.

Check with the state or local agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response following completion of all required SAVE verification steps, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has completed all SAVE verification and you do not believe the response is correct, you may make an Info Pass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request can be found at the SAVE Web site at *www.uscis.gov/save,* then by choosing ''How to Correct Your Records'' from the menu on the right.

[FR Doc. 2012–10388 Filed 4–30–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 2310 Highway 69 North, Nederland, TX 77627, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to

conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on May 11, 2011. The next triennial inspection date will be scheduled for May 2014.

FOR FURTHER INFORMATION CONTACT: Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 18, 2012.

Ira S. Reese,

Executive Director.

[FR Doc. 2012–10408 Filed 4–30–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Correction of Revoked Customs Broker Licenses

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

ACTION: Reinstatement of Licenses.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and Title 19 of the Code of Federal Regulations at section 111.30(d), the following Customs broker licenses were inadvertently revoked without prejudice on November 18, 2011. *See* Notice of Revocation of Customs Broker License, dated November 18, 2011 (76 FR 71584). The below identified licenses are active.

Name	License	Port name
Aldo Neyra, Jr	17367	Los Angeles.
Samantha Woo	17389	New York.
Gloria S. Oh	04973	New York.
Kenneth Carlstedt	13049	New York.
Michael Bonvissuto	04793	New York.
John G. Duffield	05829	New York.
Michael Russell	22702	New York.
Anthony J. Raffin	24103	Detroit.
Jeramy Caudill	23068	St. Louis.
Susan K. Richards	10847	Philadelphia.
Catherine Finn	12339	New Orleans.

Dated: April 23, 2012.

Richard DiNucci,

Deputy Assistant Commissioner, Office of International Trade.

[FR Doc. 2012–10445 Filed 4–30–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Agilent Oscilloscopes

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of certain oscilloscopes. We were asked to consider five scenarios. Based upon the facts presented, CBP has concluded in the final determination that for each scenario the assembly and programming operations performed in Singapore substantially transform the components of the oscilloscopes. Therefore, the country of origin of the oscilloscopes for purposes of U.S. government procurement is Singapore.

DATES: The final determination was issued on April 23, 2012. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before May 31, 2012.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on April 23, 2012, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain series of Agilent oscilloscopes which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H203555, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the assembly and programming operations in Singapore, the country of origin of the oscilloscopes for purposes of U.S. government procurement is Singapore.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: April 23, 2012.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H203555

April 23, 2012

MAR–2 OT:RR:CTF:VS H203555 HkP

CATEGORY: Origin

Mr. Keith Morgan
Americas Geographic Trade Manager
Agilent Technologies, Inc.
8825 Stanford Boulevard
Suite 300
Columbia, MD 21045

RE: Government Procurement; Trade Agreements Act; Country of Origin of certain Oscilloscopes; Substantial Transformation

Dear Mr. Morgan: This is in response to your letter, dated January 30, 2012, requesting a final determination on behalf of Agilent Technologies, Inc. (''Agilent''), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (''CBP'') Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of Agilent's MSOX/DSOX200A and MSOX/DSOX3000A

series oscilloscopes. As a U.S. importer, Agilent is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Agilent imports the MSOX/DSOX200A and MSOX/DSOX3000A series oscilloscopes, which are used to measure voltage in a variety of research, design, production and evaluation applications, from Malaysia. The two model series include 28 different configurations with varying bandwidth and sampling rates. The oscilloscopes consist of the following components:

1. ACQ board printed circuit assembly (PCA) populated with transistors, diodes, capacitors, integrated circuits, and a 1GB flash memory to store product firmware and application software that is the oscilloscopes' main controller. It is described as the ''motherboard'' of the oscilloscopes;
2. Keyboard PCA;
3. Main keypad;
4. Soft keypad;
5. Liquid Crystal Display (LCD);
6. LCD lens;
7. AC line filter PCA that acts as the power manager;
8. Power supply;
9. Fan;
10. Bucket assembly—a plastic component that forms part of the back cover of the oscilloscope;
11. Bezel;
12. Front and rear deck—sheet metal components that form the internal chassis; and
13. Cables, bolts, screws, washers and connectors.

The components are manufactured in several countries, including China, Malaysia, and Taiwan.

The application software and firmware for the oscilloscopes are developed in the United States. Firmware development consists of requirements analysis, design, code writing, quality assurance testing, bug fixing, maintenance and support. According to Agilent's submission, more than half of the years (the number of which is unstated) taken to develop the oscilloscopes were invested in the development of firmware, and an additional two years are invested in continued firmware development and maintenance.

Agilent has asked us to consider five manufacturing scenarios. Regardless of the scenario, the following processes take place in Singapore where the components listed above are assembled into subassemblies (described below) which are then made into complete oscilloscopes. The rear deck subassembly, consisting of the fan, the AC Line Filter PCA, power supply, AC and DC cables, and wiring, is installed into the rear deck. The front deck subassembly, consisting of a display mount, the ACQ board PCA, brackets, and various types of cables (keyboard, display, display backlight, interboard supply), is installed into the front deck. The front bezel assembly, consisting of the bezel, keypad, keyboard, cables, and knobs, is fitted together. The front and rear deck subassemblies are fitted together and the interboard power cable on the front deck subassembly is connected to the AC line filter PCA on the rear deck subassembly. The power supply shield, power switch, and front panel connectors are installed and the bezel assembly is connected to the front and rear deck subassembly. The entire assembly is placed into a fixture that is fitted together with the bucket assembly. The oscilloscopes then go through three post-assembly tests to ensure proper functionality and a cosmetic inspection. They are then shipped to Malaysia where they undergo a final pre-shipment functional test and cosmetic inspection.

Scenario 1

The ACQ board for the front deck subassembly and the AC line filter PCA for the rear deck subassembly are manufactured in Malaysia and shipped to Singapore. U.S.-origin firmware and application software is downloaded onto the fully assembled oscilloscopes in Singapore.

Scenario 2

The ACQ board is assembled in Malaysia and shipped to Singapore where it is programmed with application software during the front deck subassembly process. The AC line filter PCA is also assembled in Malaysia and shipped to Singapore. U.S.-origin firmware is downloaded onto the fully assembled oscilloscopes in Singapore.

Scenario 3

The ACQ board and the AC line filter PCA are manufactured in Malaysia. The ACQ board is temporarily programmed with application software and tested in Malaysia. Before shipment to Singapore the software is deleted from the ACQ board. In Singapore, U.S.-origin firmware and application software is downloaded onto the fully assembled oscilloscopes.

Scenario 4

As in scenario three, the ACQ board is assembled, programmed and tested in Malaysia and its software is deleted before it is shipped to Singapore. U.S.-origin firmware and application software is downloaded onto the fully assembled oscilloscopes in Singapore. The AC line filter PCA is made in Singapore.

Scenario 5

The ACQ board is assembled in Malaysia and shipped to Singapore. The AC line filter PCA is manufactured in Singapore. U.S.-origin application software and firmware is downloaded onto the fully assembled oscilloscopes in Singapore.

ISSUE:

What is the country of origin of the oscilloscopes for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be

considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Data General v. United States,* 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. The court noted that programming alters the character of a PROM by changing the pattern of interconnections within the PROM. A distinct physical change is effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, may be discerned by electronic testing of the PROM. The essence of the article, its interconnections or stored memory, is established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device possessing a desired distinctive circuit pattern, is no less a ''substantial transformation'' than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In *Texas Instruments v. United States,* 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a ''mixed question of technology and customs law.''

In C.S.D. 84–86, CBP stated:

We are of the opinion that the rationale of the court in the Data General case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming. * * * [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that changes or defines its use generally constitutes substantial transformation. *See also* Headquarters Ruling Letter ('HQ'') 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitute substantial transformation); and, HQ 733085, dated July 13, 1990; *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette does not constitute substantial transformation because it does not add value, does not involve complex or highly technical operations and did not create a new or different product); HQ 734518, dated June 28, 1993, (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imports it).

Agilent believes that the country of origin of the oscilloscopes is Singapore because that is where the oscilloscopes were manufactured and programmed with the U.S.-origin firmware and software that cause the machines to function as oscilloscopes. According to the company, the firmware and software substantially transform the electronic assemblies into functioning oscilloscopes. In support of its position, Agilent cites HQ H090115 (Aug. 2, 2010) because it believes that the facts underlying that ruling are similar to the facts in the instant case. HQ H090115 concerned the country of origin of a product known as ''Unified Communications Solution'', composed of subassemblies made in China installed at an end user's premises in the United States over a one month period and run on U.S.-origin software known as ''Communication Manager''. Communication Manager added functionality to certain individual components and changed the functionality of other components. CBP found that there was a substantial transformation of the component parts in the United States, which was where the final assembly and installation of the hardware and the programming of the components with Communication Manager took place. We note that HQ H090115 is distinguishable from the instant case because in HQ H090115 manufacturing operations took place in only one country and programming took place in another. In this case, manufacturing occurs in both Malaysia and Singapore and programming may take place in either country.

A ruling more pertinent to the facts in this case is HQ H170315, dated July 28, 2011, which concerned the country of origin of satellite telephones and considered scenarios similar to those described in this ruling. In HQ H170315, CBP was asked to consider six scenarios involving the manufacture of PCBs in one country and the programming of the PCBs with second country software either in the first country or in a third country where the phones were assembled. In this case, PCAs are manufactured in Malaysia and programmed with U.S. software and firmware either in the Malaysia or in Singapore where the oscilloscopes are assembled.

Scenario 1

In this scenario, the ACQ board (the motherboard of the oscilloscopes) and the AC line filter PCA (the power controller) are assembled in Malaysia and shipped to Singapore. After importation into Singapore, the boards are assembled with subassemblies of Singaporean origin into oscilloscopes. U.S.-origin firmware and application software are then downloaded onto the fully assembled oscilloscopes, which are then subjected to a basic test. The oscilloscopes are shipped to Malaysia for complete testing.

In this scenario, a large number of parts are assembled in Malaysia to form the Malaysian-origin boards. Upon importation into Singapore, the boards are assembled with rear, front deck, and bezel subassemblies made in Singapore from components imported from China, Malaysia, and Taiwan. In addition, the completed oscilloscopes are programmed with U.S.-origin application software and firmware in Singapore. Accordingly, in this scenario, there are three countries under consideration where programming and/or assembly operations take place, the last of which is Singapore. No one country's operations dominate the manufacturing operations of the oscilloscopes. The boards assembled in Malaysia are important to the function of the oscilloscopes, as is the U.S. firmware and software used to program the oscilloscopes in Singapore. The assembly in Singapore completes the oscilloscopes. Therefore, we find that the last substantial transformation occurs in Singapore. *See Belcrest Linens, supra;* HQ H170315 (July 28, 2011), Scenario III. Consequently, we find that the country of origin of the oscilloscopes in this scenario is Singapore.

Scenario 2

In this scenario, as in Scenario 1, the ACQ board and the AC line filter PCA are assembled in Malaysia and shipped to Singapore. However, in this scenario, after importation into Singapore the ACQ board is programmed with U.S.-

origin application software during the front deck subassembly process instead of after the oscilloscopes are completed. The boards are then assembled with subassemblies of Singaporean origin into oscilloscopes. U.S.-origin firmware is downloaded onto the fully assembled oscilloscopes in Singapore. The oscilloscopes undergo a basic testing before being shipped to Malaysia for further testing.

As discussed under Scenario 1, the boards imported from Malaysia are products of Malaysia. Upon importation into Singapore, they are assembled with rear, front deck, and bezel subassemblies, which are made in Singapore, to form complete oscilloscopes, which are then programmed with U.S.-origin application software and firmware in Singapore. Accordingly, there are three countries under consideration where programming and/or assembly operations take place, the last of which is Singapore. In this scenario, no one country's operations dominate the manufacturing operations of the oscilloscopes. The boards assembled in Malaysia are important to the function of the oscilloscopes, as is the U.S. firmware and software used to program the oscilloscopes in Singapore. Further, the assembly in Singapore completes the oscilloscopes. Therefore, as in Scenario 1, we find that the last substantial transformation occurs in Singapore. *See Belcrest Linens, supra;* HQ H170315 (July 28, 2011), Scenarios IV and V. Consequently, we find that the country of origin of the oscilloscopes in this scenario is Singapore.

Scenario 3

As in previous scenarios, the ACQ board and the AC line filter PCA are manufactured in Malaysia. However, in this scenario, the ACQ board is temporarily programmed with application software and tested in Malaysia. Before shipment to Singapore, the software is deleted from the ACQ board so that the board is not programmed when imported into Singapore. U.S.-origin firmware and application software is downloaded onto the fully assembled oscilloscopes in Singapore.

We find this scenario to be essentially the same as Scenario 1 because in both scenarios the ACQ board is not programmed when imported into Singapore, and the facts are otherwise the same as those in Scenario 1. Accordingly, for the reasons explained for Scenario 1, we find that the country of origin of the oscilloscopes in this scenario is Singapore.

Scenario 4

As in Scenario 3, the ACQ board is assembled, programmed and tested in Malaysia and its software is deleted before it is shipped to Singapore. However, in this scenario, the AC line filter PCA is made in Singapore, not Malaysia. U.S.-origin firmware and application software is downloaded onto the fully assembled oscilloscopes in Singapore.

As in previous scenarios, there are three countries under consideration where programming and/or assembly operations take place, the last of which is Singapore. In this scenario, no one country's operations dominate the manufacturing operations of the oscilloscopes. The boards assembled in Malaysia and Singapore are important to the function of the oscilloscopes, as is the U.S. firmware and software used to program the oscilloscopes in Singapore. Further, the assembly operations in Singapore complete the oscilloscopes. Therefore, we find that the last substantial transformation occurs in Singapore. *See Belcrest Linens, supra;* HQ H170315 (July 28, 2011). Consequently, we find that the country of origin of the oscilloscopes in this scenario is Singapore.

Scenario 5

The ACQ board is assembled in Malaysia and shipped to Singapore. The AC line filter PCA is manufactured in Singapore. U.S.-origin application software and firmware is downloaded onto the fully assembled oscilloscopes in Singapore.

We find this scenario to be essentially the same as Scenario 4 because in both scenarios the ACQ board is not programmed when imported into Singapore, and the facts are otherwise the same as those in Scenario 4. Accordingly, for the reasons explained for Scenario 4, we find that the country of origin of the oscilloscopes in this scenario is Singapore.

HOLDING:

Based on the facts in this case, we find that for all scenarios the country where the last substantial transformation takes place is Singapore. The country of origin of the Agilent MSOX/DSOX200A and MSOX/DSOX3000A series oscilloscopes is Singapore for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director Regulations and Rulings Office of International Trade

[FR Doc. 2012–10447 Filed 4–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 12–09]

Tuna—Tariff-Rate Quota; the Tariff-Rate Quota for Calendar Year 2012 Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS); Correction

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

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2012; correction.

SUMMARY: U.S. Customs and Border Protection (CBP) published in the **Federal Register** of April 17, 2012, a document concerning tariff rates for tuna in airtight containers for Calendar Year 2012. Inadvertently, no CBP Decision Number was listed in the heading of that document. This document corrects the April 17, 2012 document to reflect that the CBP Decision Number is 12–09 as set forth above.

DATES: *Effective Dates:* This correction is effective May 1, 2012. The 2012 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Ryan Olden, Regulations and Rulings, Office of International Trade, (202) 325–0009.

Correction

In notice document, FR Doc. 2012–9131, beginning on page 22796 in the issue of Tuesday, April 17, 2012, make the following correction in the third column:

Insert ''CBP Dec. 12–09'' into the heading of the document between the

agency name, ''U.S. Customs and Border Protection,'' and the title of the document, ''Tuna—Tariff-Rate Quota; the Tariff-Rate Quota for Calendar Year 2012 Tuna Classifiable under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS).''

Dated: April 25, 2012.

Harold M. Singer,

Director, Regulations and Disclosure Law Division, U.S. Customs and Border Protection.

[FR Doc. 2012–10409 Filed 4–30–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2012–N092; 40120–1112–0000–F2]

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given below, by May 31, 2012.

ADDRESSES: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Cameron Shaw, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: Cameron Shaw, telephone 904/731–3191; facsimile 904/731–3045.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. This notice is provided under section 10(c) of the Act.

If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES** section) or via electronic mail (email) to: *permitsR4ES@fws.gov*. Please include your name and return address in your email message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Fish and Wildlife Service office listed above (see **ADDRESSES** section).

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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit Application Number: TE–66439A

Applicant: Atlanta Botanical Garden, Atlanta, Georgia

Applicant requests authorization to collect seeds from *Trillium reliquum* (relict trillium) for the purpose of seed banking and propagation. This activity will be conducted on Fort Benning Military Base, Columbus, Georgia.

Permit Application Number: TE–237537

Applicant: Missouri Botanical Garden, St. Louis, Missouri

Applicant requests authorization to collect seeds from the following plant species:

Arenaria cumberlandensis Cumberland sandwort
Astragalus bibullatus Guthries ground plum
Solidago albopilosa White-haired Goldenrod
Xyris tennesseensis Tennessee yellow-eyed grass

This project will take place on Federal properties in Alabama, Tennessee, Kentucky, Illinois, Missouri, Virginia and West Virginia.

Permit Application Number: TE–148282

Applicant: Jack Wilhide, Chapmanville, West Virginia

Applicant requests reauthorization to conduct presence/absence surveys on the following species:

Indiana bat *Myotis sodalis*
Gray bat *Myotis grisescens*
Virginia big-eared bat *Corynorhinus townsendii virginianus*
Ozark big-eared bat *Corynorhinus townsendii ingens*

These surveys will be conducted in West Virginia, Virginia, Tennessee, Kentucky, North Carolina and Arkansas.

Permit Application Number: TE–67142A

Applicant: Woodson Asher, Mancherster, Kentucky

Applicant requests reauthorization to conduct presence/absence surveys on the following species:

Indiana bat *Myotis sodalis*
Gray bat *Myotis grisescens*
Virginia big-eared bat *Corynorhinus townsendii virginianus*

These surveys will be conducted throughout the species ranges.

Permit Application Number: TE–67464A

Applicant: Irene Liu, Duke University, Durham, North Carolina

Applicant requests authorization to monitor nests, capture, band, draw blood and conduct laparotomies on yellow-shouldered blackbirds (*Agelaius xanthomus*) in Puerto Rico.

Permit Application Number: TE–108990

Applicant: Ronald Spears, Centennial, Colorado

Applicant requests reauthorization to conduct presence/absence surveys on the following species:

Indiana bat *Myotis sodalis*
Gray bat *Myotis grisescens*
Mexican long-nosed bat *Leptonycteris nivalis*
Lesser long-nosed bat *Leptonycteris curasoae*

These surveys will be conducted throughout the species ranges.

Permit Application Number: TE–88889

Applicant: The Nature Conservancy.

Applicant requests renewed authorization to capture, band, translocate and install artificial nesting cavities for the red-cockaded woodpecker (*Picoides borealis*) on the Disney Preserve in Osceola and Polk Counties, Florida.

Permit Application Number: TE–156392

Applicant: Skybax Ecological Services, Berea, Kentucky

Applicant requests reauthorization to conduct scientific studies and surveys on the following species:

Indiana bat *Myotis sodalis*
Gray bat *Myotis grisescens*
Virginia big-eared bat *Corynorhinus townsendii virginianus*

These surveys will be conducted throughout the species ranges.

Dated: April 11, 2012.

Jacquelyn B. Parrish,

Acting Regional Director.

[FR Doc. 2012–10430 Filed 4–30–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L19900000.DB0000]

30-Day Extension of Call for Nominations for the Bureau of Land Management's California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management's (BLM) California Desert District is extending the call for nominations from the public for six members of its District Advisory Council to serve 3-year terms, first published in the **Federal Register** on January 19, 2012 (77 FR 2755). Council members provide advice and recommendations to the BLM on the management of public lands in southern California.

DATES: Nominations will be accepted until May 31, 2012.

ADDRESSES: Nominations should be sent to Teresa Raml, District Manager, Bureau of Land Management, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs (951) 697–5220.

SUPPLEMENTARY INFORMATION: The California Desert District Advisory Council is comprised of 15 individuals who represent different interests and advise BLM officials on policies and programs concerning the management of 11 million acres of public land in southern California. The Council meets in formal session three to four times each year in various locations throughout the BLM's California Desert District. Council members serve without compensation. Members serve 3-year terms and may be nominated for reappointment for additional 3-year terms.

Section 309 of the Federal Land Policy and Management Act directs the Secretary of the Interior to involve the public in planning and issues related to management of BLM-administered lands. The Secretary also selects Council nominees consistent with the requirements of the Federal Advisory Committee Act (FACA), which requires nominees appointed to the Council be balanced in terms of points of view and representative of the various interests concerned with the management of the public lands.

The Council also is balanced geographically, and the BLM strives to find qualified representatives from areas throughout the California Desert District. The District covers portions of eight counties, and includes more than 11 million acres of public land in the California Desert Conservation Area of Mono, Inyo, Kern, San Bernardino, Riverside, and Imperial counties, as well as 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles counties (known as the South Coast).

The BLM is extending the nomination period in order to broaden the pool of qualified nominations from which a selection can be made by the Secretary of the Interior. Nominations will be accepted for 30 days from the publication date of this notice. The 3-year terms would begin immediately upon appointment by the Secretary of the Interior.

The six positions to be filled include one representative of transportation/rights-of-way groups or organizations, one elected official, one representative of renewable energy groups or organizations, one representative of non-renewable resources groups or organizations, one representative of environmental protection groups or organizations, and one representative of the public-at-large.

Any group or individual may nominate a qualified person, based upon education, training, and knowledge of the BLM, the California Desert, and the issues involving BLM-administered public lands throughout southern California. Qualified individuals also may nominate themselves. If you have already submitted your nomination materials for 2012 you will not need to resubmit.

The nomination form may be found on the Desert Advisory Council Web page: *http://www.blm.gov/ca/st/en/info/rac/dac.html.* The following must accompany the nomination form for all nominations:

○ Letters of reference from represented interests or organizations;

○ A completed background information nomination form; and

○ Any other information that addresses the nominee's qualifications.

Nominees unable to download the nomination form may contact the BLM California Desert District External Affairs staff at (951) 697–5220 to request a copy. Advisory Council members are appointed by the Secretary of the Interior.

The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils.

Authority: 43 CFR subpart 1784.

Raymond C. Lee,

Acting California Desert District Manager.

[FR Doc. 2012–10427 Filed 4–30–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT923–12–L13200000–EL000, UTU–88878]

Notice of Invitation To Participate in Coal Exploration License, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: All interested qualified parties are hereby invited to participate with Ark Land Company on a pro rata cost-sharing basis in its program for the exploration of coal deposits owned by the United States of America in Sanpete County, Utah.

DATES: The notice of invitation to participate in this coal exploration license was published once each week for 2 consecutive weeks in *The Sanpete Messenger* (beginning the last week of January 2012), and by virtue of this announcement in the **Federal Register**. Any person seeking to participate in this exploration program must send written notice to both the Bureau of Land Management (BLM) and Ark Land Company, as provided in the **ADDRESSES** section below no later than 30 days after the publication of this notice in the **Federal Register**.

ADDRESSES: Copies of the exploration license and plan are available for review from 7:45 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays (serial number UTU–88878) in the public room of the BLM State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah.

The written notice to participate in the exploration program should be sent to Stan Perkes, Bureau of Land Management, Utah State Office,

Division of Lands and Minerals, P.O. Box 45155, Salt Lake City, Utah 84145 and to Paul Jensen, Geologist, Ark Land Company, c/o Canyon Fuel Company, LLC, Skylines Mines, HC35 Box 380, Helper, Utah 84526.

FOR FURTHER INFORMATION CONTACT: Stan Perkes by telephone 801–539–4036, or by email: *Stan_Perkes@blm.gov*.

SUPPLEMENTARY INFORMATION: The exploration activities will be performed pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 201(b), and to the regulations at 43 CFR part 3410. The purpose of the exploration program is to gain additional geologic knowledge of the coal underlying the exploration area for the purpose of assessing the coal resources. The exploration program is fully described and is being conducted pursuant to an exploration license and plan approved by the BLM. The exploration plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate. The area to be explored includes the following-described lands in Sanpete County, Utah:

Salt Lake Meridian, Utah

T. 13 S., R. 6 E.,
Sec. 33, E½SW¼, SW¼SW¼, and SE¼,
T. 14 S., R. 6 E.,
Sec. 4, lots 1 through 4 inclusive, and S½N½.

Containing 595.04 acres.

The Federal coal within the above-described lands is currently not leased for development of Federal coal resources.

Authority: 43 CFR 3410.2–1(c)(1).

Shelley J. Smith

Associate State Director.

[FR Doc. 2012–10425 Filed 4–30–12; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW164386]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW 164386, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from CKT Energy LLC for competitive oil and gas lease WYW164386 for land in Campbell County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $20 per acre or fraction thereof, per year and 18 -2/3 percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW 164386 effective January 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2012–10422 Filed 4–30–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM920000 L13100000 FI0000; NMNM–112882, NMNM–112883]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases NMNM 112882 and NMNM 112883

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the Class II provisions of Title IV of the Federal Oil and Gas Royalty Management Act of 1982, the Bureau of Land Management received a petition for reinstatement of oil and gas leases NMNM 112882 and NMNM 112883 from the lessee Clayton Williams Energy, Inc., for lands in Eddy County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the leases terminated under the law.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115 or at (505) 954–2146. 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 business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affects the lands. The lessees agree to new lease terms for rentals and royalties of $10 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500 administrative fee for the reinstatement of the leases and $166 cost for publishing this Notice in the **Federal Register**. The lessees met all the requirements for reinstatement of the leases as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate leases NMNM 112882 and NMNM 112883, effective the date of termination, January 1, 2012, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Lourdes B. Ortiz,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 2012–10428 Filed 4–30–12; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC02000 LF2200000.JS0000.LFESGA1D0000; 12–08807; MO #4500031135; TAS: 14X1125]

Notice of Temporary Restriction of Vehicle Use and Closure to Tree Cutting and Wood Harvesting on Public Land in Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), as authorized under the provisions of the Federal Land Policy and Management Act of 1976 and pursuant to BLM regulations, is temporarily restricting travel by motorized vehicles to existing posted roads and two-track trails and issuing a

temporary closure to wood harvesting and/or tree cutting on public land within the Ray May Fire burn area located south of Gardnerville, Nevada, in the Pine Nut Mountains east of U.S. Highway 395 in Douglas County, Nevada.

DATES: *Effective Dates:* The temporary restriction and closure of the described public use will be in effect from May 1, 2012 to August 1, 2014.

FOR FURTHER INFORMATION CONTACT: Ryan Elliott, fire planner, 775–885–6167, email: *r1elliot@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 8364.1, restriction of cross-country vehicle travel and closure to tree cutting and wood collecting on a portion of the area burned by the Ray May Fire in August 2011 is necessary to promote successful rehabilitation of the area.

The area is on public land on the west side of the Pine Nut Mountains. The affected public lands are described as follows:

Mount Diablo Meridian

T. 11 N., R. 21 E.
Sec. 1, SW¼, SW¼SE¼;
Sec. 3, Lot 4, SW¼NW¼, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 4, Lots 21–24, S½NW¼, NE¼SW¼, SE¼;
Sec. 9, NE¼NE¼;
Sec. 10, NW¼NE¼, N½NW¼;
Sec. 12, NW¼NE¼, N½NW¼.

T. 12 N., R. 21 E.
Sec. 26, SE¼SW¼, S½SE¼;
Sec. 34, W½SW¼, SE¼SW¼;
Sec. 35, E½, N½NW¼, SW¼NW¼, N½SW¼, SW¼SW¼;
Sec. 36, NW¼NW¼, S½NW¼, SW¼, SW¼SE¼.

The area described contains 2,267.91 acres, more or less, in Douglas County.

This temporary restriction and closure order will be posted at the Carson City District Office, 5665 Morgan Mill Road, Carson City, Nevada. Maps of the closure area are also available at the Carson City District Office.

On November 23, 2011, the BLM signed a Decision Record for the Ray May Fire Emergency Action, Temporary Closures Environmental Assessment (EA) to implement these restrictions and closure. The EA analyzed these actions and is available to the public on the District Web site at *http://www.blm.gov/nv/st/en/fo/carson_city_field.html.* Restricting vehicle use to posted roads and two-track trails and closing the area to wood collecting and wood cutting will improve post-fire recovery and rehabilitation of the Ray May Fire burn area as outlined in the 2011 Post-Fire Recovery Plan, Emergency Stabilization and Burned Area Rehabilitation Plan for Ray May Fire. To meet the goals of the rehabilitation plan, restrictions and closures need to be in effect for at least 3 growing seasons, ensuring sufficient regrowth of perennial plants and adequate stabilization of soils.

Motorized vehicle use within the burn area will be restricted to existing posted roads and two-track trails. The BLM will post roads and two-track trails open to use during this period. This restriction applies to all motorized vehicles, excluding:

(1) Any emergency or law enforcement vehicle while being used for emergency or administrative purposes; and

(2) Any vehicle whose use is expressly authorized in writing by the manager, Sierra Front Field Office.

Closing the area to wood harvesting and/or tree cutting is necessary because the BLM uses the burned trees to create erosion breaks. This restriction applies to all persons excluding:

(1) BLM personnel; and

(2) Any person who is expressly authorized in writing by the manager, Sierra Front Field Office.

If satisfactory rehabilitation is achieved prior to August 1, 2014, the restriction will be lifted. If the rehabilitation has not met the established benchmarks for success in the Ray May Fire Rehabilitation Plan by August 1, 2014, the BLM will consider reissuing the restriction order.

Penalties: Any person who fails to comply with the restriction order is subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisonment for not more than 12 months.

Authority: 43 CFR 8364.1.

Christopher J. McAlear,
District Manager, Carson City District Office.

[FR Doc. 2012–10424 Filed 4–30–12; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items: Northwest Museum of Arts & Culture, Spokane, WA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the intent to repatriate cultural items in the possession of the Northwest Museum of Arts & Culture, formerly Eastern Washington State Historical Society, in Spokane, WA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of unassociated funerary objects reported in the Notice of Intent to Repatriate published in the **Federal Register** (75 FR 58424–58425, September 24, 2010). The museum staff recently discovered additional unassociated funerary objects related to the sites listed in the earlier notice.

In the **Federal Register** (75 FR 58424, September 24, 2010), paragraph five is corrected by substituting the following paragraph:

During the period July 1939 to September 1940, funerary objects were systematically removed from Sites 7A and 7B (45–FE–7), Ferry County, WA, by Collier, Hudson, and Ford due to the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt), and they were accessioned by the museum in 1940 (EWSHS Accession #1027). The 45 unassociated funerary objects are 7 beaver tooth dice, 1 bone awl pendant, 27 dentalia beads, 4 copper pendants, 1 copper bracelet, 1 projectile point, 1 bone awl, 2 scrapers, and 1 hammerstone.

In the **Federal Register** (75 FR 58424–58425, September 24, 2010), paragraph six is corrected by substituting the following paragraph:

During the period July 1939 to September 1940, funerary objects were systematically removed from Site 24 (45–FE–24), Ferry County, WA, by Collier, Hudson, and Ford due to the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt), and they were accessioned by the museum in 1940 (EWSHS Accession #1027). The 118 unassociated funerary objects are 7 wooden burial markers, 1 dentalia fragment, 27 glass beads, 9 perforated bear claws, 1 carved beaver tooth, 3 copper bells, 1 lot of burial fill, 22

dentalia beads, 2 buckskin or leather fragments, 3 antler digging sticks, 1 abalone shell pendant, 5 scrapers, 2 bone awls, 1 piece of matting, 1 flake, 2 dentalia necklace fragments, 1 small box of dentalia beads, 1 bone needle, 1 copper pendant, 18 rolled copper beads, 6 dentalium, 1 piece of cordage, 1 long jadeite celt, and 1 chipped flint fragment.

In the **Federal Register** (75 FR 58424–58425, September 24, 2010), paragraph seven is corrected by substituting the following paragraph:

During the period July 1939 to September 1940, funerary objects were systematically removed from Site 46 (45–Stevens–46), Stevens County, WA, by Collier, Hudson, and Ford due to the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt), and they were accessioned by the museum in 1940 (EWSHS Accession #1027). The 98 unassociated funerary objects are 6 pieces of worked bone, 1 jadeite chip, 1 jadeite celt, 46 bone implements, 3 stone pipes, 4 projectile points, 9 schist scrapers, 1 mussel shell, 1 antler wedge, 1 slate needle, 1 slate pendant, 1 pipe fragment, 1 bone awl, 1 slate object, 1 lot of turgite paint material, 1 arrow shaft smoother, 2 hematite pieces, 3 knives, 1 spear point, 1 antler, 1 antler horn implement, 2 chalcedony drill or graver, 1 stone chip, 1 stone artifact, 2 chalcedony scrapers, 1 chert scraper fragment, 1 worked chip (possibly mineralized wood), 1 basalt point or scraper, and 2 chalcedony drills.

In the **Federal Register** (75 FR 58424–58425, September 24, 2010), paragraph eight is corrected by substituting the following paragraph:

During the period July 1939 to September 1940, funerary objects were systematically removed from Site 47 (45–ST–47), Stevens County, WA, by Collier, Hudson, and Ford due to the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt), and they were accessioned by the museum in 1940 (EWSHS Accession #1027). The 110 unassociated funerary objects are 1 copper bracelet, 20 projectile points, 6 bone combs, 1 bone implement, 1 bone spearpoint, 2 bone whistles, 27 bone awls, 2 copper and shell pendants, 1 spear point, 1 carved stone pipe, 1 jadeite celt, 1 jadeite adze, 2 bone ornaments (possible combs), 1 bone flute fragment, 1 coiled basket, 1 turquoise pendant, 1 dentalia, 2 abalone pendants, 3 glass beads, 2 arrow shaft smoothers, 1 chalcedony drill, and 32 olivella beads.

In the **Federal Register** (75 FR 58424–58425, September 24, 2010), paragraph ten is corrected by substituting the following paragraphs:

Determinations of the Northwest Museum of Arts & Culture

Officials of the Northwest Museum of Arts & Culture have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 374 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Colville Indian Reservation, Washington.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Mr. Michael Holloman, Northwest Museum of Arts & Culture, 2316 W. First Avenue, Spokane, WA 99201, (509) 363–5337, before May 31, 2012. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Colville Indian Reservation, Washington, may proceed after that date if no additional claimants come forward.

The Northwest Museum of Arts & Culture is responsible for notifying the Confederated Tribes of the Colville Indian Reservation, Washington, that this notice has been published.

Dated: April 26, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–10486 Filed 4–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Arizona State Museum, University of Arizona, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Arizona State Museum, University of Arizona.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Arizona State Museum, University of Arizona at the address below by May 31, 2012.

ADDRESSES: John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, P.O. Box 210026, Tucson, AZ 85721, telephone (520) 626–2950.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Arizona State Museum, University of Arizona, Tucson, AZ, that meets the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1930, cultural items were removed from Queen Creek Ruin, also known as Sonoqui Pueblo, Pozos de Sonoqui, or Sun Temple Ruin (AZ U:14:48(ASM)/SACATON:2:6(GP)), in Maricopa County, AZ, during legally authorized excavations conducted by the Gila Pueblo Foundation. The items were reportedly found in association with human burials, but the human remains are not present in the collections. In December 1950, the Gila Pueblo Foundation closed and the collections were donated to the Arizona State Museum. The 30 unassociated funerary objects are 12 ceramic bowls, 8 ceramic jars, 1 ceramic ladle, 3 ceramic pitchers, 5 ceramic scoops, and 1 ceramic sherd.

Queen Creek Ruin was a large habitation site that included trash mounds, burials, pithouses, canals, adobe compounds, and a ballcourt. Architectural features, the mortuary program, ceramic types, and other items of material culture are consistent with the Hohokam archeological tradition and indicate occupation between approximately A.D. 950 and 1450.

In 1927–1928, a cultural item was removed from the Adamsville site (AZ U:15:1(ASM)/FLORENCE:7:6(GP)), in Pinal County, AZ, during legally authorized excavations conducted by the Gila Pueblo Foundation. The item was reportedly found in association with a human burial, but information to associate the object with a specific burial has not been found. In December 1950, the Gila Pueblo Foundation closed and the collections were donated to the Arizona State Museum. The one unassociated funerary object is a ceramic jar.

The Adamsville site was a large village that included a platform mound, adobe structures, and ballcourts. Architectural features, the mortuary program, ceramic types, and other items of material culture are consistent with the Hohokam archeological tradition and indicate occupation between approximately A.D. 900 and 1450.

In 1973, cultural items were removed from Escalante Ruin (AZ U:15:3(ASM)), in Pinal County, AZ, during legally authorized excavations conducted by the Arizona State Museum under the direction of David Doyel. All collections from this project were accessioned into Arizona State Museum collections in 1976. The items were associated with a human burial, but the human remains are not present in the collections. The two unassociated funerary objects are a stone axe and a quartz polishing stone.

Escalante Ruin was the central habitation site of the Escalante Group Complex. It contained a large platform mound, a compound, and a room block attached to the mound. Architectural features, the mortuary program, ceramic types, and other items of material culture are consistent with the Hohokam archeological tradition and indicate occupation between approximately A.D. 1150 and 1450.

Continuities of mortuary practices, ethnographic materials, and technology indicate affiliation of Hohokam settlements with present-day O'odham (Piman) and Puebloan cultures. Documentation submitted by representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona, on April 13, 2011, addresses continuities between the Hohokam and the O'odham tribes. Furthermore, oral traditions that are documented for the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona support affiliation with Hohokam sites in central Arizona.

Determinations Made by the Arizona State Museum, University of Arizona

Officials of the Arizona State Museum, University of Arizona have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 33 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, P.O. Box 210026, Tucson, AZ 85721, telephone (520) 626–2950 before May 31, 2012. Repatriation of the unassociated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona that this notice has been published.

Dated: April 26, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–10501 Filed 4–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: Yale Peabody Museum of Natural History, New Haven, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Yale Peabody Museum of Natural History, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Yale Peabody Museum of Natural History.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Yale Peabody Museum of Natural History at the address below by May 31, 2012.

ADDRESSES: Professor Derek E.G. Briggs, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Yale Peabody Museum of Natural History that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that is in possession of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1874, six unassociated funerary objects were recovered from the area of the John Day River in Grant County, OR,

by Sam H. Snook. The objects were transferred to the Yale Peabody Museum of Natural History in 1874. These objects include two stone axes, a stone pestle or hammerstone, two stone pipes, and an obsidian knife. Catalog records and historic documentation indicate that the objects were recovered from a Native American grave and therefore they meet the definition of unassociated funerary objects. The objects were recovered within the traditional territory of the Confederated Tribes of the Umatilla Indian Reservation, Oregon, and the Confederated Tribes of the Warm Springs Reservation of Oregon (hereafter referred to as ''The Tribes'').

In 1880, a Mr. Warfield and Leander Davis collected 108 unassociated funerary objects from the Pine Mountain area, a locality called ''the cove'' in Grant County, OR, and items only attributed to Grant County, OR. These objects include sixty-seven obsidian spear heads, arrowheads or similar objects; two broken pumice stones marked with red ochre; six bone arrowheads; four broken stone pipes; sixteen dentalium and other shell beads; and thirteen small items including ochre, bone carving fragments, and bone or horn fragments. Documentary evidence indicates that these objects were collected from funerary contexts and some of the obsidian objects appear to have been melted in a fire, possibly a cremation.

Based on museum catalog records of the objects, the geographic origin of the objects, and the description of the traditional territory of The Tribes, these objects are believed to be culturally affiliated with The Tribes.

Determinations Made by the Yale Peabody Museum of Natural History

Officials of the Yale Peabody Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 114 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and The Tribes.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Professor Derek E.G. Briggs, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752 before May 31, 2012. Repatriation of the unassociated funerary objects to The Tribes may proceed after that date if no additional claimants come forward.

The Yale Peabody Museum of Natural History is responsible for notifying The Tribes that this notice has been published.

Dated: April 26, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–10496 Filed 4–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Fowler Museum at UCLA, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at UCLA has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary items should contact the Fowler Museum at UCLA at the address below by May 31, 2012.

ADDRESSES: Wendy G. Teeter, Ph.D., Curator of Archaeology, Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Fowler Museum at UCLA, Los Angeles, CA. The human remains and associated funerary objects were removed from the Coso Junction Ranch Site, Inyo County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Fowler Museum at UCLA professional staff in consultation with representatives of the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; and the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California.

History and Description of the Remains

In 1983, human remains representing, at minimum, two individuals were removed from the Coso Junction Ranch Site (CA–INY–2284), located at the south end of Inyo County, CA. No known individuals were identified. The 27 associated funerary objects are 1 awl, 1 bone tool, 2 obsidian biface fragments, 9 bags of obsidian debitage, 4 stone metate fragments, 4 bags of animal bone, 1 obsidian hydration sample, and 5 bags of organic flotation residue.

The collection was excavated in the course of a UCLA Field School conducted in the summer of 1983 under the supervision of David Whitley. The Coso Junction Ranch Site (CA–INY–2284) was a large village site located at the south end of Inyo County, CA. The site dates from about 3500–800 BP (David Whitley, January 20, 1996 email), and mostly from the Gypsum and Rose Spring periods based on analysis of diagnostic artifacts and obsidian hydration dating. The Fowler Museum at UCLA has determined the human remains and associated funerary objects to be Panamint Shoshone, ancestors of the present-day the Death Valley Timbi-Sha Shoshone Band of California and the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California, based on ethnography, the prehistoric distribution of Numic languages, and various treaties, Acts of Congress, and

Executive Orders. A claim for repatriation has been given by the Lone Pine Community of the Lone Pine Reservation, California.

Determinations Made by the Fowler Museum at UCLA

Officials of the Fowler Museum at UCLA have determined that:

- Pursuant to 25 U.S.C. 3001(9)–(10), the human remains described above represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 27 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Death Valley Timbi-Sha Shoshone Band of California and the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Wendy G. Teeter, Ph.D., Curator of Archaeology, Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, before May 31, 2012. Repatriation of the human remains and associated funerary objects to the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California, may proceed after that date if no additional claimants come forward.

The Fowler Museum at UCLA is responsible for notifying the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; and the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California that this notice has been published.

Dated: April 26, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–10491 Filed 4–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Yale Peabody Museum of Natural History, New Haven, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Yale Peabody Museum of Natural History has completed an inventory of human remains in consultation with the appropriate Indian tribes and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Yale Peabody Museum of Natural History. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Yale Peabody Museum of Natural History at the address below by May 31, 2012.

ADDRESSES: Professor Derek E.G. Briggs, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Yale Peabody Museum of Natural History. The human remains were removed from the John Day River area of Grant County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has possession of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Yale Peabody Museum of Natural History professional staff in consultation with representatives of the Confederated Tribes of the Umatilla Indian Reservation, Oregon, and the Confederated Tribes of the Warm Springs Reservation of Oregon (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1871, human remains representing, at minimum, one individual were removed from the John Day River area in Grant County, OR, by Thomas Condon and General Crook. The remains were transferred to the Yale Peabody Museum of Natural History in February of 1872. No known individuals were identified. No associated funerary objects are present.

Based on the historical records of the recovery of the remains, museum catalog records of the remains, the geographic origin of the remains, and the description of the traditional territory of The Tribes, these human remains are believed to be culturally affiliated with The Tribes.

In 1873, human remains representing, at minimum, one individual were removed from the head of the John Day River in Grant County, OR, by Joseph Savage. The remains were transferred to the Yale Peabody Museum of Natural History in 1873. No known individuals were identified. No associated funerary objects are present.

Based on museum catalog records of the remains, the geographic origin of the remains, and the description of the traditional territory of The Tribes, these human remains are believed to be culturally affiliated with The Tribes.

In 1874, human remains representing, at minimum, three individuals were removed from the area of the John Day River in Grant County, OR, by Sam H. Snook. The remains were transferred to the Yale Peabody Museum of Natural History in 1874. No known individuals were identified. No associated funerary objects are present.

Based on museum catalog records of the remains, the geographic origin of the remains, and the description of the traditional territory of The Tribes, these human remains are believed to be culturally affiliated with The Tribes.

In 1880, Mr. Warfield and Leander Davis collected human remains representing, at minimum, three individuals near Pine Mountain, Grant County, OR. No known individuals were identified. No associated funerary objects are present.

Based on museum catalog records of the remains, the geographic origin of the remains, and the description of the traditional territory of The Tribes, these

human remains are believed to be culturally affiliated with The Tribes.

Determinations Made by the Yale Peabody Museum of Natural History

Officials of the Yale Peabody Museum of Natural History have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Professor Derek E.G. Briggs, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752 before May 31, 2012. Repatriation of the human remains to The Tribes may proceed after that date if no additional claimants come forward.

The Yale Peabody Museum of Natural History is responsible for notifying The Tribes that this notice has been published.

Dated: April 26, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–10494 Filed 4–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Arizona State Museum, University of Arizona, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Arizona State Museum, University of Arizona. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Arizona State Museum, University of Arizona, at the address below by May 31, 2012.

ADDRESSES: John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, P.O. Box 210026, Tucson, AZ 85721, telephone (520) 626–2950.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Arizona State Museum, University of Arizona, Tucson, AZ. The human remains and associated funerary objects were removed from archeological sites located in Maricopa and Pinal counties, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Arizona State Museum professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona. The Gila River Indian Community of the Gila River Indian Reservation, Arizona is acting on behalf of itself and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona.

History and Description of the Remains

In 1930, human remains representing, at minimum, two individuals were removed from Queen Creek Ruin, also known as Sonoqui Pueblo, Pozos de Sonoqui, or Sun Temple Ruin (AZ U:14:48(ASM)/SACATON:2:6(GP)), in Maricopa County, AZ. The excavations were conducted by the Gila Pueblo Foundation. In December 1950, the Gila Pueblo Foundation closed and the collections were donated to the Arizona State Museum. No known individuals were identified. The three associated funerary objects are one ceramic bowl, one ceramic jar, and one ceramic pitcher.

Queen Creek Ruin was a large habitation site that included trash mounds, burials, pithouses, canals, adobe compounds, and a ballcourt. Architectural features, the mortuary program, ceramic types, and other items of material culture are consistent with the Hohokam archeological tradition and indicate occupation between approximately A.D. 950 and 1450.

In 1927–1928, human remains representing, at minimum, three individuals were removed from the Adamsville site (AZ U:15:1(ASM)/FLORENCE:7:6(GP)), in Pinal County, AZ. The excavations were conducted by the Gila Pueblo Foundation. In December 1950, the Gila Pueblo Foundation closed and the collections were donated to the Arizona State Museum. No known individuals were identified. The three associated funerary objects are ceramic jars.

At an unknown date, a surface collection survey was conducted at the same Adamsville site (AZ U:15:1(ASM)/FLORENCE:7:6(GP)), in Pinal County, AZ, by the Arizona State Museum. The survey collection was brought to the museum, but was never formally accessioned. A search through the survey collection was conducted in 2010. One human bone fragment from the Adamsville site, representing, at minimum, one individual, was found. No known individuals were identified. No associated funerary objects are present.

The Adamsville site was a large village that included a platform mound, adobe structures, and ballcourts. Architectural features, the mortuary program, ceramic types, and other items of material culture are consistent with the Hohokam archeological tradition and indicate occupation between approximately A.D. 900 and 1450.

In 1973, human remains representing, at minimum, 50 individuals were removed from Escalante Ruin (AZ U:15:3(ASM)), in Pinal County, AZ. The legally authorized excavations were directed by David Doyel of the Arizona State Museum under contract with the Continental Oil Company. All

collections from this project were accessioned into Arizona State Museum collections in 1976. No known individuals were identified. The 13 associated funerary objects are 1 ceramic beaker, 2 ceramic bowls, 2 ceramic jars, 2 ceramic sherds, 4 shell beads, 1 lot of pebbles, and 1 lot of minerals.

Escalante Ruin was the central habitation site of the Escalante Group Complex. It contained a large platform mound, a compound, and a room block attached to the mound. Architectural features, the mortuary program, ceramic types, and other items of material culture are consistent with the Hohokam archeological tradition and indicate occupation between approximately A.D. 1150 and 1450.

In 1973, human remains representing, at minimum, three individuals were removed from an unnamed site (AZ U:15:22(ASM)), in Pinal County, AZ. The legally authorized excavations were directed by David Doyel of the Arizona State Museum under contract with the Continental Oil Company. All collections from this project were accessioned into Arizona State Museum collections in 1976. No known individuals were identified. The one associated funerary object is a ceramic jar.

Site AZ U:15:22(ASM) was one of the components of the Escalante Group Complex. It contained two adobe compounds. Architectural features, the mortuary program, ceramic types, and other items of material culture are consistent with the Hohokam archeological tradition and indicate occupation between approximately A.D. 1200 and 1350.

In 1973, human remains representing, at minimum, 19 individuals were removed from Las Casitas (AZ U:15:27(ASM)), in Pinal County, AZ. The legally authorized excavations were directed by David Doyel of the Arizona State Museum under contract with the Continental Oil Company. All collections from this project were accessioned into Arizona State Museum collections in 1976. No known individuals were identified. The 31 associated funerary objects are 13 ceramic bowls, 7 ceramic jars, 1 ceramic scoop, 5 ceramic sherds, 4 pieces of chipped stone, and 1 flotation sample.

Las Casitas was one of the components of the Escalante Group Complex. It contained two adobe compounds. Architectural features, the mortuary program, ceramic types, and other items of material culture are consistent with the Hohokam archeological tradition and indicate occupation between approximately A.D. 1200 and 1350.

In 1973, human remains representing, at minimum, two individuals were removed from Sidewinder Ruin (AZ U:15:32(ASM)) in Pinal County, AZ. The legally authorized excavations were directed by David Doyel of the Arizona State Museum under contract with the Continental Oil Company. All collections from this project were accessioned into Arizona State Museum collections in 1976. No known individuals were identified. The nine associated funerary objects are 3 ceramic bowls, 1 ceramic jar, and 5 flotation samples.

Sidewinder Ruin was one of the components of the Escalante Group Complex. It contained an adobe compound and associated trash mound. Architectural features, the mortuary program, ceramic types, and other items of material culture are consistent with the Hohokam archeological tradition and indicate occupation between approximately A.D. 1200 and 1300.

Continuities of mortuary practices, ethnographic materials, and technology indicate affiliation of Hohokam settlements with present-day O'odham (Piman) and Puebloan cultures. Documentation submitted by representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona, on April 13, 2011, addresses continuities between the Hohokam and the O'odham tribes. Furthermore, oral traditions that are documented for the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona support affiliation with Hohokam sites in central Arizona.

Determinations Made by the Arizona State Museum, University of Arizona

Officials of the Arizona State Museum, University of Arizona have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 80 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 60 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, P.O. Box 210026, Tucson, AZ 85721, telephone (520) 626–2950 before May 31, 2012. Repatriation of the human remains and associated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona that this notice has been published.

Dated: April 26, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–10499 Filed 4–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Northwest Museum of Arts & Culture, Spokane, WA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the

completion of an inventory of human remains and associated funerary objects in the possession of The Northwest Museum of Arts & Culture, formerly Eastern Washington State Historical Society, Spokane, WA. The human remains and associated funerary objects were removed from Lincoln, Ferry, and Stevens counties, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of associated funerary objects reported in the Notice of Inventory Completion published in the **Federal Register** (75 FR 58429–58430, September 24, 2010). The museum staff recently discovered additional associated funerary objects related to the human remains published in the earlier notice.

In the **Federal Register** (75 FR 58429–58430, September 24, 2010), paragraph six is corrected by substituting the following paragraph:

Human remains representing a minimum of nine individuals were removed from Site 2 (45–LI–27), opposite the mouth of the Sanpoil, in Lincoln County, WA. No known individuals were identified. The 13 associated funerary objects are 1 basalt piece, 1 bone awl, 2 unworked and worked cache forms, 1 scraper, 2 pestles, 1 blade fragment, 1 piece of wood, 3 projectile points, and 1 knife.

In the **Federal Register** (75 FR 58429–58430, September 24, 2010), paragraph 11 is corrected by substituting the following paragraph:

Human remains representing a minimum of 27 individuals were removed from Site 24 (45–FE–24), in Ferry County, WA. No known individuals were identified. The 503 associated funerary objects are 2 arrow shaft smoothers, 1 bone harpoon, 1 bone awl, 4 knives, 6 projectile points, 1 string of copper bone beads, 100 dentalia (11 of which are dentalia beads), 1 clam shell disc bead, 7 rolled copper beads, 1 hand maul, 4 bear penis bones, 2 gravers, 13 perforated elk teeth, 2 abalone gorgets, 6 copper pendants, 5 worked bone fragments, 1 copper bracelet, 1 rectangular perforated copper plate, 52 olivellae, 2 antler digging sticks, 270 glass beads, 1 shell bead, 14 sets of wooden burial marker sacks, 3 sets ''fill-over burial'' sacks, 1 hammerstone, 1 scraper, and 1 end scraper.

In the **Federal Register** (75 FR 58429–58430, September 24, 2010), paragraph 15 is corrected by substituting the following paragraphs:

Determinations Made by the Northwest Museum of Arts & Culture

Officials of The Northwest Museum of Arts & Culture have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of 61 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 576 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Colville Indian Reservation, Washington.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Mr. Michael Holloman, The Northwest Museum of Arts & Culture, 2316 West First Ave., Spokane, WA 99201, telephone (509) 363–5337, before May 31, 2012. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Indian Reservation, Washington, may proceed after that date if no additional claimants come forward.

The Northwest Museum of Arts & Culture is responsible for notifying the Confederated Tribes of the Colville Indian Reservation, Washington that this notice has been published.

Dated: April 26, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–10503 Filed 4–30–12; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Fowler Museum at UCLA, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at UCLA has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that that there is a cultural affiliation between the human remains and present-day Indian tribes. Repatriation of the human remains to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Fowler Museum at UCLA at the address below by May 31, 2012.

ADDRESSES: Wendy G. Teeter, Ph.D., Curator of Archaeology, Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Fowler Museum at UCLA, Los Angeles, CA. The human remains were removed from the Sacramento River Basin, Butte County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Fowler Museum at UCLA professional staff in consultation with representatives of the Mooretown Rancheria of Maidu Indians of California and the Mechoopda Indian Tribe of Chico Rancheria, California, and with the Cultural Preservation Committee of Koyomi'Kawi (Konkow) Maidu Tribe (a non-Federally recognized Indian group).

History and Description of the Remains

In the summer of 1967, human remains representing, at minimum, three individuals were removed from the Finch Site (CA–BUT–12), in the Sacramento River Basin, Butte County, CA. The remains were excavated during a UCLA field school conducted under the direction of Joseph Chartkoff. The human remains consist of three molars

representing no more than three separate individuals. The degree of wear and root development on the teeth suggest that two of these individuals were juveniles, and one was likely an adult. The sex of the individuals cannot be determined. No known individuals were identified. No associated funerary objects are present.

Osteological and archaeological analyses have determined that the teeth are likely of Native American origin. Everett Smith, an elder, J.D. Smith, Chair of the Cultural Preservation Committee, and Arlene Ward, Mechoopda Maidu Tribe, have identified the recovery site as within the traditional territory of the Northwestern Maidu. The geographic location is consistent with the historically documented Konkow or Northwestern Maidu territory. Butte County, CA, is in the Central Valley region of traditional lands of the Maidu. Descendants of the Konkow or Northwestern Maidu were dispersed and became members of the Federally recognized tribes of the Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and the Round Valley Indian Tribes of Round Valley Reservation, California. Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the human remains were removed is the aboriginal land of the Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and the Round Valley Indian Tribes of Round Valley Reservation, California. A claim of repatriation has been received from the Mechoopda Indian Tribe of Chico Rancheria, California.

Determinations Made by the Fowler Museum at UCLA

Officials of the Fowler Museum at UCLA have determined that:

- Pursuant to 25 U.S.C. 3001(9)–(10), the human remains described above represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and the Round Valley Indian Tribes of Round Valley Reservation, California.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Wendy G. Teeter, Ph.D., Curator of Archaeology, Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, before May 31, 2012. Repatriation of the human remains to the Mechoopda Indian Tribe of Chico Rancheria, California may proceed after that date if no additional claimants come forward.

The Fowler Museum at UCLA is responsible for notifying the Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and the Round Valley Indian Tribes of Round Valley Reservation, California that this notice has been published.

Dated: April 26, 2012.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2012–10497 Filed 4–30–12; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1104 (Review)]

Certain Polyester Staple Fiber From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on certain polyester staple fiber from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is May 31, 2012. Comments on the adequacy of responses may be filed with the Commission by July 16, 2012. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* May 1, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On June 1, 2007, the Department of Commerce issued an antidumping duty order on imports of certain polyester staple fiber from China (72 FR 30545). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 12–5–269, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined the *Domestic Like Product* as all certain polyester staple fiber, coextensive with the scope of the investigation.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all known domestic producers of certain polyester staple fiber.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is June 1, 2007.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b) (4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 31, 2012. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is July 16, 2012. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in

general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2011, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) Net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (*Optional*) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: April 25, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–10461 Filed 4–30–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–562]

Certain Incremental Dental Positioning Adjustment Appliances and Methods of Producing Same; Notice of Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to the November 13, 2006, consent order issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3061. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov/.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation in this matter on February 15, 2006, based on a complaint filed by Align Technology, Inc. (''Align'') of Santa Clara, California (now of San Jose, California). 71 FR 7995–96. The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain incremental dental positioning adjustment appliances by reason of infringement of certain claims of U.S. Patent Nos. 6,685,469; 6,450,807; 6,394,801; 6,398,548; 6,722,880 (''the '880 patent''); 6,629,840; 6,699,037; 6,318,994; 6,729,876; 6,602,070; 6,471,511 (''the '511 patent''); and 6,227,850. The complaint also alleged a violation of section 337 by reason of misappropriation of trade secrets. The Commission's notice of investigation named OrthoClear, Inc. of San Francisco, California; OrthoClear Holdings, Inc. of Tortola, British Virgin Islands; and OrthoClear Pakistan Pvt, Ltd. of Lahore, Pakistan as respondents. On July 11, 2006, the ALJ granted Align's motion to terminate the investigation as to the '807 patent, which the Commission determined not to review. Order No. 10 (July 11, 2006), Notice of Non-Review (July 20, 2006).

On November 13, 2006, the Commission issued notice of its determination not to review the presiding administrative law judge's initial determination granting Align's and respondents' joint motion to terminate the investigation as to respondents (and in its entirety) based on a consent order. The consent order prohibits the importing, offering for sale, and selling for importation in the United States incremental dental positioning adjustment appliances and any other articles that infringe the asserted patents or that contain or use the asserted trade secrets.

On March 1, 2012, Align filed a complaint for enforcement proceedings under Commission Rule 210.75. On March 22, 2012, Align filed a corrected complaint for enforcement. Align asserts that the successors and bound officers of the original respondents have violated the November 13, 2006, consent order by the continued practice of prohibited activities such as importing, offering for sale, and selling for importation into the United States incremental dental positioning adjustment appliances and other related products that infringe the '511 and '880 patents. On March 23, 2012, counsel for proposed respondent ClearCorrect Operating, LLC (''ClearCorrect USA'') submitted a letter opposing institution of the enforcement proceeding. On March 28, 2012, Align responded to ClearCorrect USA's submission.

Having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission rule 210.75, the Commission has determined to institute formal enforcement proceedings to determine whether ClearCorrect USA of Houston, Texas; ClearCorrect Pakistan (Private), Ltd. (''ClearCorrect Pakistan'') of Lahore, Pakistan; and Mudassar Rathore, Waqas Wahab, Nadeem Arif, and Asim Waheed (''the bound officers''), all c/o ClearCorrect Pakistan, are in violation of the November 13, 2006, consent order issued in the investigation with respect to the '511 and '880 patents, and what, if any, enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) Align; (2) respondents ClearCorrect USA, ClearCorrect Pakistan, and the bound officers; and (3) the Office of Unfair Import Investigations.

The Commission notes that the threshold issue appears to be whether the accused digital datasets identified in the enforcement complaint that are allegedly imported into the United States are within the scope of the articles covered by the consent order. In instituting this enforcement proceeding, the Commission has not made any determination as to whether such digital datasets are within the scope of the consent order sought to be enforced. Accordingly, the presiding administrative law judge may wish to consider this issue at an early date. Any such decision should be issued in the form of an initial determination (''ID'') under Commission rule 210.42(c), 19 CFR 210.42(c). The ID will become the Commission's final determination 45 days after the date of service of the ID unless the Commission determines to review the ID. Any such review will be conducted in accordance with Commission rules 210.43, 210.4, and 210.45, 19 CFR 210.43, 210.44, and 210.45.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

Issued: April 25, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–10367 Filed 4–30–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–840]

Certain Semiconductor Integrated Circuit Devices and Products Containing Same; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 23, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Microchip Technology Incorporated of Chandler, Arizona. A corrected complaint was filed on March 30, 2012. An amended complaint and supplement were filed on April 16, 2012. The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor integrated circuit devices and products containing same by reason of infringement of certain claims of U.S. Patent No. 7,225,088 (''the '088 patent''); U.S. Patent No. 6,245,597 (''the '597 patent''); U.S. Patent No. 6,159,765 (''the '765 patent''); U.S. Patent No. 5,760,720 (''the '720 patent''); U.S. Patent No. 6,559,783 (''the '783 patent''); and U.S. Patent No. 6,847,904 (''the '904 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 24, 2012, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor integrated circuit devices and products containing same that infringe one or more of claims 1, 2, 9, 10, 16–18, 25, 26, and 32 of the '088 patent; claims 3, 7, 8, 11, 12, and 14 of the '597 patent; claims 1–6 of the '765 patent; claims 12 and 14 of the '720 patent; claims 1, 5, 7, 9, 14–17, 19–24, 26, 28–33, 35, 37, 38, and 41 of the '904 patent; and claims 1, 2, 6, 7, 9, and 12 of the '783 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Microchip Technology Incorporated, 2355 West Chandler Boulevard, Chandler, AZ 85224–6199.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Intersil Corporation, 1001 Murphy Ranch Road, Milpitas, CA 95035.
Zilker Labs, Inc., 4301 Westbank Drive, Building A–100, Austin, TX 78746.
Techwell LLC, 1001 Murphy Ranch Road, Milpitas, CA 95035.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

(4) The Office of Unfair Import Investigation will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: April 25, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–10366 Filed 4–30–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–014]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 15, 2012 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–860 (Second Review) (Tin- and Chromium-Coated Steel Sheet from Japan). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 25, 2012.
5. Vote in Inv. No. 731–TA–891 (Second Review)(Foundry Coke from China). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 29, 2012.
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 26, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–10529 Filed 4–27–12; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[DN 2893]

Certain Drill Bits and Products Containing Same; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Drill Bits and Products Containing the Same,* DN 2893; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Boart Longyear Company and Longyear™, Inc. on April 25, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain drill bits and products containing the same. The complaint names as respondents Boyles Bros Diamantina S.A., Peru; Christensen Chile S.A., Chile; Diamantina Christensen Trading Inc., Panama; and Intermountain Drilling Supply Corp., West Valley City, UT.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No.2893'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 25, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–10462 Filed 4–30–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Employment Reference Questionnaire

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Justice Management Division (JMD), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 2, 2012. This

process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact LaTonya Gamble, DOJ, Justice Management Division, 145 N Street NE., Washington DC, 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Employment Reference Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. Other:* None. The form will be used as a part of DOJ's employment selection process.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10,000 respondents will complete a 20 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,333 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Suite 2E.808, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, Department of Justice.

[FR Doc. 2012–10381 Filed 4–30–12; 8:45 am]

BILLING CODE 4410–CG–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on April 19, 2012, a proposed Consent Decree in *United States and the State of Kansas* v. *E.I. du Pont de Nemours and Co.,* 6:12–cv–01146–EFM–KMH, was lodged with the United States Court for the District of Kansas. The Joint Complaint filed by the United States and State of Kansas alleges claims for natural resource damages under the Clean Water Act and Kansas state law. The proposed Consent Decree settles these claims in exchange for a payment by Defendant of $252,739 in natural resource damages and reimbursement of natural resource damage assessment costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and the State of Kansas* v. *E.I. du Pont de Nemours and Co.,* 90–11–2–1081/6.

During the public comment period, the Second Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $6 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–10390 Filed 4–30–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that on April 25, 2012, a proposed Consent Decree in *United States of America and State of New Jersey* v. *Hess Corporation,* Civil Action No. 2:12cv2335 was lodged with the United States District Court for the District of New Jersey.

The Consent Decree in this Clean Air Act enforcement action against Hess Corporation resolves allegations by the Environmental Protection Agency, asserted in a complaint filed together with the Consent Decree, under section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged environmental violations at Hess Corporation's petroleum refinery in Port Reading, New Jersey.

This is one of numerous national settlements reached as part of the EPA's Clean Air Act Petroleum Refinery Initiative. Consistent with the objectives of EPA's national initiative, in addition to the payment of $850,000 in civil penalties, the settlement requires Hess Corporation to perform injunctive relief to reduce emission of nitrogen oxides and volatile organic compounds.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to Hess Corporation, D.J. Ref. 90–5–2–1–08229.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or

by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $33.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–10389 Filed 4–30–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Amended Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

On April 24, 2012, at **Federal Register**/Vol. 77, No. 79, pages 24515–24516, notice was given that on April 16, 2012 a proposed Consent Decree (''Decree'') in *United States of America and the State of Tennessee* v. *the City of Memphis* (''City''), Civil Action No. 2:10–CV–02083–SHM-dkv was lodged with the United States District Court for the Western District of Tennessee. The Decree represents a settlement of claims against the City of Memphis under Section 301, 309, and 402 of the Clean Water Act, 33 U.S.C. 1311, 1319, and 1342; and Tenn. Code Ann. Sections 69–3–108(b)(6), 114 and 115; and Sections 101 through 138 of the Tennessee Water Quality Control Act (''TWQCA'').

The April 24, 2012 Notice did not contain the public comment email address. 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 mailed to that address or emailed to *pubcommentees.enrd@usdoj.gov* and should refer to *United States of America and State of Tennessee* v. *City of Memphis,* Civil Action No. 2:10–CV–02083–SHM-dkv, D.J. Ref. 90–5–1–1–09720.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–10387 Filed 4–30–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0061]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Certificate of Compliance with 18 U.S.C. 922(g)(5)(B)

ACTION: Correction 30-Day Notice of Information Collection.

This is to correct a second 60 day notice that was published in error Volume 77, Number 78, page 24225, on April 23, 2012. The notice should have been published as a 30 day notice instead of a 60 day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 30, page 8276 on February 14, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 31, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be directed to The Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection. If you have questions concerning the collection, please contact Tracey Robertson, *tracey.robertson@atf.gov* or the DOJ Desk Officer at 202–514–4304.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Summary of Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certificate of Compliance with 18 U.S.C. 922(g)(5)(B)

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5330.20. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The law of 18 U.S.C. 922(g)(5)(B) makes it unlawful for any nonimmigrant alien to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has shipped or transported in interstate or foreign commerce. ATF F 5330.20 is for the purpose of ensuring that nonimmigrant aliens certify their compliance according to the law at 18 U.S.C. 922(g)(5)(B).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 37,826 respondents will complete the form in 3 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1891.3 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution

Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–10379 Filed 4–30–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0049]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Application for National Firearms Examiner Academy

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 35, page 10560 on February 22, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 31, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer, Washington, DC 20503. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection. If you have questions concerning the collection, contact James Yurgealitis at *Yurgealitis@atf.gov* or the DOJ Desk Officer at 202–514–4304.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for National Firearms Examiner

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6330.1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Federal. Abstract: The changes to the form are to update telephone numbers and add two questions regarding if the applicant is a U.S. Citizen or a permanent resident alien.

Need for Collection

The information requested on this form is necessary to process requests from prospective students to attend the ATF National Firearms Examiner Academy and to acquire firearms and tool mark examiner training. The information collection is used to determine the eligibility of the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 75 respondents will complete the form within 12 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 15 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–10380 Filed 4–30–12; 8:45 am]

BILLING CODE 4410–FY–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings; May 2012

TIME AND DATES: All meetings are held at 2:30 p.m.

Tuesday, May 1;
Wednesday, May 2;
Thursday, May 3;
Tuesday, May 8;
Wednesday, May 9;
Tuesday, May 15;
Wednesday, May 16;
Thursday, May 17;
Tuesday, May 22;
Wednesday, May 23;
Thursday, May 24;
Tuesday, May 29;
Wednesday, May 30;
Thursday, May 31.

PLACE: Board Agenda Room, No. 11820, 1099 14th St. NW., Washington, DC 20570

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

DATED: April 27, 2012.

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Executive Secretary, (202) 273–1067.

Lester A. Heltzer,

Executive Secretary, (202) 273–1067.

[FR Doc. 2012–10628 Filed 4–27–12; 4:15 pm]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0096]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 5, 2012 to April 18, 2012. The last biweekly notice was published on April 17, 2012 (77 FR 22808).

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–2012–0096.

You may submit comments by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0096. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

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

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0096 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0096.
- *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. Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- *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–2012–0096 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 entering the comment submissions into ADAMS, and 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.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a

hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The

E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Detroit Edison, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 10, 2012.

Description of amendment request: The proposed amendment would modify Fermi 2 Plant Operating License, Appendix A, Technical Specifications (TS) to revise the Residual Heat Removal (RHR) Suppression Pool Cooling Surveillance Requirement (SR) 3.6.2.3.2, flow requirement from greater than or equal to 10,000 gallons per minute (gpm) to greater than or equal to 9,250 gpm. This change is consistent with the RHR suppression cooling rate associated with RHR heat exchanger minimum thermal performance requirements. Additionally, the proposed license amendment clarifies that SR 3.6.2.3.2 applies only to pumps required for meeting the Limiting Condition of Operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS SR 3.6.2.3.2 minimum flow of greater than or equal to 9,250 gpm is consistent with that assumed for accident extrapolation calculations of measured thermal performance obtained during RHR heat exchanger testing. This testing is performed to periodically demonstrate that the actual heat exchanger thermal performance exceeds that assumed for establishing the maximum post-accident bulk average suppression pool temperature. Therefore, the change in required RHR suppression pool cooling flow will not result in any increase in post-accident suppression pool temperature above that already evaluated for demonstrating adequate Net Pump Suction Head (NPSH) for any Emergency Core Cooling System (ECCS) pump. The change in the applicability of the surveillance to each required RHR pump provides consistency with the design of the system and maintains full capability of each RHR suppression pool cooling subsystem to provide post accident design basis cooling.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises TS SR 3.6.2.3.2 for RHR suppression pool cooling flow to be consistent with that assumed for evaluating measured heat exchanger thermal performance against the minimum requirements of the plant safety analysis. Changing the applicability of the surveillance to each required RHR pump is consistent with the system design requirement and maintains full capability of each RHR suppression pool cooling subsystem to provide the post accident cooling function. No physical changes are being made to the installed RHR system or the manner in which it is operated. No new or different accident scenarios are created by this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The RHR system has historically been capable of meeting TS SR 3.6.2.3.2. This Surveillance requires demonstration of a system flow, in conjunction with a prescribed RHR heat exchanger capacity that ensures the overall suppression pool cooling capacity meets the requirements of the safety

analysis. However, the lack of available operating margin inherent in the design orifices of the RHR suppression pool cooling test return line and identification of a non-conservative bias in the test flow instrument calibration have eroded the flow test margin such that it is possible that the TS SR may not be satisfied in the future even though a large margin is maintained compared to the minimum performance assumed in the containment safety analyses. The proposed change makes the margin between TS SR 3.6.2.3.2 and the performance assumed in the plant safety analyses available as a design and operating margin. This is ensured by establishing a higher level of required heat exchanger performance, where ample margin is available. Heat exchanger testing is conducted in accordance with existing testing standards as prescribed by EPRI TR–107397, Service Water Heat Exchanger Testing Guidelines. The minimum required flow rate necessary to satisfy RHR suppression pool cooling TS SR 3.6.2.3.2 will be documented in the plant design basis with the minimum required flow adjusted upward as necessary to account for instrument uncertainty and bias as well as differences between assumed accident and actual test operating conditions.

The change in the applicability of the surveillance to each required RHR pump is consistent with the design basis of the plant and maintains full capability of the system to provide its safety related cooling function following a design basis accident.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bruce R. Masters, DTE Energy, General Council—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Acting Branch Chief: Shawn A. Williams.

Detroit Edison, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 10, 2012.

Description of amendment request: The proposed amendment would modify Fermi 2 Plant Operating License, Appendix A, Technical Specifications (TS) to modify Surveillance Requirement (SR) 3.4.3.2, in TS 3.4.3, ''Safety Relief Valves (SRVs)'', SR 3.5.1.13, in TS 3.5.1, ''ECCS-Operating,'' and SR 3.6.1.6.1, in TS 3.6.1.6, ''Low-Low Set (LLS) Valves.'' This proposed amendment replaces the current requirement in these TS SRs to verify the SRV opens when manually actuated with an alternate requirement that verifies the SRV is capable of being opened. The verification of that capability would be satisfied by a series of overlapping tests, performed during a refueling outage, that demonstrate the required functions of successive valve stages.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not modify the method of demonstrating the operability of the Safety Relief Valves (SRVs) in both the safety and relief modes of operation. As currently stated in the Technical Specification (TS) Bases ''* * * valve OPERABILITY and the setpoints for overpressure protection are verified, per ASME Code requirements, prior to valve installation.'' The proposed change does modify the method for demonstrating the proper mechanical functioning of the SRVs. The SRVs are required to function in the safety mode to prevent overpressurization of the reactor vessel and reactor coolant system pressure boundary during various analyzed transients, including Main Steam Isolation Valve closure. SRVs associated with the Automatic Depressurization System are also required to function in the relief mode to reduce reactor pressure to permit injection by low pressure Emergency Core Cooling System (ECCS) pumps during certain reactor coolant pipe break accidents. The current testing method demonstrates the proper mechanical functioning of the SRVs in both modes through manual actuation of the SRVs. The proposed new testing method demonstrates both operability and proper mechanical functioning using a series of overlapping tests that demonstrate proper functioning of the SRV and supporting control components. This proposed testing method results in acceptable demonstration of the SRV functions in both the safety and relief modes, and therefore provides assurance that the probability of SRV failure will not increase. None of the accident safety analyses is affected by the requested TS changes. Therefore, the consequences of accidents mitigated by the SRVs will not increase.

Certain SRV malfunctions are included in the UFSAR safety analyses. Specifically, the plant safety analyses include the inadvertent opening of an SRV and a stuck open SRV. By reducing or not actuating the SRVs during plant operation for testing and thus reducing the potential incidence of pilot stage leakage of the SRVs, the proposed testing reduces a contributor to these events.

Based on these considerations, the proposed test method does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change modifies the method of testing of the SRVs, but does not alter the functions or functional capabilities of the SRVs. Testing under the proposed method is performed in offsite test facilities and in the plant during outage periods when the SRV functions are not required. Existing analyses address events involving an SRV inadvertently opening or failing to reclose. Analyses also address the failure of one or more SRVs to open. The proposed change does not introduce any new failure mode, and therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed amendment provides for an alternative means of testing the SRVs. The proposed changes will provide a complete verification of the functional capability of the SRVs by performing a series of tests, inspections, and maintenance activities without opening the valves with reactor steam while installed in the plant. The alternative testing and associated programmatic controls will provide an equivalent level of assurance that the SRVs are capable of performing their intended accident mitigation safety functions. The proposed amendment does not affect the valve setpoints or adversely affect any other operational criteria assumed for accident mitigation. No changes are proposed that alter the setpoints at which protective actions are initiated, and there is no change to the operability requirements for equipment assumed to operate for accident mitigation. Moreover, it is expected that the alternative testing methodology will increase the margin of safety by reducing the potential for SRV leakage resulting from testing the SRVs with reactor steam pressure while installed in the plant.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bruce R. Masters, DTE Energy, General Council—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Acting Branch Chief: Shawn A. Williams.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: September 20, 2011, as supplemented by letter dated November 21, 2011.

Description of amendment request: The proposed amendments would allow revisions to the current licensing basis to allow a measurement uncertainty recapture (MUR) power uprate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment changes the rated thermal power from 2568 megawatts thermal (MWt) to 2610 MWt; an increase of approximately 1.64% Rated Thermal Power. Duke Energy's evaluations have shown that all structures, systems and components (SSCs) are capable of performing their design function at the uprated power of 2610 MWt. A review of station accident analyses found that all but two analyses remain bounding at the uprated power of 2610 MWt. These two analyses (High Energy Line Break and Double Main Steam Line Break) were reanalyzed at the higher power level and found to be acceptable.

The radiological consequences of operation at the uprated power conditions have been assessed. The proposed power uprate does not affect release paths, frequency of release, or the analyzed reactor core fission product inventory for any accidents previously evaluated in the Final Safety Analysis Report. Analyses performed to assess the effects of mass and energy releases remain valid. All acceptance criteria for radiological consequences continue to be met at the uprated power level.

As summarized in Sections IV, V, and VI of Enclosure 2, the proposed change does not involve any change to the design or functional requirements of the associated systems. That is, the increased power level neither degrades the performance of, nor increases the challenges to any safety systems assumed to function in the plant safety analysis.

While power level is an input to accident analyses, it is not an initiator of accidents. The proposed change does not affect any accident precursors and does not introduce any accident initiators. The proposed change does not impact the usefulness of the Surveillance Requirements (SRs) in evaluating the operability of required systems and components.

In addition, evaluation of the proposed TS [Technical Specification] change demonstrates that the availability of equipment and systems required to prevent or mitigate the radiological consequences of an accident is not significantly affected. Since the impact on the systems is minimal, it is concluded that the overall impact on the plant safety analysis is negligible.

Therefore, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

A Failure Modes and Effects Analysis of the new system was performed, and the possible effects of failures of the new equipment and the increased power level on the overall plant systems were reviewed. This review found that no new or different accidents were created by the new equipment or the uprated power levels.

No installed equipment is being operated in a different manner. The proposed changes have no significant adverse affect on any safety-related SSCs and do not significantly change the performance or integrity of any safety-related system.

The proposed changes do not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. The uprated power does not create any new accident initiators. Credible malfunctions are bounded by the current accident analyses of record or recent evaluations demonstrating that applicable criteria are still met with the proposed changes.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Although the proposed amendment increases the operating power level of the plants, it retains the margin of safety because it is only increasing power by the amount equal to the reduction in uncertainty in the heat balance calculation. The margins of safety associated with the power uprate are those pertaining to core thermal power. These include fuel cladding, reactor coolant system pressure boundary, and containment barriers. Analyses demonstrate that the current design basis continues to be met after the MUR power uprate. Components associated with the reactor coolant system pressure boundary structural integrity, including pressure-temperature limits, vessel fluence, and pressurized thermal shock are bounded by the current analyses. Systems will continue to operate within their design parameters and remain capable of performing their intended safety functions.

The current Oconee safety analyses, and the revised design basis radiological accident dose calculations, bound the power uprate and therefore do not significantly impact margins.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Nancy L. Salgado.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 8, 2011.

Description of amendment request: The amendment would revise Technical Specifications (TS) 3.8.1; ''AC [Alternating Current] Sources—Operating.'' Specifically, the amendment would revise TS 3.8.1 and the associated Bases, to expand its scope to include provisions for testing of the automatic transfer function from the station 22 kiloVolt (kV) bus to offsite power for Division III. A new Surveillance Requirement (SR) would be added to ensure availability of offsite power after loss of the station (onsite) 22 kV bus when offsite power remains available. The amendment would also add notes to the Limiting Condition for Operation (LCO) and SR to require this feature when Division III is powered by onsite power. In addition, new ACTIONS would be added to ensure this transfer from onsite to offsite is maintained when a required offsite power source is lost.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the Technical Specification Surveillance Requirements to allow power for emergency systems to be supplied from onsite power prior to event initiation. This power supply will be transferred to the current accepted offsite power source if the main generator is no longer available. The proposed Surveillance Requirement is to confirm the automatic transfer function.

The proposed changes do not involve a change in the design requirements of the electrical power systems, including the emergency power systems. The plant will continue to operate within acceptable parameters (electrical loading, etc.) The

proposed changes do not change the function of plant equipment, or affect the response of emergency power systems.

The proposed changes do not involve a change in the design basis initiators for loss of offsite power to the emergency power systems. The proposed change utilizes existing components and circuits. The change will add a new surveillance requirement to confirm the design function operation.

The proposed change does not impact other design basis accident initiators or analyzed events or assumed mitigation of accident or transient events.

The proposed change does not involve a change to the consequences of a design basis event as described in the Safety Analysis Report.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the Technical Specification surveillance requirements to confirm operation of existing components and circuits. The proposed changes do not involve a change in the design basis initiators for loss of offsite power to the emergency power systems.

The proposed changes do not involve a change in the design requirements of the electrical power systems, including the emergency power systems. The proposed changes do not change the function of plant equipment, nor do they affect the response of emergency power systems.

The proposed changes do not involve a change in the operational limits or physical design of the electrical power systems, particularly the emergency power systems. The proposed changes do not change the design function or operation of plant equipment, nor do they introduce any new failure mechanisms. This change will implement surveillance requirements to confirm the design function operation.

The transfer function components supporting the safety-related buses have been designed to applicable quality standards and design criteria. As such, no new failure modes are being introduced. The plant equipment will continue to respond in accordance with the design and analyses, and no malfunction of a new or different type is being introduced by the proposed changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the Technical Specification surveillance requirements. The proposed changes do not involve a change in the operational limits or the response of that equipment if it is called upon to operate.

The performance capability of the emergency diesel generators will not be affected. The plant will continue to operate within acceptable parameters (electrical loading, etc.)[.]

In addition, administrative controls will ensure there are adequate administrative controls are in place to ensure the plant configuration remains as evaluated.

The results of the PRA performed to quantitatively assess the risk impact of this change indicate there is a minimal risk impact.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit 2, Westchester County, New York

Date of amendment request: January 11, 2012.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Table 3.3.6–1, ''Containment Purge System and Pressure Relief Line Isolation Instrumentation.'' The proposed amendment would change the term ''ALLOWABLE VALUE'' to ''TRIP SETPOINT'' and revise the current setpoint used for the Containment Purge Systems and Pressure Relief Line isolation. The proposed revision to TS Table 3.3.6–1 will change ''≤ 3 x background'' to allow the trip setpoint to be as specified in the Offsite Dose Calculation Manual (ODCM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will revise the term ''ALLOWABLE VALUE'' to ''TRIP SETPOINT'' and change the setpoint requirements from ''≤ 3 [x] background'' to allow the allowable value to be as specified in the Offsite Dose Calculation Manual (ODCM). The change to trip setpoint is a correction of an administrative error and will only affect the instrument setting specified. Therefore it does not involve the initiation of an accident or the consequences. The values for the instrument setting are provided for isolating the Containment Purge and Pressure Relief Systems due to increased source terms and are redundant to containment isolation signals. They have no effect on the probability of an accident previously evaluated. The change in the setting will be negligible for purposes of an accident termination. The ODCM limits are based on 10 CFR 20 [Title 10 of the Code of Federal Regulations, Part 20] limits which are substantially below accident analysis release rates. Therefore the change has a minimum effect on the consequences of such accidents.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of previously evaluated accidents.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will revise the term ''ALLOWABLE VALUE'' to ''TRIP SETPOINT'' and change the setpoint requirements. The changes do not affect the system operations, plant operating procedures or affect how the plant is operated. The change does not create the possibility of any equipment failure or effect on other equipment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will revise the term ''ALLOWABLE VALUE'' to ''TRIP SETPOINT'' and change the setpoint requirements. The change to trip setpoint is correcting an administrative error and has no significant affect on the margin of safety. The proposed change involves changes to existing setpoints for automatic isolation of the Containment Purge and Pressure Relief Systems. However, the ability of the systems to isolate remains within current evaluations and therefore does not significantly reduce the safety margin.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue White Plains, NY 10601.

NRC Branch Chief: George Wilson.

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: April 5, 2012.

Description of amendment request: The licensee proposed to revise the MNGP Technical Specifications (TS) 3.3.5.1, ''Emergency Core Cooling System (ECCS) Instrumentation.'' Specifically, it is proposed to revise the lower allowable value limit for Table 3.3.5.1, Functions 1.e and 2.e, ''Reactor Steam Dome Pressure Permissive—Bypass Timer (Pump Permissive).'' The licensee has determined that the upper allowable value limit for the Automatic Depressurization System (ADS) bypass timer function provides the operator sufficient time to assess the situation and inhibit ADS actuation if the event does not require rapid reactor depressurization. The lower allowable value limit ADS bypass timer function pertains to providing adequate margin to unwanted pump starts during reactor water level transients and is not credited in the safety analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC). The NRC staff reviewed the licensee's NSHC analysis and prepared its own as follows:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not physically impact the plant nor does it impact any design or functional requirements of the Automatic Depressurization System (ADS). The proposed change does not degrade the performance or increase the challenges to any safety systems assumed to function in the accident analysis. There is no change to normal plant operating parameters or accident mitigation performance.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no hardware changes nor are there any changes in the method by which plant systems perform a safety function. This request does not affect the normal method of plant operation. No new equipment is introduced which could create a new or different kind of accident. No new equipment failure modes are created. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not affect the assumptions of the safety analysis or the availability or operability of any plant equipment. There is no reduction in the margin of safety because the criteria for the performance of the ADS are not changed and there are no changes to those plant systems necessary to assure the accomplishment of protection functions.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on its own analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for the licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Istvan Frankl, Acting.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov*.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station (DBNPS), Unit 1, Ottawa County, Ohio

Date of application for amendment: May 20, 2011 as supplemented by letter dated February 7, 2012.

Brief description of amendment: This amendment revised Technical Specification (TS) 5.5.8.g to perform the special visual inspections based on a condition rather than a specific frequency. Specifically, TS 5.5.8.g requires visual inspection of the secured internal auxiliary feedwater header (AFWH), header to shroud attachment welds, and external header thermal sleeves of the steam generators (SGs) at DBNPS to be performed during the third period of each 10-year inservice inspection interval (ISI). With the proposed change, if eddy current inspections (required by TS 5.5.8.d.5) identify any SG peripheral rube to secured internal AFWH gaps less than ¼ inches or there is evidence that the header is degrading or has moved, then the TS 5.5.8.g visual inspections shall be performed on the affected SG.

Date of issuance: April 18, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 285.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** September 20, 2011 (76 FR 58306). The February 7, 2012

supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 2012.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station (NMP2), Unit 2, Oswego County, New York

Date of application for amendment: December 30, 2011, as supplemented on March 20, 2012.

Brief description of amendment: The proposed amendment changes the NMP2 Updated Safety Analysis Report allowing the use of Modified Alloy 718 material for fabrication of the NMP2 reactor recirculation system jet pump holddown beams.

Date of issuance: April 13, 2012.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 141.

Renewed Facility Operating License No. NPF–069: The amendment revises the License and Updated Safety Analysis Report.

Date of initial notice in ***Federal Register:*** February 8, 2012 (77 FR 6601). The supplemental letter dated March 20, 2012, provided additional information that clarified the application and did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 2012.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: July 28, 2011, as supplemented on February 14 and March 14, 2012.

Brief Description of amendments: These amendments permanently revise the Technical Specifications (TS) 6.4.Q, ''Steam Generator (SG) Program,'' to exclude portions of the SG tube below the top of the SG tubesheet from periodic inspections. In addition, this amendment request proposes to revise TS 6.6.A.3, ''Steam Generator Tube Inspection Report,'' to remove references to the previous Unit 1 one-time and Unit 2 temporary alternate repair criteria and provides reporting requirements specific to the permanent alternate repair criteria. This amendment also addressed minor administrative revisions to reinstate the superscript number 1 as the end of the TS 4.13.B.

Date of issuance: April 17, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: Unit 1—277 and Unit 2—277.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** October 25, 2011 (76 FR 66090). The supplements dated February 14, 2012 and March 14, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 17, 2012.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 20th day of April 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–10195 Filed 4–30–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0183]

Low-Level Radioactive Waste Management and Volume Reduction

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is revising its 1981 Policy Statement on Low-Level Radioactive Waste (LLRW) Volume Reduction (Policy Statement). This statement encouraged licensees to take steps to reduce the amount of waste generated and to reduce the volume of waste once generated. The purpose of this revised statement is to recognize that progress in reducing waste volume has been achieved since the 1981 Policy Statement was published, and to acknowledge that factors other than volume reduction may be considered by licensees to determine how best to manage their LLRW.

DATES: This Policy Statement is effective on May 1, 2012.

ADDRESSES: Please refer to Docket ID NRC–2011–0183 when contacting the NRC about the availability of information for this policy statement. You may access information and comment submissions related to this policy statement, which the NRC possesses and are publicly available, by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0183. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* 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.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Donald Lowman, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5452, email: *Donald.Lowman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1981, the NRC published a Policy Statement (46 FR 51100; October 16, 1981) regarding the volume reduction of LLRW. The Policy Statement addressed:

- The need for a volume reduction policy; and
- The need for waste generators to minimize the quantity of waste produced.

For 30 years, this Policy Statement has conveyed the Commission's expectations that generators of LLRW

should reduce the volume of waste shipped for disposal at licensed commercial waste disposal facilities. The Commission uses policy statements to communicate expectations about matters relating to activities that are within NRC jurisdiction and of importance to the Commission. Policy statements help to guide the activities of the NRC staff and licensees. However, they are not regulations and are not accorded the status of a regulation within the meaning of the Administrative Procedure Act. The Agreement States, which are responsible for overseeing their material licensees, cannot be required to implement the elements of a policy statement because such statements, unlike NRC regulations, are not a matter of compatibility. Additionally, policy statements cannot be considered binding upon, or enforceable against, NRC or Agreement State licensees or certificate holders.

On April 7, 2010, the NRC staff issued SECY–10–0043, ''Blending of Low-Level Radioactive Waste'' (ADAMS Accession No. ML090410531), and referenced the Policy Statement in response to stakeholder comments that large-scale blending might not be consistent with the Policy Statement goal of achieving reduced waste volumes and might actually increase waste volumes. Although the Commission disagreed that blending would necessarily increase the volume of waste, it recognized the need to clarify the Policy Statement to better explain the role of volume reduction in the context of LLRW management. Therefore, the Commission directed the staff to update the Policy Statement to recognize the progress that has been achieved in waste reduction since 1981, and to acknowledge that volume reduction continues to be important, and that other risk-informed, performance-based approaches to managing waste are also appropriate for managing LLRW safely.

A revised draft of the Policy Statement, ''Volume Reduction and Low-Level Radioactive Waste Management,'' was published in the **Federal Register** for comment on August 15, 2011 (76 FR 50500), with the comment period ending on October 14, 2011.

The NRC received written comments on the draft Policy Statement and considered these comments when finalizing the Policy Statement. None of the comments resulted in changes to the basic principles of the Policy Statement and the changes made to the draft Policy Statement were limited. Responses to these comments can be found in ADAMS (Accession No. ML120090117).

II. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

III. Policy Statement of the U.S. Nuclear Regulatory Commission on Low-Level Radioactive Waste Management and Volume Reduction

Summary

In 1981, the Commission published a Policy Statement (46 FR 51100; October 16, 1981) regarding the volume reduction of LLRW. In October 2010, the Commission directed the NRC staff to revise the Policy Statement (ADAMS Accession No. ML102861764) including updating to acknowledge that volume reduction continues to be important and adding that risk-informed, performance-based approaches to managing waste are also needed to safely manage LLRW.

Policy Statement

The focus of any LLRW management program should be public health and safety. Such programs often include waste minimization efforts and the Commission recognizes the substantial progress made by licensees in reducing volumes of LLRW shipped for disposal since the publication of the 1981 Policy Statement. The Congress, States, LLRW Compacts and nuclear industry groups have also played a central part in this effort by encouraging waste minimization and volume reduction practices. Widespread use of these practices has resulted in a significant reduction in the amount of LLRW generated by licensees and the volume shipped for disposal. The Commission recognizes that the high cost of LLRW disposal has also been a factor, along with limitations on LLRW disposal access, which has resulted in increased use of volume reduction and waste minimization techniques.

The Commission continues to believe that volume reduction is important to the management of LLRW. A continued focus on volume reduction will extend the operational lifetime of the existing commercial LLRW disposal sites and will reduce the number of waste shipments to disposal facilities. Therefore, the Commission encourages licensees to continue to adopt procedures that will minimize the volume of waste being transferred to disposal facilities.

The Commission also recognizes that volume reduction is only one aspect of an effective LLRW management program. Although the Commission continues to favor the disposal of LLRW over storage, it recognizes that licensees may safely manage waste in a variety of ways, consistent with NRC regulations and guidance. As part of ensuring public health and safety, licensees should consider reductions in occupational exposures and security in determining how best to manage LLRW. As part of their LLRW management strategies, licensees may consider operational efficiency and cost. Although the Commission continues to favor disposal in a licensed disposal facility, licensees should consider additional means available to manage waste in a manner that is secure and protects public health and safety, such as (in no particular order and thus not indicating any NRC preference):

- Waste minimization;
- Short-term storage and decay;
- Long-term storage;
- Use of the alternate disposal provision in Title 10 of the *Code of Federal Regulations* (10 CFR) 20.2002, ''Method for obtaining approval of proposed disposal procedures;'' and
- Use of waste processing technologies.

The Commission understands that limited LLRW disposal access means that many licensees will need to store at least some of their LLRW. Agreement States and NRC licensees must continue to ensure that waste is safely and securely managed. However, waste disposal is still considered the safest and most secure long-term LLRW management approach.

Dated at Rockville, Maryland, this 25th day of April 2012.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2012–10433 Filed 4–30–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of April 30, May 7, 14, 21, 28, June 4, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 30, 2012

Monday, April 30, 2012

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (EEO) (Public Meeting) (Contact: Kristin Davis, 301–492–2208).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of May 7, 2012—Tentative

Friday, May 11, 2012

9:00 a.m. Briefing on Potential Medical Isotope Production Licensing Actions (Public Meeting); (Contact: Jessie Quichocho, 301–415–0209).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of May 14, 2012—Tentative

There are no meetings scheduled for the week of May 14, 2012.

Week of May 21, 2012—Tentative

There are no meetings scheduled for the week of May 21, 2012.

Week of May 28, 2012—Tentative

Friday, June 1, 2012

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (AARM) (Public Meeting) (Contact: Rani Franovich, 301–415–1868).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of June 4, 2012—Tentative

Thursday, June 7, 2012

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting); (Contact: Tanny Santos, 301–415–7270).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: April 26, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–10617 Filed 4–27–12; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1039; NRC–2012–0099; EA–12–047]

In the Matter of Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Independent Spent Fuel Storage Installation; Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of order for implementation of additional security measures and fingerprinting for unescorted access to Southern Nuclear Operating Company, Inc.

FOR FURTHER INFORMATION CONTACT:

L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852; telephone: (301) 492–3316; fax number: (301) 492–3348; email: *Raynard.Wharton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 2.106, the U.S. Nuclear Regulatory Commission (NRC or the Commission) is providing notice, in the matter of Vogtle Electric Generating Plant Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

The NRC has issued a general license to Southern Nuclear Operating Company, Inc. (SNC), authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 72. This Order is being issued to SNC because it has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission's regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR part 73, appendix C. Specific physical security requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security

requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment, in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, the environment, and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued Advisories, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at SNC's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to provide reasonable assurance of adequate protection of public health and safety, in light of the continuing threat environment, the Commission concludes that these actions must be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *it is hereby ordered,* effective immediately, that your general license is modified as follows:

A. SNC shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the Vogtle Electric Generating Plant's physical security plan. SNC shall demonstrate its ability to comply with the requirements in Attachments 1 and 2 to the Order no later than 365 days from the date of this Order or 90 days before the first day that spent fuel is initially placed in the ISFSI, whichever is earlier. SNC must implement these requirements before initially placing spent fuel in the ISFSI. Additionally, SNC must receive written verification from the NRC that it has adequately demonstrated compliance with these requirements before initially placing spent fuel in the ISFSI.

B. 1. SNC shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause SNC to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide

SNC's justification for seeking relief from, or variation of, any specific requirement.

2. If SNC considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, SNC must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 1 and 2 requirements in question, or a schedule for modifying the facility, to address the adverse safety condition.

If neither approach is appropriate, SNC must supplement its response, to Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C. 1. SNC shall, within twenty (20) days of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachments 1 and 2.

2. SNC shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

SNC's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals and documents produced by SNC as a result of this Order, that contain Safeguards Information as defined by 10 CFR 73.22, shall be properly marked and handled, in accordance with 10 CFR 73.21 and 73.22.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

IV

In accordance with 10 CFR 2.202, SNC must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, SNC and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which SNC relies and the reasons as to why the Order should not have been issued. If a person other than SNC requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory

documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call to 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by SNC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), SNC may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date this Order is published in the **Federal Register**, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III, shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 23rd day of April, 2012.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs) contains Safeguards Information and is not included in the Federal Register notice

Attachment 2—Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations, Dated June 3, 2010

A. General Basis Criteria

1. These additional security measures (ASMs) are established to delineate an independent spent fuel storage installation (ISFSI) licensee's responsibility to enhance security measures related to authorization for unescorted access to the protected area of an ISFSI in response to the current threat environment.

2. Licensees whose ISFSI is collocated with a power reactor may choose to comply with the U.S. Nuclear Regulatory Commission (NRC)-approved reactor access authorization program for the associated reactor as an alternative means to satisfy the provisions of sections B through G below. Otherwise, licensees shall comply with the access authorization and fingerprinting requirements of sections B through G of these ASMs.

3. Licensees shall clearly distinguish in their 20-day response which method they intend to use in order to comply with these ASMs.

B. Additional Security Measures for Access Authorization Program

1. The licensee shall develop, implement and maintain a program, or enhance its existing program, designed to ensure that persons granted unescorted access to the protected area of an ISFSI are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety or the common defense and security, including a potential to commit radiological sabotage.

a. To establish trustworthiness and reliability, the licensee shall develop, implement, and maintain procedures for conducting and completing background investigations, prior to granting access. The scope of background investigations must address at least the past three years and, as a minimum, must include:

i. Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check (CHRC). Where an applicant for unescorted access has been previously fingerprinted with a favorably completed CHRC (such as a CHRC pursuant to compliance with orders for access to safeguards information), the licensee may accept the results of that CHRC, and need not submit another set of fingerprints, provided the CHRC was completed not more than three years from the date of the application for unescorted access.

ii. Verification of employment with each previous employer for the most recent year from the date of application.

iii. Verification of employment with an employer of the longest duration during any calendar month for the remaining next most recent 2 years.

iv. A full credit history review.

v. An interview with not less than two character references, developed by the investigator.

vi. A review of official identification (e.g., driver's license; passport; government identification; state-, province-, or country-of-birth issued certificate of birth) to allow comparison of personal information data provided by the applicant. The licensee shall maintain a photocopy of the identifying document(s) on file, in accordance with ''Protection of Information,'' in section G of these ASMs.

vii. Licensees shall confirm eligibility for employment through the regulations of the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and shall verify and ensure, to the extent possible, the accuracy of the provided social security number and alien registration number, as applicable.

b. The procedures developed or enhanced shall include measures for confirming the term, duration, and character of military service for the past 3 years, and/or academic enrollment and attendance in lieu of employment, for the past 5 years.

c. Licensees need not conduct an independent investigation for individuals employed at a facility who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government-granted security clearance (i.e., Top Secret, Secret, or Confidential).

d. A review of the applicant's criminal history, obtained from local criminal justice resources, may be included in addition to the FBI CHRC, and is encouraged if the results of the FBI CHRC, employment check, or credit check disclose derogatory information. The scope of the applicant's local criminal history check shall cover all residences of record for the past three years from the date of the application for unescorted access.

2. The licensee shall use any information obtained as part of a CHRC solely for the purpose of determining an individual's suitability for unescorted access to the protected area of an ISFSI.

3. The licensee shall document the basis for its determination for granting or denying access to the protected area of an ISFSI.

4. The licensee shall develop, implement, and maintain procedures for updating background investigations for persons who are applying for reinstatement of unescorted access. Licensees need not conduct an independent reinvestigation for individuals who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government-granted security clearance, i.e., Top Secret, Secret or Confidential.

5. The licensee shall develop, implement, and maintain procedures for reinvestigations of persons granted unescorted access, at intervals not to exceed five years. Licensees need not conduct an independent reinvestigation for individuals employed at a facility who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government-granted security clearance, i.e., Top Secret, Secret or Confidential.

6. The licensee shall develop, implement, and maintain procedures designed to ensure that persons who have been denied unescorted access authorization to the facility are not allowed access to the facility, even under escort.

7. The licensee shall develop, implement, and maintain an audit program for licensee and contractor/vendor access authorization programs that evaluate all program elements and include a person knowledgeable and practiced in access authorization program performance objectives to assist in the overall assessment of the site's program effectiveness.

C. Fingerprinting Program Requirements

1. In a letter to the NRC, the licensee must nominate an individual who will review the results of the FBI CHRCs to make trustworthiness and reliability determinations for unescorted access to an ISFSI. This individual, referred to as the ''reviewing official,'' must be someone who requires unescorted access to the ISFSI. The NRC will review the CHRC of any individual nominated to perform the reviewing official function. Based on the results of the CHRC, the NRC staff will determine whether this individual may have

access. If the NRC determines that the nominee may not be granted such access, that individual will be prohibited from obtaining access.[1] Once the NRC approves a reviewing official, the reviewing official is the only individual permitted to make access determinations for other individuals who have been identified by the licensee as having the need for unescorted access to the ISFSI, and have been fingerprinted and have had a CHRC in accordance with these ASMs. The reviewing official can only make access determinations for other individuals, and therefore cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.

2. No person may have access to Safeguards Information (SGI) or unescorted access to any facility subject to NRC regulation, if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and CHRC, that the person may not have access to SGI or unescorted access to any facility subject to NRC regulation.

3. All fingerprints obtained by the licensee under this Order must be submitted to the Commission for transmission to the FBI.

4. The licensee shall notify each affected individual that the fingerprints will be used to conduct a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information,'' in section F of these ASMs.

5. Fingerprints need not be taken if the employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, has a favorably adjudicated U.S. Government CHRC within the last 5 years, or has an active Federal security clearance. Written confirmation from the Agency/employer who granted the Federal security clearance or reviewed the CHRC must be provided to the licensee. The licensee must retain this documentation for a period of 3 years from the date the individual no longer requires access to the facility.

[1] The NRC's determination of this individual's unescorted access to the ISFSI, in accordance with the process, is an administrative determination that is outside the scope of the Order.

D. Prohibitions

1. A licensee shall not base a final determination to deny an individual unescorted access to the protected area of an ISFSI solely on the basis of information received from the FBI involving: An arrest more than 1 year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge, or an acquittal.

2. A licensee shall not use information received from a CHRC obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

E. Procedures for Processing Fingerprint Checks

1. For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop TWB–05B32M, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to an ISFSI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by email to *Forms.Resource@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards because of illegible or incomplete cards.

2. The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

3. Fees for processing fingerprint checks are due upon application. The licensee shall submit payment of the processing fees electronically. To be able to submit secure electronic payments, licensees will need to establish an account with Pay.Gov (*https://www.pay.gov*). To request an account, the licensee shall send an email to *det@nrc.gov.* The email must include the licensee's company name, address, point of contact (POC), POC email address, and phone number. The NRC will forward the request to Pay.Gov, who will contact the licensee with a password and user ID. Once the licensee has established an account and submitted payment to Pay.Gov, they shall obtain a receipt. The licensee shall submit the receipt from Pay.Gov to the NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 492–3531. Combined payment for multiple applications is acceptable. The application fee (currently $26) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

4. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for CHRCs, including the FBI fingerprint record.

F. Right To Correct and Complete Information

1. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal history records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of notification.

2. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency)

that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least 10 days for an individual to initiate an action challenging the results of a FBI CHRC after the record is made available for his/her review. The licensee may make a final access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to an ISFSI, the licensee shall provide the individual its documented basis for denial. Access to an ISFSI shall not be granted to an individual during the review process.

G. Protection of Information

1. The licensee shall develop, implement, and maintain a system for personnel information management with appropriate procedures for the protection of personal, confidential information. This system shall be designed to prohibit unauthorized access to sensitive information and to prohibit modification of the information without authorization.

2. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures, for protecting the record and the personal information from unauthorized disclosure.

3. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining suitability for unescorted access to the protected area of an ISFSI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have the appropriate need to know.

4. The personal information obtained on an individual from a CHRC may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

5. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

[FR Doc. 2012–10472 Filed 4–30–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66860; File No. SR–CBOE–2012–013]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Adopt Self-Trade Prevention Modifiers on the CBOE Stock Exchange

April 25, 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 12, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Self-Trade Prevention modifiers for its CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to adopt three forms of Self-Trade Prevention modifiers: The Cancel Newest, Cancel Oldest, and Cancel Both Self-Trade Prevention modifiers. A CBSX Trader may elect for all of his proprietary orders and quotes to be marked with a Self-Trade Prevention modifier. If a CBSX Trader makes such an election, any quote or order he submits will be prevented from executing against a resting opposite side order or quote that is labeled as originating from the same associated acronym and trading for the same account (for the purposes of this Rule, the ''Same CBSX Trader''). A CBSX Trader may only elect for one of the three Self-Trade Prevention options, as the CBSX System may only be configured to permit one such election. Such election shall apply to all of the CBSX Trader's eligible proprietary orders and quotes. As such, Self-Trade Prevention elections cannot be made on a per-order, per-quote, or security-by-security basis due to CBSX System limitations. Any of the Cancel Newest, Cancel Oldest, or Cancel Both Self-Trade Prevention modifiers may be accommodated on the CBSX System.

The Self-Trade Prevention modifiers only apply to proprietary orders and quotes. The purpose of limiting the Self-Trade Prevention modifiers to proprietary orders and quotes is to avoid preventing agency orders from trading with each other, as agency orders for the Same CBSX Trader may actually be for different customers. In circumstances in which both the Market-Maker Trade Prevention Order and a Self-Trade Prevention Modifier are implicated, the Self-Trade Prevention Modifier shall rule and take precedence.

Cancel Newest

If a CBSX Trader has made the election for the Cancel Newest Self-Trade Prevention modifier, any incoming order or quote submitted by that CBSX Trader will not execute against opposite side resting interest from the Same CBSX Trader. The incoming order or quote (or any portion thereof) will be canceled back to the originating CBSX Trader if such order or quote cannot trade with another eligible order or quote originating from any origin other than the Same CBSX Trader (''Another CBSX Trader'') (the incoming order or quote may only trade with another eligible order or quote originating from Another CBSX Trader if the order or quote originating from Another CBSX Trader is at as good a price as the order or quote from the Same CBSX Trader that is being ''skipped over''). The resting order or quote from the Same CBSX Trader will remain on the book. In the case of an opening or re-opening, the newer of the two orders or quotes submitted by the Same CBSX Trader will be canceled, and the older order or quote will [sic] permitted to trade with eligible orders or quotes originating from Another CBSX Trader, and any remaining portion thereof will remain in the book.

Cancel Newest Example 1: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Newest Self-Trade Prevention modifier rests on the CBSX Book with no resting interest behind it. An order to sell 500 shares @ $20.00 comes in from the Same CBSX Trader. The incoming sell order for 500 shares @ $20.00 is then canceled back to the originating CBSX Trader. The resting buy order for 500 shares @ $20.00 remains on the CBSX Book.

Cancel Newest Example 2: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Newest Self-Trade Prevention modifier rests on the CBSX Book with another order to buy 500 shares @ $20.00 from Another CBSX Trader resting behind it. An order to sell 500 shares @ $20.00 comes in from the Same CBSX Trader. The incoming sell order for 500 shares @ $20.00 would not trade with the order to buy 500 shares @ $20.00 from the Same CBSX Trader, but would trade with the order to buy 500 shares @ $20.00 from the other CBSX Trader resting behind the buy order from the Same CBSX Trader. That resting buy order for 500 shares @ $20.00 from the Same CBSX Trader remains on the CBSX Book.

Cancel Newest Example 3: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Newest Self-Trade Prevention modifier rests on the CBSX Book with another order to buy 500 shares @ $19.99 from Another CBSX Trader resting behind it. The incoming sell market order for 500 shares would not trade with the order to buy 500 shares @ $20.00 from the Same CBSX Trader and would also not trade with the order to buy 500 shares @ $19.99 from Another CBSX Trader resting behind the buy order from the Same CBSX Trader. The incoming sell market order for 500 shares is then canceled back to the originating CBSX Trader. The resting buy order for 500 shares @ $20.00 from the Same CBSX Trader remains on the CBSX Book.

Cancel Newest Example 4: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Newest Self-Trade Prevention modifier rests on the CBSX Book with no resting interest behind it. An order to sell 700 shares @ $20.00 comes in from the Same CBSX Trader. The incoming sell order for 700 shares @ $20.00 is then canceled back to the originating CBSX Trader. The resting buy order for 500 shares @ $20.00 remains on the CBSX Book.

Cancel Newest Example 5: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Newest Self-Trade Prevention modifier rests on the CBSX Book with no resting interest behind it. An order to sell 400 shares @ $20.00 comes in from the Same CBSX Trader. The incoming sell order for 400 shares @ $20.00 is then canceled back to the originating CBSX Trader. The resting buy order for 500 shares @ $20.00 remains on the CBSX Book.

Cancel Newest Example 6: Upon the opening, a CBSX Trader who has elected for the Cancel Newest Self-Trade Prevention modifier submits an order to buy 500 shares @ $20.00 and the Same CBSX Trader then submits an order to sell 500 shares @ $20.00. The order to sell 500 shares @ $20.00 would be canceled back to the CBSX Trader (because it was the newest), and the order to buy 500 shares @ $20.00 would be permitted to trade against any eligible interest other than that from the Same CBSX Trader, and then any remaining portion thereof would be entered into the CBSX Book.

Cancel Oldest

If a CBSX Trader has made the election for the Cancel Oldest Self-Trade Prevention modifier, any incoming order or quote submitted by that CBSX Trader will not execute against opposite side resting interest from the Same CBSX Trader. When a CBSX Trader submits an incoming order or quote that would trade against opposite side resting interest from the Same CBSX Trader, that opposite side resting interest will be canceled. The incoming order or quote will be eligible to trade with another eligible order or quote originating from Another CBSX Trader. If any portion of the incoming order or quote does not trade with another eligible order or quote originating from Another CBSX Trader, it will be entered into the book. In the case of an opening or re-opening, the older of the two orders or quotes submitted by the Same CBSX Trader will be canceled, and the newer order or quote will be permitted to trade with eligible orders or quotes originating from Another CBSX Trader, and any remaining portion thereof will be entered into the book.

Cancel Oldest Example 1: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Oldest Self-Trade Prevention modifier rests on the CBSX Book with no resting interest behind it. An order to sell 500 shares @ $20.00 comes in from the Same CBSX Trader. The resting buy order for 500 shares @ $20.00 is then canceled back to the originating CBSX Trader. The incoming sell order for 500 shares @ $20.00 is entered into the CBSX Book.

Cancel Oldest Example 2: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Oldest Self-Trade Prevention modifier rests on the CBSX Book with another order to buy 500 shares @ $20.00 from Another CBSX Trader resting behind it. An order to sell 500 shares @ $20.00 comes in from the Same CBSX Trader. The resting buy order for 500 shares @ $20.00 from the Same CBSX Trader is canceled back to the Same CBSX Trader. The incoming sell order for 500 shares @ $20.00 would trade with the order to buy 500 shares @ $20.00 from the other (Another) CBSX Trader resting behind the buy order from the Same CBSX Trader.

Cancel Oldest Example 3: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Oldest Self-Trade Prevention modifier rests on the CBSX Book with another order to buy 500 shares @ $19.99 from Another CBSX Trader resting behind it. A market order to sell 500 shares comes in from the Same CBSX Trader. The resting buy order for 500 shares @ $20.00 is canceled back to the originating CBSX Trader. The incoming sell market order for 500 shares would trade with the order to buy 500 shares @ $19.99 from Another CBSX Trader that had been resting behind the buy order from the Same CBSX Trader (since the resting buy order from the Same CBSX Trader was canceled).

Cancel Oldest Example 4: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Oldest Self-Trade Prevention modifier rests on the CBSX Book with no resting interest behind it. An order to sell 700 shares @ $20.00 comes in from the Same CBSX Trader. The resting buy order for 500 shares @ $20.00 is canceled back to the originating CBSX Trader. The incoming sell order for 700 shares @ $20.00 is entered into the CBSX Book.

Cancel Oldest Example 5: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Oldest Self-Trade Prevention modifier rests on the CBSX Book with no resting interest behind it. An order to sell 400 shares @ $20.00 comes in from the Same CBSX Trader. The resting buy order for 500 shares @ $20.00 is canceled back to the originating CBSX Trader. The incoming sell order for 400 shares @ $20.00 is entered into the CBSX Book.

Cancel Oldest Example 6: Upon the opening, a CBSX Trader who has elected for the Cancel Oldest Self-Trade Prevention modifier submits an order to buy 500 shares @ $20.00 and the Same CBSX Trader then submits an order to sell 500 shares @ $20.00. The order to buy 500 shares @ $20.00 would be canceled back to the CBSX Trader (because it was the oldest), and the order to sell 500 shares @ $20.00 would be permitted

to trade against any eligible interest other than that from the Same CBSX Trader, and then any remaining portion thereof would be entered into the CBSX Book.

Cancel Both

If a CBSX Trader has made the election for the Cancel Both Self-Trade Prevention modifier, any incoming order or quote submitted by that CBSX Trader will not execute against opposite side resting interest from the Same CBSX Trader. When a CBSX Trader submits an incoming order or quote that would trade against opposite side resting interest from the Same CBSX Trader, that opposite side resting interest will be canceled. The incoming order or quote (or any portion thereof) will be canceled back to the Same CBSX Trader if such order or quote (or part of such order or quote) cannot trade with another eligible order or quote originating from Another CBSX Trader. In the case of an opening or re-opening, both of the two orders or quotes will be canceled.

Cancel Both Example 1: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Both Self-Trade Prevention modifier rests on the CBSX Book with no resting interest behind it. An order to sell 500 shares @ $20.00 comes in from the Same CBSX Trader. Both orders would be canceled back to the CBSX Trader.

Cancel Both Example 2: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Both Self-Trade Prevention modifier rests on the CBSX Book with another order to buy 500 shares @ $20.00 from another CBSX Trader resting behind it. An order to sell 500 shares @ $20.00 comes in from the Same CBSX Trader. The resting buy order for 500 shares @ $20.00 from the Same CBSX Trader is canceled back to the Same CBSX Trader. The incoming sell order for 500 shares @ $20.00 would trade with the order to buy 500 shares @ $20.00 from Another CBSX Trader that had been resting behind the buy order from the Same CBSX Trader.

Cancel Both Example 3: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Both Self-Trade Prevention modifier rests on the CBSX Book with another order to buy 500 shares @ $19.99 from Another CBSX Trader resting behind it. A market order to sell 500 shares comes in from the Same CBSX Trader. The resting buy order for 500 shares @ $20.00 from the Same CBSX Trader is canceled back to the Same CBSX Trader. The incoming sell market order for 500 shares would trade with the order to buy 500 shares @ $19.99 from Another CBSX Trader that had been resting behind the buy order from the Same CBSX Trader (since the resting buy order from the Same CBSX Trader was canceled).

Cancel Both Example 4: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Both Self-Trade Prevention modifier rests on the CBSX Book with no resting interest behind it. An order to sell 700 shares @ $20.00 comes in from the Same CBSX Trader. Both orders would be canceled back to the CBSX Trader.

Cancel Both Example 5: An order to buy 500 shares @ $20.00 from a CBSX Trader who has elected for the Cancel Both Self-Trade Prevention modifier rests on the CBSX Book with no resting interest behind it. An order to sell 400 shares @ $20.00 comes in from the Same CBSX Trader. Both orders would be canceled back to the CBSX Trader.

Cancel Both Example 6: Upon the opening, a CBSX Trader who has elected for the Cancel Both Self-Trade Prevention modifier submits an order to buy 500 shares @ $20.00 and the Same CBSX Trader then submits an order to sell 500 shares @ $20.00. Both orders would be canceled back to the CBSX Trader.

The Self-Trade Prevention modifiers are designed to prevent a market participant from unintentionally causing a proprietary self-trade. The Exchange believes that the Self-Trade Prevention modifiers will allow firms to better manage order flow and prevent undesirable executions with themselves or the potential for (or appearance of) ''wash sales'' that may occur as a result of the velocity of trading in today's high-speed marketplace. CBSX Traders may have multiple connections into CBSX due to capacity- and speed-related demands. Orders routed by the same CBSX Trader via different connections may, in certain circumstances, trade against each other. The new Self-Trade Prevention modifiers provide CBSX Traders the opportunity to prevent these potentially undesirable trades. The Exchange notes that offering the Self-Trade Prevention modifiers will streamline certain regulatory functions by reducing false positive results that may occur on Exchange-generated wash trading surveillance reports when orders are executed by the same CBSX Trader. For these reasons, the Exchange believes the Self-Trade Prevention modifiers provide market participants with enhanced order processing functionality to prevent potentially unwanted trades from occurring.

Orders marked with the Self-Trade Prevention modifiers operate in a different fashion during openings and re-openings than during normal trading due to CBSX System limitations. Also, because under the proposed Self-Trade Prevention modifier rules, orders or quotes skip over orders or quotes from the Same CBSX Trader and are given the opportunity to trade against eligible orders or quotes with lower priority that originate from Another CBSX Trader (provided the prices are the same), the Exchange proposes adding an interpretation to Rule 52.1, the CBSX Matching Algorithm/Priority rule, to provide that in instances in which the Self-Trade Prevention modifiers are implicated, the Self-Trade Prevention modifier rules will supersede other allocation methods only for the purpose of preventing self-trades, as described in the proposed Self-Trade Prevention modifier rule. Similarly, because CBSX Rule 51.8(t) already provides for a Market-Maker Self-Trade Prevention Order which, if combined with a Self-Trade Prevention modifier, could cause a conflict in order handling, the Exchange proposes clarifying that, in circumstances where both the Market-Maker Self-Trade Prevention Order and a Self-Trade Prevention modifier are implicated, the Self-Trade Prevention modifier shall rule and take precedence.

A number of other exchanges offer modifiers similar to the ones proposed here. The Cancel Newest, Cancel Oldest, and Cancel Both Self-Trade Prevention modifiers are similar to counterpart Anti-Internalization Qualifier Modifiers offered on EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX''), Match Trade Prevention Modifiers offered on BATS Exchange, Inc. (''BATS'') and BATS–Y Exchange, Inc. (''BYX''),[3] and namesake Self Trade Prevention Modifiers offered on NYSE Arca, Inc. (''Arca'')[4] and National Stock Exchange, Inc. (''NSX'').[5] While the other exchanges' rules apply to orders, we determined to apply Self-Trade Prevention modifier rules to orders and quotes because the application of the modifier rules to quotes as well as orders allows for the modifiers to be used in a more complete, comprehensive, and consistent fashion. Some of the other exchanges make the Self-Trade Prevention modifiers available on per-order, per-quote, or per-security bases, and allow for the election of more than one Self-Trade Prevention modifier. However, CBSX System limitations prevent CBSX from offering such options. Other exchanges also do not specify that their modifiers are limited to proprietary orders. CBSX believes that it is important to limit the Self-Trade Prevention modifiers to proprietary orders and quotes to avoid preventing agency orders from trading with each other, as agency orders for the Same CBSX Trader may actually be for different customers. Finally, other exchanges do not specify how their modifiers work during openings and re-openings. CBSX feels that it is important to clarify how the Self-Trade Prevention modifiers will work differently during openings and re-openings because the CBSX System cannot easily process

[3] *See* EDGA, EDGX, BATS and BYX Rules 11.9(f).

[4] *See* Arca Equities Rule 7.31(qq).

[5] *See* NSX Rule 11.11(c)(1).

orders marked with the Self-Trade Prevention modifiers in the same manner during openings and re-openings as during regular trading.

Once the CBSX System is so enabled to permit the use of the Self-Trade Prevention modifiers, and such use has been appropriately tested, CBSX intends to announce the availability of the Self-Trade Prevention modifiers to the CBSX Traders via Regulatory Circular prior to the implementation of the Self-Trade Prevention modifiers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change advances these objectives by making available to market participants an order and quote modifier that will assist them in preventing unwanted executions against themselves. Allowing market participants to prevent unwanted executions against themselves removes impediments to and perfects the mechanism for a free and open market by allowing market participants to better manage order flow and prevent the potential for (or appearance of) ''wash sales'' that may occur as a result of the velocity of trading in today's high-speed marketplace, and by streamlining certain regulatory functions by reducing false positive results that may occur on Exchange-generated wash trading surveillance reports when orders are executed by the same CBSX Trader.

Finally, adding an interpretation to Rule 52.1 to provide that, in instances in which the Self-Trade Prevention modifiers are implicated, the Self-Trade Prevention modifier rules will supersede other allocation methods only for the purposes of preventing self-trades, as described in the proposed Self-Trade Prevention modifier rule, and also clarifying that, in circumstances where both the Market-Maker Self-Trade Prevention Order and a Self-Trade Prevention modifier are implicated, the Self-Trade Prevention modifier shall rule and take precedence, perfects the mechanism for a free and open national market system and protects investors and the public interest by removing any potential confusion regarding priority and allocation methods.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–013 and should be submitted on or before May 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66857; File No. SR–NYSEAmex–2012–23]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending NYSE Amex Options Rule 928NY Specifying That the Potential Range for the Settings Applicable to the Market Maker Risk Limitation Mechanism Will Be Between One and 100 Executions per Second, To Eliminate the Current Reference to the Default Setting and, in the Future, To Specify the Applicable Minimum, Maximum and Default Settings via Regulatory Bulletin

April 25, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on April 12, 2012, NYSE Amex LLC (the ''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 self-regulatory organization. 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 NYSE Amex Options Rule 928NY to specify that the potential range for the settings applicable to the Market Maker Risk Limitation Mechanism (''Mechanism'') will be between one and 100 executions per second, to eliminate the current reference to the default setting and, in the future, to specify the applicable minimum, maximum and default settings via Regulatory Bulletin. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, 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 amend NYSE Amex Options Rule 928NY to specify that the potential range for the settings applicable to the Mechanism will be between one and 100 executions per second, to eliminate the current reference to the default setting and, in the future, to specify the applicable minimum, maximum and default settings via Regulatory Bulletin.

The Mechanism protects Market Makers from the risk associated with an excessive number of nearly simultaneous executions in a single option class.[3] Specifically, if ''n'' executions occur within one second against the Market Maker's quotes in an appointed class, the NYSE Amex System automatically cancels all quotes posted by the Market Maker in that class.

The Mechanism currently defaults the ''n'' number of executions to 50 executions per second.[4] However, a Market Maker may instead set the ''n'' number of executions between five and 100 executions per second.[5] The Exchange proposes to decrease the low end of this range from five to one.[6] The Exchange also proposes to eliminate the reference to the default setting that is applicable to the Mechanism. In addition, the Exchange proposes that, in the future, it will specify the applicable minimum, maximum and default settings for the Mechanism via Regulatory Bulletin, all of which would be within the proposed range of one to 100 executions per second.[7]

The Exchange believes that this proposed change would provide the Exchange with greater flexibility with respect to changing these settings in the future. In particular, the Exchange may need to change the settings from time to time to accommodate systems capacity concerns. The Exchange believes that specifying these settings via Regulatory Bulletin, instead of within NYSE Amex Options Rule 928NY, is consistent with the manner in which the Commission currently permits other option exchanges to communicate settings or parameters for various exchange mechanisms to their members other than through the rule filing process, i.e., via notices, bulletins or circulars.[8]

The Exchange anticipates announcing via Regulatory Bulletin that the applicable minimum, maximum and default settings for the Mechanism will be decreased to 2, 50 and 5 executions per second, respectively. The Exchange believes that decreasing these settings would provide Market Makers with greater flexibility with respect to managing their risk on the Exchange, consistent with the flexibility available on other option markets. In this regard, the Exchange understands that the Commission has previously permitted similar risk mechanisms to be implemented on other option exchanges without requiring any applicable minimum, maximum and/or default settings in the exchanges' corresponding rules.[9]

The Exchange is not proposing any other changes to the Mechanism at this time.

2. Statutory Basis

The Exchange believes that 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) of the Act,[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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

[3] *See* Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR–NYSEALTR–2008–14).

[4] *See* NYSE Amex Options Rule 928NY(b)(1).

[5] *See* NYSE Amex Options Rule 928NY(b)(2).

[6] The high end of the range would remain unchanged at 100 executions per second.

[7] *See* proposed NYSE Amex Options Rule 928NY(b)(1). The Exchange proposes to designate NYSE Amex Options Rule 928NY(b)(2) as ''reserved.''

[8] *See, e.g.,* Chapter VI, Section 16 of the Boston Options Exchange (''BOX'') Rules, which provides that, related to BOX's Quote Removal Mechanism Upon Technical Disconnect, BOX Market Makers will be notified of the value that ''n'' seconds represents via Regulatory Circular. *See also* Securities Exchange Act Release No. 58140 (July 10, 2008), 73 FR 41384 (July 18, 2008) (SR–BSE–2008–40), in which the Commission noted [sic] that ''n'' seconds would be configurable by BOX and any subsequent re-configurations will be announced to Market Makers via Regulatory Circular. *See also* Interpretation and Policy .05 to Chicago Board Options Exchange (''CBOE'') Rule 6.74A, which provides that any determinations made by CBOE regarding CBOE's Automated Improvement Mechanism, such as eligible classes, order size parameters and the minimum price increment for certain responses, shall be communicated in a Regulatory Circular. *See also* CBOE Rule 6.13(b)(i)(C)(2)(a), which provides that CBOE may establish certain maximum order size eligibility requirements with respect to automatic executions and announce such determinations via Regulatory Circular. *See also* CBOE Rules 6.45A and 6.45B, which provide that CBOE will issue a Regulatory Circular to specify certain priority-related information, including specifying which priority rules will govern which classes of options any time the Exchange changes the priority. *See also* CBOE Rule 6.25(a)(4)(i), which provides that, for purposes of nullifying a trade due to an erroneous print in an underlying or related instrument, CBOE may announce such underlying or related instrument via Regulatory Circular. *See also* C2 Options Exchange (''C2'') Rule 6.13, which provides that C2 may make certain determinations regarding the price check parameter feature and announce such determinations via Regulatory Circular. *See also* Securities Exchange Act Release No. 65311 (September 9, 2011), 76 FR 57094 (September 15, 2011) (SR–C2–2011–018).

[9] *See, e.g.,* Chapter VI, Section 15 of the BOX Rules, which provides for Automatic Quote Cancellation. *See also* Securities Exchange Act Release No. 65001 (August 1, 2011), 76 FR 47635 (August 5, 2011) (SR–BX–2011–050). *See also* Supplementary Material .01 to International Securities Exchange (''ISE'') Rule 804, which provides for Automated Quotation Adjustments for Market Makers.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change would prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade because it would continue to provide Market Makers with greater control and flexibility with respect to managing risk and the manner in which they enter quotes. The Exchange believes that this increased control and flexibility also fosters cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities. The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanisms of a free and open market and a national market system because it would permit the Exchange to adjust the minimum, maximum and default settings for the Mechanism via Regulatory Bulletin, which would be consistent with the manner in which other option exchanges are permitted to communicate settings or parameters for various exchange mechanisms to their members other than through the rule filing process, i.e., via notices, bulletins or circulars.[12] The Exchange further believes that the proposed rule change is consistent with, and furthers the objectives of, the Act because it would permit the Exchange to increase or decrease the minimum, maximum and default settings from their current levels, should the Exchange choose to do so, for example, to accommodate systems capacity concerns.[13] The Exchange also believes that specifying the applicable minimum, maximum and default settings for the Mechanism via Regulatory Bulletin would further remove impediments to and perfect the mechanisms of a free and open market by reducing the resources that would otherwise be expended, by both the Exchange and the Commission, if the Exchange is required to propose a rule change with the Commission each time it wishes to change the settings.

The Exchange believes that the proposed decrease of the low end of the range of the Mechanism's settings to one execution per second would continue to reasonably ensure that, consistent with their obligations, Market Makers maintain a quote on the Exchange. In this regard, the Exchange notes that the proposed rule change would not relieve Market Makers on the Exchange of their quoting obligations under the Exchange's Rules.[14] As is the case today, a Market Maker quote that is cancelled would no longer count toward satisfying the Market Maker's percentage quoting obligation under NYSE Amex Options Rule 925NY. The Exchange further notes that the proposed rule change would not relieve a Market Maker of its ''firm quote'' obligation under Rule 602 of Regulation NMS[15] or NYSE Amex Options Rule 970NY, thereby promoting the protection of investors and the public interest.

The Exchange further believes that the proposed rule change is not unfairly discriminatory because the same minimum, maximum and default settings would be applicable to all Market Makers and because the settings would be announced via Regulatory Bulletin to all Market Makers at the same time.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2012–23 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–NYSEAmex-2012–23. 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. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

[12] *See supra* note 8.

[13] As noted above, the Exchange anticipates that the current minimum, maximum and default settings will be decreased to 2, 50 and 5 executions per second, respectively. The Exchange understands that the Commission has previously permitted similar risk mechanisms to be implemented on other option exchanges without any applicable minimum, maximum and/or default settings in the exchanges' corresponding rules. *See supra* note 9.

[14] *See, e.g.,* NYSE Amex Options Rule 925NY.

[15] 17 CFR 242.602.

should refer to File Number SR–NYSEAmex–2012–23 and should be submitted on or before May 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10391 Filed 4–30–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66859; File No. SR–Phlx–2012–52]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Account Fee

April 25, 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 18, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Account Fee displayed in the Pricing Schedule at Section VI, A entitled ''Membership Fees.''

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to recoup some of the billing and processing costs associated with participant accounts. The proposed amendment would also encourage members to discontinue holding inactive trading accounts, which the Exchange believes should, in turn, eliminate the need to expend resources to create additional account fields. As a result, the staff time allocated to maintaining account records would be reduced, which would allow for a more efficient use of staff resources.

Currently, member organizations receive one free account for each permit assigned to the member organization and the Exchange assesses an Account Fee of $50.00 for each additional account a member holds. The Exchange initially adopted this Account Fee in 2006 to encourage member organizations to discontinue holding inactive trading accounts, which the Exchange believed would, in turn, eliminate the need to expend resources to create additional account.[3] The Exchange is proposing to amend this fee to assess an Account Fee of $50.00 per month for each account held by a member organization. The Exchange would remove the following text from the Pricing Schedule ''for each account beyond the number of permits billed to that member organization.'' While today member organizations receive one free account for each permit assigned to the member organization, the proposal would bill a member organization $50.00 for each account. The Account Fee would cover any month, or any part of a month, during which an account is maintained by a member.

Member organizations are not restricted in the number of trading accounts they may request through the Exchange's Membership Department. In many instances, multiple accounts are requested by a member organization as a means of tracking various trading activity using the Exchange's account numbers or because they have multiple clearing arrangements.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed amendment to the Account Fee is reasonable because it seeks to recoup costs incurred by the Exchange. Further, the Exchange is seeking to incentivize members to discontinue inactive trading accounts. The Exchange also believes that the proposed Account Fee is equitable and not unfairly discriminatory because it would be uniformly applied to all members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] 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

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53046 (January 3, 2006), 71 FR 1459 (January 9, 2006) (SR–Phlx–2005–89). The Exchange noted in its filing that the $50 per month fee would be applicable to any part of a month.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2012–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2012–52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2012–52 and should be submitted on or before May 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10392 Filed 4–30–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; In the Matter of Berman Center, Inc., Cyberkinetics Neurotechnology Systems, Inc., and Java Detour, Inc.

April 27, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Berman Center, Inc. because it has not filed any periodic reports since the period ended December 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cyberkinetics Neurotechnology Systems, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Java Detour, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 27, 2012, through 11:59 p.m. EDT on May 10, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–10568 Filed 4–27–12; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13067 and #13068]

Kansas Disaster #KS–00063

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Kansas dated 04/23/2012.

Incident: Severe storms, hail and tornadoes.

Incident Period: 04/14/2012 through 04/15/2012.

Effective Date: 04/23/2012.

Physical Loan Application Deadline Date: 06/22/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 01/23/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Sedgwick.

Contiguous Counties:

Kansas: Butler, Cowley, Harvey, Kingman, Reno, Sumner.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13067 B and for economic injury is 13068 0.

The State which received an EIDL Declaration # is Kansas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 23, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–10417 Filed 4–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies—Early Stage SBICs

AGENCY: U.S. Small Business Administration.

ACTION: Call for Early Stage Fund Managers.

SUMMARY: This Call invites experienced early stage fund managers to submit the preliminary materials discussed in Section II, in the form of the Small Business Investment Company (''SBIC'') Management Assessment Questionnaire (''MAQ''), for consideration by the Small Business Administration (''SBA'') to be licensed as Early Stage Small Business Investment Companies. Licensed Early Stage SBICs may receive SBA-guaranteed debenture leverage of up to 100 percent of their Regulatory Capital, up to a maximum of $50 million. Early Stage SBICs must invest at least 50% of their investment dollars in early stage small businesses. For the purposes of this initiative, an ''early stage'' business is one that has never achieved positive cash flow from operations in any fiscal year. By licensing and providing SBA guaranteed leverage to Early Stage SBICs, SBA seeks to expand entrepreneurs' access to capital and encourage innovation as part of President Obama's Start-Up America Initiative launched on January 31, 2011. More information on the Early Stage SBIC Initiative and the regulations governing these SBICs may be found at *www.sba.gov/inv/earlystage.*

DATES: In order to expedite licensing of qualified applicants that have already raised the required capital, SBA has established two ''tracks'' for the Early Stage SBIC Licensing Process as follows:

► Track 1—Applicants with Capital: This includes all applicants that have signed commitments for at least $15 million in Regulatory Capital and the remaining capital needed to achieve the minimum $20 million in Regulatory Capital for Early Stage SBICs ''soft-circled''. (This may include drop-down funds.) Track 1 applicants that receive a Greenlight will need signed commitments of at least $20 million in Regulatory Capital when they file their Licensing Application on or before July 30, 2012. SBA will accept a commitment that is conditioned upon issuance of an Early Stage SBIC license and/or approval of the applicant's organizational documents, but will not accept a commitment that is subject to any other conditions.

► Track 2—All Other Applicants.

The following table provides the key milestones for each track.

Milestone	Track 1—Applicants with capital	Track 2—all other applicants
FAQ Process Closed	5 p.m. Eastern Time (''ET'') on May 18, 2012.	
Initial Review Period:		
• Management Assessment Questionnaires (''MAQs'') Due	5 p.m. ET May 25, 2012	5 p.m. ET. June 19, 2012.
• Interview Period	June 6, 2012–June 13, 2012	July 23, 2012–August 3, 2012.
• Anticipated Greenlight Decision	June 29, 2012	September 28, 2012.
Licensing Period:		
• Licensing Applications Due with at least $20 million in Regulatory Capital.	5 p.m. ET July 30, 2012	5 p.m. ET May 15, 2013.
• Anticipated Licensing Date	September 28, 2012	September 30, 2013.

NOTES:
- SBA will notify applicants with Greenlight Letters of any further Licensing Periods.
- SBA reserves the right to extend its interview, due diligence, committee, and approval timelines as appropriate. SBA will update its Web site at *www.sba.gov/inv/earlystage* should these dates change. Applicants will be notified by email should these dates change.
- SBA expects to issue additional calls for Early Stage Fund Managers on an annual basis. SBA will announce these calls via a call notice in the **Federal Register**.

ADDRESSES: Email *MAQrequest@sba.gov* to obtain a copy of the Management Assessment Questionnaire (''MAQ'') for your proposal as discussed in Section II. You must submit via express or next day delivery service two (2) paper copies of the MAQ to the following:

Chief Administrative Officer, Office of Investment, U.S. Small Business Administration, 409 3rd St. SW., Suite #6300, Washington, DC 20416.

You must provide with the MAQ a CD-ROM containing an electronic version of your completed MAQ in Word and Excel format. SBA will not accept MAQs via regular mail due to irradiation requirements nor will SBA accept MAQs via hand delivery or courier service.

SUPPLEMENTARY INFORMATION:

I. Background Information

SBA invites early stage fund managers to submit the preliminary materials, as discussed in Section II, in the form of a Management Assessment Questionnaire (''MAQ'') for the formation and management of an Early Stage SBIC. Early Stage SBICs represent a new sub-category of SBICs that will focus on making investments in early stage small businesses. Go to *www.sba.gov/inv/earlystage* for information on the Early Stage Initiative and links to the Early Stage SBIC Final Rule (''Final Rule''). This initiative is part of President Obama's ''Start-Up America Initiative'' to promote American innovation and job creation by encouraging private sector investment in job-creating startups and small firms, accelerating research, and addressing barriers to success for entrepreneurs and small businesses.

II. Management Assessment Questionnaire/License Application Materials

The first required submission in the Early Stage Licensing process is SBA's MAQ. The MAQ consists of two forms that cover qualitative and quantitative information on the management team, the proposed strategy for the SBIC, the principals' investment track record, and the proposed fund structure and economics. The MAQ consists of SBA

Form 2181 and the exhibits in SBA Form 2183.

If, after submitting the MAQ, you are invited to be interviewed (see paragraph III.B.2), you will be required to bring to the interview a completed Exhibit N from SBA Form 2182, consisting of your financial forecast and a written narrative which identifies how you will manage SBA leverage as part of your business plan. Whether you choose discounted leverage or standard leverage with a 5 year interest reserve, each as described in the Final Rule, your plan must address how you will meet interest payments after 5 years from the date of debenture issue.

Should SBA issue you a ''Green Light letter'' (described in paragraph III.B.6), you must submit the SBIC License Application, consisting of SBA Form 2181 (updated as needed) and SBA Form 2182, for the final licensing phase (paragraph III.D). Exhibit Q in SBA Form 2182 includes the fund's limited partnership agreement (''LPA''). Applicants should review Section IV of this notice for special instructions associated with the LPA for Early Stage SBICs.

To obtain a copy of the most recent versions of these forms, please send an email to *MAQrequest@sba.gov*. Read only examples of these forms may be found at *www.sba.gov/content/application-forms*.

III. Early Stage Licensing Process

There are four stages in SBA's Early Stage Licensing Process: (A) Call Period; (B) Initial Review; (C) Applicant Fundraising and Document Preparation; and (D) Licensing. Each of these stages is discussed below.

A. *Call Period.* This notice signals the start of the Fiscal Year 2012 Early Stage SBIC call period. SBA intends to hold no more than one Early Stage SBIC call period for accepting MAQs per fiscal year and SBA will issue a new notice in the **Federal Register** for the next call period. Interested parties should request a MAQ from SBA, per paragraph II above. Please take time to read the instructions included with each form identified in Section II. You should also review the information at *www.sba.gov/inv/earlystage* which includes a list of frequently asked questions (''FAQs'') regarding the Early Stage Initiative. If you still have questions regarding the Early Stage process, please email your questions to *startupamerica@sba.gov*. SBA will endeavor to respond to your question within three business days, depending on volume. SBA may not be able to respond to fund specific questions or questions that require a legal opinion. SBA will not take any further questions after the end of the Question and Answer Period identified under the Dates section.

B. *Initial Review.* At the end of the Initial Review phase, SBA will issue Green Light letters to those applicants that meet the evaluation criteria for an Early Stage SBIC, including the vintage year and geographic diversification criteria. Section V of this notice describes the criteria by which SBA will evaluate applicants. The process for SBA's Initial Review is as follows:

1. Submit MAQ. SBA must receive your completed MAQ no later than the date and time specified under the Dates section of this notice. SBA will send a confirmation that it has received your MAQ within 3 business days of your submission. If you have not fully completed all sections of the MAQ or provided sufficient information to allow SBA to evaluate your management team, you may be ineligible for this call period. If so, SBA will notify you by email.

2. Pre-Screen. SBA will review all MAQs against the evaluation criteria identified in Section V. SBA may engage a contractor to assist in evaluating MAQs received in response to this Call. The Investment Committee (composed of senior managers from the Office of Investment) will consider each MAQ, and if the Investment Committee concludes that the management team may be qualified for an Early Stage SBIC license, the entire team will be invited to SBA Headquarters in Washington, DC for an interview. Those applicants not invited for interviews will also be notified. SBA will provide feedback to applicants not selected for an interview after the first Early Stage SBIC Licensing cycle is complete.

3. Interview Period. SBA's invitation for an interview will identify a 1 hour time block during the Interview Period identified in the Dates Section, along with the topics that the applicants should be prepared to address. SBA will conduct interviews at SBA Headquarters, at 409 Third Street SW., Washington, DC. At the interview, you must bring your financial forecast as described under Section II of this document.

Track 1 applicants are encouraged to bring the following completed exhibits from SBA Form 2182 to the Interview:

a. Exhibit B—Fingerprint cards and

b. Exhibit C—Statements of Personal History.

If the applicant receives a Green Light letter, SBA will forward the fingerprint cards and Statements of Personal History to SBA's Office of Inspector General for processing by the FBI. (Note: Track 1 applicants may wait until the licensing stage to submit these documents. However, you will not be able to draw SBA leverage until your FBI checks are complete.)

If after the Interview, the Investment Committee decides that an applicant does not meet the criteria for an Early Stage SBIC license, the SBA will notify the applicant that it will not be considered further for this call period. SBA will provide feedback to those applicants after the first Early Stage SBIC Licensing cycle is complete.

4. Due Diligence. SBA will conduct due diligence on all applicants that successfully pass the Interview process. SBA may be assisted in this process by a contractor engaged by SBA.

5. Green Light Letter. Following the interview and the completion of SBA's due diligence, the SBA will issue a ''Green Light'' letter to all applicants that meet the criteria identified in Section V, as determined by the Investment Committee. The ''Green Light'' letter formally invites an applicant to submit the SBIC License application for the Licensing stage. Applicants approved by the Investment Committee can expect to receive the Green Light letter via email within a few days of the Investment Committee's decision. The Green Light letter is only an invitation to proceed to the next stage in the process, not a guarantee that you will be issued an Early Stage SBIC license. Those applicants that do not receive a Green Light letter will also be notified by email within a few days of the Investment Committee's decision. SBA will provide feedback to those applicants that do not receive a Green Light letter after the first Early Stage SBIC Licensing cycle is complete.

C. *Fundraising and Document Preparation.* If you receive a Green Light letter, you will need to raise the minimum Regulatory Capital needed to execute your strategy (which can be no less than $20 million) and submit your completed license application by the start of the licensing period identified in the Dates Section of this notice for your Track.

1. Raise Regulatory Capital. Early Stage SBIC applicants must have signed commitments for at least $20 million in Regulatory Capital prior to filing their license application.

2. SBIC Education. All principals of an Early Stage SBIC applicant that has received a Green Light letter must attend a one-day SBIC Regulations training class. This training is normally held several times per year in Washington, DC. The purpose of this class is to familiarize SBIC principals with the SBIC rules, regulations and compliance procedures. Classes are

normally limited in size. Although an applicant may receive a license before all principals have completed the training, a majority must do so before licensing and all must do so before a licensed Early Stage SBIC will be permitted to draw leverage. (Track 1 applicants should note that training sessions are currently scheduled for June 14 and October 11, 2012.) Information concerning registration for classes can be obtained at *www.sbia.org*. Certain non-principals such as members of a board of directors may also be required to take the class. In addition, any employees or consultants whom you have assigned to handle regulatory matters or to interact with the Office of Investment should attend the class.

3. Finalize Documents & Perform Checklist. The following items must be completed and submitted in order to proceed to the Licensing phase:

Item	☑
Updated SBA Form 2181 (See Section II for more information.).	
SBA Form 2182 (See Section II for more information.).	
At least $20 million in Regulatory Capital evidenced by signed Capital Certificate in Form 2182 (Exhibit M).	
$25,000 Non-refundable licensing fee.	

D. *Licensing.* During this last stage, SBA will review your completed application, perform further due diligence and analysis if more than 3 months have passed since the Green Light Letter was issued, and make the final licensing decision. SBA will hold at most two Early Stage SBIC Licensing periods per year for those applicants that received a Green Light letter as a result of SBA's Initial Review. For calendar year 2012, SBA will only hold one licensing period. Early Stage SBIC applicants that receive a Green Light letter will be eligible to submit their license applications for the next two licensing periods after receipt of the Green Light letter. Track 1 applicants that receive Green Light letters in 2012 and wish to be licensed in 2012 will need to submit their completed license application no later than July 30, 2012. Any Track 1 applicants that are unable to raise the minimum $20 million in Regulatory Capital and submit their license application by that date may submit their applications for the Track 2 licensing period. Similarly, Track 2 applicants that are unable to raise sufficient capital and submit their license applications by the start of the Track 2 licensing period may submit their applications during the next Early Stage licensing period. SBA will notify Track 2 Green Light recipients when future licensing periods will take place. The process for Licensing is detailed below.

1. Submit License application. To proceed to the Licensing stage, applicants that have received a Green Light letter will need to submit all items listed in the Checklist above to the address indicated in your Green Light Letter. Upon receipt of the application, SBA will acknowledge receipt by email. Within three business days, SBA will determine whether the application is complete, meets the minimum capital requirements and satisfies management ownership diversity requirements. If so, SBA will formally accept the application. If the applicant did not submit a completed licensing application, SBA may defer the applicant to the next licensing cycle.

2. Background and Documentation Review. Once the application has been formally accepted, SBA will forward the fingerprint cards and Statements of Personal History to SBA's Office of Inspector General for processing by the FBI, if the applicant did not previously submit such information during or after the Interview. Following a review of the application and legal documents, SBA will provide the applicant with a ''comment letter''. Applicants must respond in writing to the comment letter, via mail, fax or email within one week after the date SBA sends the comment letter. Applicants that do not address, to SBA's satisfaction, all of the comments contained in SBA's comment letter will be moved to the next licensing cycle in order to provide SBA with sufficient time to resolve outstanding issues. Through this process, SBA hopes to resolve all issues specified in SBA's comment letter as expeditiously as possible. Promptness and responsiveness in responding to SBA's comment letter are important. Due to the short timeframe for Licensing, Early Stage SBIC Applicants may not make pre-licensing investments.

3. Divisional Licensing Committee. Once the applicant has satisfactorily addressed all issues and SBA has completed its review and any due diligence if necessary and the Office of General Counsel has signed off on legal sufficiency of the application (including the final form of the organizational and other legal documents), the license application is presented to the Divisional Licensing Committee. This committee is composed of the senior managers of the Office of Investment. If approved by the Divisional Licensing Committee, the application is forwarded to the Agency Licensing Committee which is comprised of certain senior managers of the SBA. Prior to consideration by the Agency Licensing Committee, an applicant must provide a signed, up-to-date capital certificate showing that it has at least $2.5 million in Leverageable Capital, consisting of cash on deposit and/or approved organizational and operational expenses paid out of partners' contributed capital, and at least $20 million in Regulatory Capital. The applicant's selected bank must certify that the requisite funds are in the applicant's account and unencumbered. An applicant must also submit a commitment request for the amount of leverage it is seeking.

4. Agency Licensing Committee and Administrator Approval. If the Agency Licensing Committee approves your license application, it will be forwarded to the SBA Administrator or her designee for final action as soon as you submit fully executed copies of all legal documents. (Please note that the executed documents must be identical to the ''final form'' of the documents approved by SBA.) If the Administrator or her designee approves your application, your Early Stage SBIC license is issued.

5. Leverage Commitments. SBA has allocated only $150 million in Fiscal Year (''FY'') 2012 and $200 million in FY 2013. SBA expects to allocate another $200 million each in FYs 2014 and 2015 and $250 million in FY 2016. If total leverage commitments requested for the FY 2012 licensing cycle exceed the amount available in FY 2012, SBA will allocate available leverage across all FY2012 Early Stage SBICs on a pro rata basis. Early Stage SBICs licensed in FY2012 will be eligible to request the remainder of their uncommitted leverage request in subsequent fiscal years based on availability. SBA expects to be able to commit the full amount of leverage that an Early Stage SBIC requests at the time of licensing. However, those commitments may be approved in multiple years, depending on availability in each year. Early Stage SBICs that raise additional private capital after licensing may request leverage commitments against that capital. However, such requests are subject to leverage availability and will not be considered until all other licensee requests are satisfied.

IV. Early Stage SBIC LPA and Organizational Instructions

A. *Early Stage SBIC Model LPA.* In order to expedite the review of Early

Stage SBIC license applications, SBA has adopted a Model Early Stage SBIC Limited Partnership Agreement (''Model LPA'') that incorporates in Bold Arial type those provisions required by SBA. You must download the Model LPA at *www.sba.gov/content/earlystage-model-partnership-agreement.* Applicants must use the Model LPA as a template and follow the organizational structure of the Model LPA. Further, Applicants must include in their limited partnership agreements all of those provisions of the Model LPA that appear in Bold Arial type in the Model LPA. Additions, deletions and other changes or modifications to any of those provisions of the Model LPA that appear in Bold Arial type will not be accepted. Applicants are required to submit a copy of their limited partnership agreement black-lined against the Model LPA, with all of the provisions of the Model LPA in Bold Arial type retained in Bold Arial type, as explained in the instructions provided at the beginning of the Model LPA. SBA provides the following further guidance on limited partnership agreements:

1. SBA encourages applicants to adhere to the Model LPA to the maximum extent possible. All deviations from those provisions of the Model LPA that do not appear in Bold Arial type must be accompanied by a narrative explanation for those deviations. Please note that any deviations must have a substantive basis and may not be deemed acceptable by SBA.

2. There must be no conditions or restrictions on the ability of the GP to call private capital commitments except under the ''no fault termination of the investment period'' or ''key person'' provisions included in the Model LPA.

3. Withdrawal rights are limited to those permitted by the Model LPA.

4. Applicants must adhere to SBA's management fee policies available at *www.sba.gov/content/sbic-technotes-number-7a-revised-april-2008.* This policy sets a maximum allowable management fee only. The actual management fee will be set by negotiation between the management team and the limited partners and may be less than the maximum. Early Stage SBIC applicants should be aware that the calculation of an SBIC's capital impairment percentage is affected by all fund expenses, including management fees. SBA will consider the management fee in its licensing evaluation criteria as part of fund economics. SBA believes that the primary incentive for fund managers should be carried interest rather than fees.

5. The designation of fund expenses and expenses to be paid out of the management fee must be consistent with SBIC program regulations (see 13 CFR 107.520).

a. Organizational costs, expenses incurred in applying for a license and forming the SBIC and its entity general partner (but not its parent fund or any other affiliate), are considered a partnership expense. Organizational expenses typically include items such as the licensing fee, cost of legal and other professional and consulting services, travel and other fundraising expenses, costs of preparing, printing and distributing the private placement memorandum or other offering materials, and other related expenses such as telephone and supply costs. SBA strongly encourages applicants to include in the LP agreement a reasonable cap on the total organizational costs to be paid by the applicant. Costs deemed excessive can be paid by the GP or management company or deducted from the applicant's Regulatory Capital prior to licensing.

b. Unreimbursed expenses on deals that do not close may be designated as a partnership expense but must be capped at a reasonable level.

6. Right of limited partners to remove general partner—Provisions allowing removal of the general partner without cause (''no-fault divorce'' provisions) are permitted only after the Early Stage SBIC has repaid all outstanding leverage and any other amounts payable to SBA and has surrendered its SBIC license.

7. SBA will not consider amendments to an Early Stage SBIC's LPA for a minimum of six months after licensing.

B. *Organization.* Early Stage SBIC applicants must adhere to the following rules regarding organizational structure:

1. Applicant cannot be a BDC or other public entity or a subsidiary of any such entity.

2. All provisions governing the operation of the SBIC must be included in the limited partnership agreement (no side letters).

3. Applicant must adopt SBA Model Valuation Guidelines.

4. Drop-down SBICs.

a. The drop-down structure should be used only when it has a clear business purpose:

i. Example 1—Parent fund has already raised capital and begun operating and wants to commit a portion of its capital to an Early Stage SBIC.

ii. Example 2—Substantial capital will be retained for investment at the parent level (SBA suggests that managers consider the alternative of structuring a non-SBIC fund side by side with the SBIC).

b. Drop-down funds must have one parent fund only and the parent fund must be a U.S. entity.

c. Parent must qualify as a traditional investment company based on established SBA precedent.

d. Parent must disclose the identity of all of its investors.

e. All of the investors in the parent fund (the SBIC's ''Class A'' limited partner) must agree to be ''Class B'' limited partners of the SBIC with an obligation to fund the Early Stage SBIC capital calls if the Class A limited partner does not. The obligation of the Class B limited partners to the Early Stage SBIC is reduced dollar for dollar as the Parent Fund contributes capital to the SBIC. The Model LPA contains required provisions for drop-down funds.

f. The Class B limited partners' commitments to the SBIC applicant must be expressed as a specific dollar amount (not just as the ''proportionate share'' of parent fund's commitment).

g. The total dollar amount of Class B commitments must be equal to the Class A limited partner's unfunded commitment to the SBIC. SBA will not require Class B commitments if the SBIC's Regulatory Capital will not include any unfunded commitments from the Class A limited partner.

C. *Capitalization.* Applicants must raise the minimum $20 million in Regulatory Capital by the time the license application is submitted (see section III.D).

1. Capital commitments from limited partners must be made directly to the SBIC (and its parent fund, in the case of a drop-down) with no intermediaries involved.

2. The Early Stage SBIC applicant must have the unconditional ability to legally enforce collection of each capital commitment.

3. Capital Certificate. Capital commitments must be documented in the capital certificate (Section M of SBA Form 2182) and comply with the following:

a. A signed Capital Certificate must be submitted with the license application.

b. The only permitted conditions on private capital commitments are:

iii. Receipt of Early Stage SBIC license

iv. Approval of limited partnership agreement.

c. Individual investors must list primary residence address, not a business address.

d. Street addresses are required (no P.O. Box addresses).

4. A dual commitment may be obtained to back up the commitment of

any direct investor in the SBIC who is not an Institutional Investor. SBA will not permit an Early Stage SBIC applicant that is a drop-down to utilize dual commitments.

5. Capital commitments by the principals, general partner, or their affiliates must be payable in cash when called (cannot be satisfied with notes or management fee waivers).

D. General Partner

1. All principals must:

a. Hold direct ownership interests in and be the direct individual managers of the general partner, with no intervening entities.

b. Receive carried interest directly from the general partner; for drop-down SBICs, carried interest may be received from the parent fund's general partner.

2. A maximum of 25% of the carried interest may be allocated to non-principals.

3. Any provision to remove or terminate a principal must be spelled out within the general partner's organizational document and must not be tied to events occurring under other agreements (e.g., a principal's employment agreement with the management company).

E. *Investment Advisor (''Management Company'').* Ownership of the Management Company that is highly disproportionate to the ownership of the general partner (e.g., one principal is the 100% owner) is not viewed favorably by SBA, but may be acceptable if there are adequate checks and balances on the powers of the dominant owner. Areas that cannot be subject to unilateral decision-making include the following:

1. Power to remove or terminate other principals.

2. Power to change the composition of the Early Stage SBIC's investment committee.

V. Early Stage SBIC Licensing Evaluation Criteria

A. *General Criteria.* SBA will evaluate an Early Stage SBIC license applicant based on the submitted application materials, Investment Committee interviews with the applicant's management team, and the results of background investigations, public record searches, and other due diligence conducted by SBA and other Federal agencies. SBA will evaluate an Early Stage SBIC license applicant based on the same factors applicable to other license applicants, as set forth in 13 CFR 107.305, with particular emphasis on managers' skills and experience in evaluating and investing in early stage companies. As discussed in the Final Rule, evaluation criteria fall into 4 areas: (A) Management Team; (B) Track Record; (C) Proposed Investment Strategy; and D) Organizational Structure and Fund Economics. You should review these regulations prior to completing your MAQ.

B. *Managing SBA Leverage.* SBA will pay particular attention to how a team's investment strategy works with proposed SBA leverage. Early Stage Debenture leverage either requires a 5 year interest and annual charge reserve from the date of issue or is structured with an original issue discount that covers the interest and annual charges for the first 5 years. In either case, Early Stage SBICs must identify how quarterly interest payments beginning in the 6th year from Debenture issue will be met. Sources of liquidity to make interest payments may include (a) private capital; (b) realizations; or (c) current income. As part of your plan of operations, you should carefully consider how your investment strategy will work with SBA leverage and make appropriate suggestions to manage risk. Risk mitigation strategies might include making some investments in current pay instruments; taking down less than a full tier of leverage, (i.e., leverage less than 100% of Regulatory Capital); taking leverage down later in the fund's life; lowering management expenses; and reserving more private capital. The strategies you choose to employ should be appropriate for your management team's track record and investment strategy.

C. *SBA Diversification Rights.* Per § 107.320, SBA reserves the right to maintain diversification among Early Stage SBICs with respect to (i) the year in which they commence operations (''vintage year'') and (ii) geographic location.

1. Vintage Year Diversification. Vintage year has a major impact on the return expectations of a fund and excessive concentration in a single year could substantially increase program risk. Therefore, SBA reserves the right, when licensing Early Stage SBICs, to maintain diversification across vintage years. SBA believes that it will be able to manage vintage year diversification through its call process. For example, if SBA approves a significant number of Green Lights in FY 2012, it may not hold a call in FY 2013. This will also help facilitate the allocation of early stage debenture leverage. As such, potential applicants should not assume that SBA will hold calls for new MAQs each year. SBA will announce all new calls through the **Federal Register**.

2. Geographic Diversification. All Early Stage SBICs must first meet SBA's basic licensing criteria. After those criteria are met, SBA reserves the right to maintain diversification among Early Stage SBICs with respect to where the Early Stage SBIC expects to invest.

Sean Greene,

Associate Administrator for Investment and Special Advisor for Innovation.

[FR Doc. 2012–10412 Filed 4–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

SBA Council on Underserved Communities

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the first meeting of the SBA Council on Underserved Communities Advisory Council. The meeting will be open to the public.

DATES: The meeting will be held on Monday, May 7 from 1 to 5 p.m. Central Time Zone.

ADDRESSES: The meeting will be held at the SBA Kansas City District Office located at 1000 Walnut Street, Suite 500, Kansas City, MO 64106.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the SBA Council on Underserved Communities. The SBA Council on Underserved Communities is tasked with providing advice, ideas and opinions on SBA programs and services and issues of interest to small businesses in underserved communities.

The purpose of the meeting is to discuss with the council the current status of small business across the United States and to discuss the agency's programs and initiatives especially in regards to underserved communities. The agenda includes an update of SBA's most recent programs and initiatives from Deputy Administrator Marie Johns as well as a meeting open to the public to hear from the members of the council.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the SBA Council on Underserved Communities should please contact Nicole Nelson by May 3rd 2010, by fax or email in order to be placed on the agenda.

Nicole Nelson, SBA's Office of Entrepreneurship Education, SBA Headquarters.

Email: *nicole.nelson@sba.gov.*

Phone: (202) 205–7540, Fax: (202) 481–0215.

Additionally, if you need accommodations because of a disability or require additional information, please contact Robbie Moore, Program Support Assistant at the SBA Kansas City District Office. Phone (816–426–4933); Email: *robbie.moore@sba.gov.*

Dated: Monday, April 23, 2012.

Dan Jones,

SBA Committee Management Officer.

[FR Doc. 2012–10419 Filed 4–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 7863]

Culturally Significant Objects Imported for Exhibition Determinations: ''Rembrandt, Van Dyck, Gainsborough: The Treasures of Kenwood House, London''

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 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Rembrandt, Van Dyck, Gainsborough: The Treasures of Kenwood House, London,'' imported from abroad by the American Federation of Arts for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the following Federation member venues for the following approximate periods is in the national interest: the Museum of Fine Arts Houston from on or about June 3 to on or about September 4, 2012; the Milwaukee Museum of Art from on or about October 4, 2012 to on or about January 6, 2013; the Seattle Art Museum from on or about February 14, 2013 to on or about May 19, 2013; the Arkansas Art Center from on or about June 6, 2013 to on or about September 8, 2013; and at possible additional exhibitions or venues yet to be determined. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 25, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–10509 Filed 4–30–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7862]

Culturally Significant Objects Imported for Exhibition Determinations: ''Gold, Jasper, and Carnelian: Johann Christian Neuber at the Saxon Court''

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 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Gold, Jasper, and Carnelian: Johann Christian Neuber at the Saxon Court,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Frick Collection, New York, New York, from on or about May 29, 2012, until on or about August 19, 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 list of the exhibit objects, 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 24, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–10506 Filed 4–30–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7864]

Determination and Waiver of Section 7070(a) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Division I, Public Law 112–74 (''the Act'') Relating to Assistance for the Independent States of the Former Soviet Union

Pursuant to the authority vested in me as Deputy Secretary of State, including by Section 7070(a) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Division I, Pub. L. 112–74), (''the Act''), Executive Order 12163, as amended by Executive Order 13118, and State Department Delegation of Authority No. 245–1, I hereby determine that it is in the national security interest of the United States to make available funds appropriated under the heading ''Assistance for Europe, Eurasia and Central Asia'' of the Act, without regard to the restriction in section 7070(a).

This Determination shall be reported to the Congress and published in the **Federal Register**.

Dated: April 13, 2012.

William J. Burns,

Deputy Secretary of State.

[FR Doc. 2012–10511 Filed 4–30–12; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 7819]

Advisory Committee on the Secretary of State's Strategic Dialogue With Civil Society

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (FACA), the Advisory Committee on the Secretary of State's Strategic Dialogue with Civil Society will convene in Washington, DC on May 16, 2012. The Committee provides advice on the formulation of U.S. policies, proposals, and strategies for engagement with, and protection of, civil society worldwide.

The objective of this meeting is to review the progress of the Committee's five subcommittees. The meeting is open to public participation through live stream at *http://www.state.gov/s/sacsed/c47725.htm.*

DATES: The meeting will be held on May 16, 2012, from 12:15 p.m. to 1:45 p.m.

ADDRESSES: The meeting will be held at the U.S. Department of State, 2201 C Street NW., Washington, DC.

Written comments may be submitted to Madeleine Ioannou via email to *civilsociety@state.gov* or facsimile to (202) 736–7880. All comments, including names and addresses when provided, are placed in the record and are available for inspection and copying. The public may inspect comments received at the U.S. Department of State, 2201 C Street NW., Room 1317, Washington, DC 20520. Please call ahead to (202) 736–7824 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Madeleine Ioannou, Committee Executive Secretary, U.S. Department of State, 2201 C Street NW., Room 1317, Washington, DC 20520; (202) 736–7308; *civilsociety@state.gov.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public and will be streamed live at: *http://www.state.gov/s/sacsed/c47725.htm.* Agenda items to be covered include: (1) Introductions, (2) Presentations by the Chairs of the Subcommittees, (3) Discussion of any Public Submissions, (4) General Discussion, (5) Adjournment. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff by sending an email to *civilsociety@state.gov.*

Dated: April 25, 2012.

Madeleine Ioannou,

Office of the Senior Advisor for Civil Society and Emerging Democracies, U.S. Department of State.

[FR Doc. 2012–10504 Filed 4–30–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-First Meeting: RTCA Special Committee 203, Unmanned Aircraft Systems

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

ACTION: Meeting Notice of RTCA Special Committee 203, Unmanned Aircraft Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the twenty-first meeting of RTCA Special Committee 203, Unmanned Aircraft Systems.

DATES: The meeting will be held May 22–25, 2012, from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street, NW., Suite 910, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 203. The agenda will include the following:

May 22, 2012 Opening Plenary Session

- Welcome/Introductions/Administrative Remarks
- Approval of Twentieth Plenary Summary
- Chairperson/Leadership Updates
- Designated Federal Official (DFO) Update
- Schedule Status
- Workgroup Updates
- Plenary Adjourns

Mid Morning/Afternoon

- Workgroup Breakout Sessions
  - Systems Engineering Workgroup
  - C&C Workgroup
  - S&A Workgroup
  - Safety Workgroup

Wednesday, May 23

- All day-Workgroup Breakout Sessions

Thursday, May 24

- All day-Workgroup Breakout Sessions

Friday, May 25

- 8:00 a.m.–10:00 a.m.—Workgroup Breakout Sessions
- 11:00 a.m.–12:00 p.m.—Plenary Reconvenes
  - Workgroup Back Briefs
  - Other Business
  - Closing Plenary Session
  - Other Business
  - Date, Place, and Time for Plenary Twenty-Two
  - Plenary Adjourns

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 24, 2012.

John Raper,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–10365 Filed 4–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Washington, DC

AGENCY: U.S. Federal Highway Administration, District of Columbia Division; District of Columbia, Department of Transportation.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The U.S. Federal Highway Administration (FHWA) in coordination with the District of Columbia Department of Transportation (DDOT) in Washington, DC is issuing this notice to advise agencies and the public that a Draft Environmental Impact Statement (DEIS) will be prepared to assess the impacts of the proposed reconstruction of the Virginia Avenue Tunnel in Washington, DC. The tunnel is owned and operated by CSX Transportation, Inc. (CSX), and is an integral feature of CSX's freight rail network that encompasses about 21,000 route miles of track in 23 states, the District of Columbia and the Canadian provinces of Ontario and Quebec. The tunnel's reconstruction requires FHWA approval due to temporary construction impacts to the Southeast Freeway (I–695) and use of I–695 air rights.

FOR FURTHER INFORMATION CONTACT: Federal Highway Administration, District of Columbia Division: Mr. Michael Hicks, Environmental/Urban Engineer, 1900 K Street, Suite 510, Washington, DC 20006–1103, (202) 219–3513; or Mr. Faisal Hameed, Manager, Project Development & Environmental Division, Infrastructure Project Management Administration, District of Columbia, Department of Transportation, 55 M Street, SE., Suite 500, Washington, DC 20003, (202) 671–2326.

SUPPLEMENTARY INFORMATION: The environmental review of the reconstruction of Virginia Avenue Tunnel will be conducted in accordance with the requirements of the National

Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371, et seq.), Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), FHWA Code of Federal Regulations (23 CFR 771.101–771.137, et seq.), and all applicable Federal, State, and local government laws, regulations, and policies.

The EIS will replace the Environmental Assessment (EA) currently being prepared by FHWA and DDOT for the proposed reconstruction of Virginia Avenue Tunnel. Engineering, environmental and public involvement work or activities associated with the EA preparation conducted to date will be incorporated into preparing the EIS. Cooperating agencies will be notified of FHWA's intent to prepare an EIS for the proposed reconstruction of Virginia Avenue Tunnel. Notices will also be given to other agencies, private organizations, citizens, and interest groups that have previously expressed or are known to have interest in the project. Public input will continue to be solicited through the ongoing public involvement and outreach effort.

Public Scoping Meetings: DDOT has solicited public and agency comments on the proposed action through public scoping, including public meetings held on September 14, 2011 and November 30, 2011. To ensure that the full range of issues is identified early in the process, comments are invited from all interested and/or potentially affected parties. The location and time for any future public meeting will be publicized in at least one local daily newspaper. Written comments will be accepted throughout this process and can be forwarded to Faisal Hameed at the address provided above. Any future meeting will also be announced on the project Web site accessible at *http://www.virginiaavenuetunnel.com.* Meeting materials will be available at all public meetings and after the meetings from the project Web site. At all future meetings, oral and written comments may be given. Comments may also be sent to Faisal Hameed at the above project Web site.

Description of Primary Study Area and Transportation Needs

Virginia Avenue Tunnel is located in the Capitol Hill neighborhood of Washington, DC beneath eastbound Virginia Avenue SE from 2nd Street SE (west portal) to 11th Street SE (east portal), a distance of approximately 3,800 feet. This section of Virginia Avenue SE is adjacent to or in close proximity to the U.S. Marine Corps recreation facility, National Park Service properties, residences and a few businesses. The Southeast Freeway abuts the north side of Virginia Avenue SE throughout nearly all the project limits.

In order to meet the freight transportation needs of the 21st century, the capacity and condition of freight rail infrastructure must keep pace. Overall freight tonnage is projected to increase by 50 percent in 2040 from 2010 levels, and freight rail is expected to accommodate a substantial share of the future increase demand for freight land transportation in the U.S. The current deficiencies of Virginia Avenue Tunnel prevent CSX from operating their freight rail network in the manner needed to meet the projected freight transportation demand through the District of Columbia. The interior height and width of Virginia Avenue Tunnel do not meet the needs of modern freight rail infrastructure due to its single track arrangement and the inability to accommodate double-stack intermodal container freight trains. The single-track presents a bottleneck in the system, preventing fluid operations along CSX's mainline rail network. Built over 100 years ago, the tunnel is nearing the end of its useful life and is subject to an ever increasing level of maintenance and repairs. During construction of the project, which may last approximately three years, CSX must be able to maintain freight transport through the District of Columbia. Determining how CSX will maintain their freight rail transport through the District of Columbia during reconstruction of the tunnel will be part of the environmental review for this project.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Planning and Construction. The regulations and implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: April 30, 2012.

Joseph C. Lawson,

Division Administrator, District of Columbia Division, Federal Highway Administration.

[FR Doc. 2012–10364 Filed 4–30–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Madison County, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice of intent to advise the public that an Environmental Impact Statement will be prepared for a proposed transportation project in Alton and Godfrey, Illinois in an area bounded roughly by IL Route 3 on the south; Seminary Road on the east; Seiler Road on the north and US 67 on the west.

FOR FURTHER INFORMATION CONTACT: Norman Stoner, Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4640. Omer Osman, Deputy Director of Highways, Region 5 Engineer, Illinois Department of Transportation, 1102 Eastport Plaza Drive, Collinsville, Illinois 62234, Phone: (618) 346–3110.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation (IDOT) will prepare an Environmental Impact Statement (EIS) for a project that involves improved transportation flow, safety and connectivity in Alton and Godfrey, Illinois. Improved connectivity will focus on IL Route 3 and IL Route 255. Possible alternatives include: No Action, an upgrade of existing roadways and connections, or roadways on new alignment with new connections.

IDOT has initiated a scoping process that involves all appropriate federal, state, and local agencies, consulting parties, private organizations and citizens who have previously expressed or are known to have interest in this proposal. Context Sensitive Solutions (CSS) is being used for this project and a Stakeholder Involvement Plan (SIP) has been developed. A public hearing will be held to present the findings of the Draft EIS. Public notice will be given regarding the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

There are sensitive resources within the study area. These resources include schools, a Centennial farm, wetlands, Coal Branch Creek, the West Fork of Wood River, and areas with highly erodible soils. Sites within the study area listed on the National Register of Historic Places include the Benjamin Godfrey Mansion, Benjamin Godfrey Memorial Chapel, and Gilman Hall at Lewis and Clark Community College and Bierbaum Monument and Levis Tomb at Oakwood Cemetery. There is potential for archaeological sites within the study area. No formal neighborhood groups are within the study area. However, there are several residential subdivisions and cohesiveness and character of neighborhoods as well as noise impacts will need to be further

analyzed. In addition, it has yet to be determined if there is potential for threatened and endangered species within the study area.

To ensure that the full range of issues related to this proposed action are addressed and all major issues are identified in the process, comments and suggestions are invited from all interested and/or potentially affected parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or IDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 24, 2012.

Norman R. Stoner,

Division Administrator Springfield, Illinois.

[FR Doc. 2012–10448 Filed 4–30–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0034]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated March 21, 2012, the City of Nevada, Iowa (City), has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 222. FRA assigned the petition Docket Number FRA–2012–0034.

The City is seeking a waiver from the provisions of 49 CFR 222.35(b), which requires active grade crossing warning devices at public crossings within a new quiet zone be equipped with constant warning time devices, so that the active grade crossing warning devices at South West 4th Street (DOT #199653D) are not required to be equipped with a constant warning time device in order to be included in a new quiet zone.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 15, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on April 25, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–10421 Filed 4–30–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before July 2, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

Title: Tax on Lump-Sum Distributions (From Qualified Plans of Participants Born Before January 2, 1936).

OMB Number: 1545–0193.

Form Number: Form 4972.

Abstract: Internal Revenue Code section 402(e) and regulation section 402(e) and regulations section 1.402(e) allow recipients of lump-sum distributions from a qualified retirement plan to figure the tax separately on the distributions. The tax can be computed on the 10-year averaging method and/or by a special capital gain method. Form 4972 is used to compute the separate tax and to make a special 20 percent capital gain election on lump-sum distributions attributable to pre-1974 participation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 21,709.

Estimated Time per Respondent: 4 hrs. 24 min.

Estimated Total Annual Burden Hours: 95,520.

Title: Credit for Employer-Provided Child Care Facilities and Services.

OMB Number: 1545–1809.

Form Number: 8882.

Abstract: Qualified employers use Form 8882 to request a credit for employer-provided child care facilities and services. Section 45F provides credit based on costs incurred by an employer in providing child care facilities and resource and referral services. The credit is 25% of the qualified child care expenditures plus 10% of the qualified child care resource and referral expenditures for the tax year, up to a maximum credit of $150,000 per tax year.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 666,666.

Estimated Time per Respondent: 3 hours, 62 minutes.

Estimated Total Annual Burden Hours: 2,459,998.

Title: Section 108 Reduction of Tax Attributes for S Corporations.

OMB Number: 1545–2155 REG–102822–08 (TD 9469).

Abstract: This final regulations provide guidance on the manner in which an S corporation reduce its tax attributes under section 108(b) for taxable years in which the S corporation has discharge of indebtedness income that is excluded from gross income under section 108(a). In particular, the regulations address situations in which the aggregate amount of the shareholders' disallowed section 1366(d) losses and deductions that are treated as a net operating loss tax attribute of the S corporation exceeds the amount of the S corporation's excluded discharge of indebtedness income. The regulations affect S corporations and their shareholders.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

Title: Reduction of Tax Attributes Due to Discharge of Indebtedness.

OMB Number: 1545–0046.

Form Number: 982.

Abstract: Internal Revenue Code (IRC) section 108 allows taxpayers to exclude from gross income amounts attributable to discharge of indebtedness in title 11 cases, insolvency or a qualified farm indebtedness. Section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data is used to verify adjustments to basis of property and reduction of tax attributes.

Affected Public: Individuals or households, businesses or other for-profit, small businesses or organizations.

Estimated Number of Responses: 667.

Estimated Burden Hours: 7,491.

Title: Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

OMB Number: 1545–0195.

Form Number: 5213.

Abstract: Section 183 of the Internal Revenue Code allows taxpayers to elect to postpone a determination as to whether an activity is entered into for profit or is in the nature of a nondeductible hobby. The election is made on Form 5213 and allows taxpayers 5 years (7 years for breeding, training, showing, or racing horses) to show a profit from an activity.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 3,541.

Estimated Time per Respondent: 47 minutes.

Estimated Total Annual Burden Hours: 2,762.

Title: Certificate of Payment of Foreign Death Tax.

OMB Number: 1545–0260.

Form Number: 706–CE.

Abstract: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit allowed by Internal Revenue Code section 2014. The information is used by IRS to verify that the proper credit has been claimed.

Current Actions: There are no changes being made to Form 706–CE at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households.

Estimated Number of Responses: 2,250.

Estimated Time per Response: 1.72 hrs.

Estimated Total Annual Burden Hours: 720.

Title: (LR–27–83) Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks, and (LR–54–85) Excise Tax on Heavy Trucks, Truck Trailers, Semitrailers, and Tractors; Reporting and Recordkeeping Requirements.

OMB Number: 1545–0745.

Regulation Project Number: LR–27–83 (TD 7882); LR–54–85 (TD 8050).

Abstract: LR–27–83 requires sellers of trucks, trailers and semitrailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability. LR–54–85 requires that if the sale is to be treated as exempt, the seller and the purchaser must be registered and the purchaser must give the seller a resale certificate.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,100.

Estimated Time per Respondent: 1 hour, 1 minute.

Estimated Total Annual Burden Hours: 4,140.

Title: Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return and Schedule Q (Form 1066), Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

OMB Number: 1545–1014.

Form Number: Form 1066 and Schedule Q (Form 1066).

Abstract: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,917.

Estimated Total Annual Burden Hours: 264,388.

Title: Change of Address.

OMB Number: 1545–1163.

Form Number: Form 8822.

Abstract: Form 8822 is used by taxpayers to notify the Internal Revenue Service that they have changed their home or business address or business location.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,500,000.

Estimated Total Annual Burden Hours: 387,501.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless the collection of information displays a valid OMB control number.

Approved: April 24, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–10474 Filed 4–30–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before July 2, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, the IRS is seeking comments concerning the following forms, and reporting and recordkeeping requirements:

Title: Notice of Election of and Agreement To Special Lien Under Internal Revenue Code Section 6324A and Regulations.

OMB Number: 1545–2109.

Form Number: Form 13925.

Abstract: Under IRC section 6166, an estate may elect to pay the estate tax in installments over 14 years if certain conditions are met. If the IRS determines that the government's interest in collecting estate tax is sufficiently at risk, it may require the estate provide a bond. Alternatively, the executor may elect to provide a lien in lieu of bond. Under section 6324A(c) and the regulations there under (OMB 1545–0757), to make this election the executor must submit a lien agreement to the IRS. Form 13925 is a form lien agreement that executors may use for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 500.

Title: Carbon Dioxide Sequestration Credit.

OMB Number: 1545–2132.

Form Number: Form 8933.

Abstract: Generally, the credit is allowed to the person that captures and physically or contractually ensures the disposal of or the use as a tertiary

injectant of the qualified carbon dioxide. The credit can be claimed on Form 8933 for qualified carbon dioxide captured after October 3, 2008, and before the end of the calendar year in which the Secretary, in consultation with the Administrator of the EPA, certifies that 75,000,000 metric tons of qualified dioxide have been captured and disposed of or used as a tertiary injectant. Authorized under I.R.C. section 45Q.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, individuals or households, and farms.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 2 hours, 9 minutes.

Estimated Total Annual Burden Hours: 215.

Title: Material Advisor Disclosure Statement.

OMB Number: 1545–0865.

Form Number: 8918.

Abstract: The American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418, (AJCA) was enacted on October 22, 2004. Section 815 of the AJCA amended section 6111 to require each material advisor with respect to any reportable transaction to make a return (in such form as the Secretary may prescribe) setting forth: (1) Information identifying and describing the transaction; (2) information describing any potential tax benefits expected to result from the transaction; and (3) such other information as the Secretary may prescribe.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit organizations.

Estimated Responses: 350.

Estimated Total Burden Hours: 3,959 hours.

Title: Consolidated Returns-Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Non-applicability of Section 357(c).

OMB Number: 1545–1344.

Regulation Project Number: CO–30–92 (TD 8560) (Final).

Abstract: These regulations amend the consolidated return investment adjustment system, including the rules for earnings and profits and excess loss accounts. In addition, the regulations provide special rules for allocating consolidated income tax liability among members and modify the method for allocating income when a corporation enters or leaves a consolidated group.

Current Actions: There is no change to the total burden of these final regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 52,049.

Estimated Time per Respondent: 22 minutes.

Estimated Total Annual Burden Hours: 18,600.

Title: Permitted Elimination of Preretirement Optional Forms of Benefit.

OMB Number: 1545–1545.

Regulation Project Number: REG–107644–97 (TD 8769) (Final).

Abstract: This regulation permits an amendment of a qualified plan or other employee pension benefit plan that eliminates plan provisions for benefit distributions before retirement age but after age 70½. The regulation affects employers that maintain qualified plans and other employee pension benefit plans, plan administrators of these plans and participants in these plans.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 135,000.

Estimated Average Time per Respondent: 22 min.

Estimated Total Annual Burden Hours: 48,800.

Title: Waiver of Right to Consistent Agreement of Partnership Items and Partnership-Level Determinations as to Penalties, Additions to Tax, and Additional Amounts.

OMB Number: 1545–1969.

Form Number: 13751.

Abstract: The information requested on Form 13751 (as required under Announcement 2005–80) will be used to determine the eligibility for participation in the settlement initiative of taxpayers related through TEFRA partnerships to ineligible applicants. Such determinations will involve partnership items and partnership-level determinations, as well as the calculation of tax liabilities resolved under this initiative, including penalties and interest.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 100.

Title: Credit for New Qualified Alternative Motor Vehicles (Advanced Lean Burn Technology Motor Vehicles and Qualified Hybrid Motor Vehicles).

OMB Number: 1545–1988.

Form Number: Notice 2006–9.

Abstract: This notice sets forth a process that allows taxpayers who purchase passenger automobiles or light trucks to rely on the domestic manufacturer's (or, in the case of a foreign manufacturer, its domestic distributor's) certification that both a particular make, model and year of vehicle qualifies as an advanced lean burn technology motor vehicle under Section 30B(a)(2) and (c) of the Internal Revenue Code or a qualified hybrid motor vehicle under Section 30B(a)(3) and (d), and the amount of the credit allowable with respect to the vehicle.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, farms.

Estimated Number of Respondents: 7.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 280.

Title: Credit for Residential Energy Efficient Property.

OMB Number: 1545–2134.

Form Number: Notice 2009–41.

Abstract: This notice sets forth interim guidance, pending the issuance of regulations, relating to the credit for residential energy efficient property under § 25D of the Internal Revenue Code. Specifically, this notice provides procedures that manufacturers may follow to certify property as a qualified residential energy efficient property, as well as guidance regarding the conditions under which taxpayers seeking to claim the § 25D credit may rely on a manufacturer's certification. The Internal Revenue Service (Service) and the Treasury Department expect that the regulations will incorporate the rules set forth in this notice.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, businesses and other for-profit organizations.

Estimated Number of Respondents: 140.

Estimated Time per Respondent: 2 Hours, 30 minutes.

Estimated Total Annual Burden Hours: 350.

Title: Notice of Expatriation and Waiver of Treaty Benefits.

OMB Number: 1545–2138.

Form Number: Form W–8CE.

Abstract: Information used by taxpayers to notify payer of expatriation so that proper tax treatments is applied by payer. The taxpayer is required to file this form to obtain any benefit accorded by the status.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 5 hours, 41 minutes.

Estimated Total Annual Burden Hours: 2,840.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless the collection of information displays a valid OMB control number.

Approved: April 23, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–10475 Filed 4–30–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2013 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a notice that the IRS has made available the *2013 Grant Application Package and Guidelines* (Publication 3319) for organizations interested in applying for a Low Income Taxpayer Clinic (LITC) matching grant for the 2013 grant year, which runs January 1, 2013, through December 31, 2013. The application period runs from May 1, 2012, through June 15, 2012.

The IRS will award a total of up to $6,000,000 (unless otherwise provided by specific Congressional appropriation) to qualifying organizations, subject to the limitations of Internal Revenue Code section 7526, for matching grants. A qualifying organization may receive a matching grant of up to $100,000 per year for up to a three-year project period. Qualifying organizations that provide representation for free or for a nominal fee to low income taxpayers involved in tax controversies with the IRS, or inform individuals for whom English is a second language of their taxpayer rights and responsibilities, or both, can apply for a grant.

Examples of qualifying organizations include: (1) A clinical program at an accredited law, business or accounting school whose students represent low income taxpayers in tax controversies with the IRS, (2) an organization exempt from tax under I.R.C. § 501(a) that represents low income taxpayers in tax controversies with the IRS or refers those taxpayers to qualified representatives, and (3) an organization exempt from tax under I.R.C. § 501(a) that operates programs to inform individuals for whom English is a second language about their rights and responsibilities as taxpayers.

DATES: Grant applications for the 2013 grant year must be electronically filed, postmarked, sent by private delivery service, or hand-delivered to the LITC Program Office in Washington, DC by June 15, 2012.

ADDRESSES: Send completed grant applications to: Internal Revenue Service, Taxpayer Advocate Service, LITC Grant Program Administration Office, TA:LITC, 1111 Constitution Avenue NW., Room 1034, Washington, DC 20224. Copies of the *2013 Grant Application Package and Guidelines,* IRS Publication 3319 (Rev. 5–2012), can be downloaded from the IRS Internet site at *www.irs.gov/advocate* or ordered by the IRS Distribution Center by calling 1–800–829–3676. Applicants can also file electronically through the Federal Grants Web site at *www.grants.gov.* For applicants applying through the Federal Grants Web site, the Funding Number is TREAS–GRANTS–052013–001.

FOR FURTHER INFORMATION CONTACT: The LITC Program Office at (202) 622–4711 (not a toll-free number) or by email at *LITCProgramOffice@irs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 7526 of the Internal Revenue Code authorizes the IRS, subject to the availability of appropriated funds, to award organizations matching grants of up to $100,000 per year for the development, expansion, or continuation of qualified low income taxpayer clinics. Section 7526 authorizes the IRS to provide grants to qualified organizations that represent low income taxpayers in controversies with the IRS or inform individuals for whom English is a second language of their taxpayer rights and responsibilities, or both. The IRS may award grants to qualifying organizations to fund one-year, two-year, or three-year project periods. Grant funds may be awarded for start-up expenditures incurred by new clinics during the grant cycle.

Mission Statement

Low Income Taxpayer Clinics ensure the fairness and integrity of the tax system by educating low income taxpayers about their rights and responsibilities, by providing *pro bono* representation to taxpayers in tax disputes with the IRS, by conducting outreach and education to taxpayers who speak English as a second language, and by identifying and advocating for issues that impact low income taxpayers.

Selection Consideration

Applications that pass the eligibility screening process will undergo a two-tier evaluation process. Applications will be subject to both a technical evaluation and a program office evaluation. The final funding decision is made by the National Taxpayer Advocate, unless recused. The costs of preparing and submitting an application are the responsibility of each applicant. Each application will be given due consideration and the LITC Program Office will notify each applicant once funding decisions have been made.

Nina E. Olson,

National Taxpayer Advocate, Internal Revenue Service.

[FR Doc. 2012–10453 Filed 4–30–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Employee Benefits Security Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9967–NC]

Request for Information Regarding Stop Loss Insurance

AGENCIES: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Request for information.

SUMMARY: This document is a request for information regarding the use of stop loss insurance by group health plans and their plan sponsors, with a focus on the prevalence and consequences of stop loss insurance at low attachment points. Given the limited nature of data available, the Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the Departments) invite public comments via this request for information.

DATES: Comments must be submitted on or before July 2, 2012.

ADDRESSES: Written comments may be submitted to the Department of Labor as specified below. Any comment that is submitted will be shared with the other Departments. Please do not submit duplicates. All comments will be made available to the public. Warning: Please do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are posted on the Internet exactly as received and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Comments may be submitted by one of the following methods:

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

Email: E-OHPSCA-STOPLOSS.EBSA@dol.gov.

Mail or Hand Delivery: Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Stop Loss Comments.

Comments received will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa*, and available for public inspection in the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Beth Baum or Amy Turner, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622–6080; Steve Kornblit, Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, at (410)786–1565.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the CMS Web site (*www.cciio.cms.gov*), and information on health reform can be found at *http://www.HealthCare.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Stop loss insurance protects against health insurance claims that are catastrophic or unpredictable in nature [1] and provides coverage to self-insured group health plans once a certain level of risk has been absorbed by the plan.[2] Stop loss protection allows an employer to self-insure for a set amount of claims costs, with the stop loss insurance covering most or all of the remainder of the claims costs that exceed the set amount, generally referred to as the ''attachment point.'' Attachment points can be either ''specific'' or ''aggregate.'' Specific attachment points protect the plan against a high claim for any one individual (e.g., an employer self-insures up to $500,000 in claims per year for any one enrollee and stop loss insurance covers claims amounts above the $500,000 attachment point).[3] Aggregate attachment points define the maximum dollar amount of claims that an employer will pay, in total, during a specific period (e.g., an employer self-insures up to 125 percent of expected claims per year across all employees and stop loss insurance covers claims amounts above the 125 percent attachment point).[4] Stop loss insurance policies may be purchased by an employer or by the employer's group health plan.

The Departments have little data on the incidence or terms of stop loss insurance among self-insured employers' group health plans. Private-sector employer sponsored health benefit plans that have 100 or more participants and smaller plans that hold assets in trust generally are required to file annual reports with the Department of Labor. These reports, filed on Form 5500, include some information on the plans' finances, including some information on any stop loss insurance policies held by the plans. However, the reports do not include information on the attachment points associated with stop loss insurance policies or any information on stop loss insurance policies held by plan sponsors rather than by plans. Additionally, plans with fewer than 100 participants that employers self-insure using their general assets (and that do not hold assets in trust) are not required to file Form 5500 annual reports and as a result, the Departments have even less information about stop loss coverage for these plans. The limited information on stop loss insurance policies contained in Form 5500 is summarized in the Department of Labor's Group Health Plans Reports Abstract of Form 5500 Annual Reports, available at: *http://www.dol.gov/ebsa/publications/form5500dataresearch.html#healthplan*. The limited available information suggests that stop loss insurance is perhaps becoming more common among smaller self-insured plans but information is not available on the type of stop loss coverage purchased by plans of various sizes. More specifically, according to Form 5500 data, between 2000 and 2008, the percentage of group health plans filing a Form 5500 that reported having stop loss insurance was in the range of approximately 23 percent to 27 percent for self-insured plans and approximately 28 percent to 29 percent

[1] See the Self-Insurance Institute of America Inc.'s definition of stop-loss insurance at: *http://www.siia.org/i4a/pages/Index.cfm?pageID=4549.*

[2] *American Medical Security Inc.* v. *Bartlett,* 111 F.3d 358, 360, 361 (4th Cir. 1997)

[3] See the Self-Insurance Institute of America Inc.'s definition of stop-loss insurance at: *http://www.siia.org/i4a/pages/Index.cfm?pageID=4549.*

[4] Id.

for partially-insured, partially self-insured plans.[5]

Unless prohibited by State insurance law, an insurer may offer stop loss insurance policies with attachment points set low enough such that the stop loss insurer assumes nearly all the insurance risk. For example, the attachment point could be set at $5,000 per employee, or $100,000 for a small group.

Under section 514(a) of the Employee Retirement Income Security Act (ERISA), State laws that relate to ''employee benefit plans,'' as defined by ERISA section 3(3), are generally preempted. (Although ERISA section 514(b)(2)(A) saves State insurance laws from preemption, ERISA section 514(b)(2)(B) prohibits States from deeming employee benefit plans to be insurance companies in order to regulate them under insurance laws.)[6] As a result, self-insured plans are not subject to State insurance laws, but insurance policies issued to those plans or plan sponsors, including stop loss insurance policies, can be regulated by States if the regulation is directed toward and affects the business of insurance rather than the relationship between an employee benefit plan and its participants.

Employers and plans that purchase stop loss insurance generally are not subject to State health insurance laws including coverage laws, rating policies, and other State and Federal consumer protections applicable to health insurance, including certain patient protections under the Patient Protection and Affordable Care Act (Affordable Care Act). It has been suggested that some small employers with healthier employees may self-insure and purchase stop loss insurance policies with relatively low attachment points to avoid being subject to these requirements while exposing themselves to little risk.[7] This practice, if widespread, could worsen the risk pool and increase premiums in the fully insured small group market, including in the Small Business Health Options Program (SHOP) Exchanges that begin in 2014.[8]

In the mid-1990s, the National Association of Insurance Commissioners (NAIC) and several States expressed concern that the purchase of stop loss insurance policies with low attachment points made the self-insured classification a method to circumvent State insurance regulation. As a result, the NAIC adopted a model law (Model Act 92–1), which established standards for determining whether an insurance policy should be treated as a health insurance policy or a stop loss insurance policy under State law. The model law created minimum attachment points for stop loss insurance policies.[9] If the attachment points exceeded the minimum amount, the policies would be treated essentially as reinsurance of a self-insured plan. If the attachment points were below the minimum, the policies would be classified as health insurance subject to State insurance regulation. In addition, the model law established distinctly different requirements for health insurance policies as opposed to stop loss insurance policies, including different licensing, reporting, policy form and solvency requirements for insurers issuing the health insurance policies.

Other interested stakeholders are also monitoring the market for stop loss coverage with low attachment points.[10]

II. Solicitation of Comments

The Departments are requesting comments to contribute to the Departments' understanding of the current and emerging market for stop loss products, both generally and with respect to the following specific areas:

1. How common is the use of stop loss insurance in connection with self-insured arrangements? Does the usage vary (and, if so, how) based on the size of the underlying arrangement or based on other factors? How many individuals, if known, are covered under stop loss insurance (either nationally or on a state-specific basis)? What are the trends? Are past trends expected to be predictive of future trends? Is the Affordable Care Act expected to affect these trends (and, if so, how)?

2. What are common attachment points for stop loss insurance policies, and what factors are used to determine these attachment points? What are common attachment points by employer size (e.g., for plans with fewer than 50, between 50 and 100, or between 100 and 250 employees, and how do these compare to attachment points used by larger plans)? What are the lowest attachment points that are available? What are the trends?

3. Are employee-level (''specific'') attachment points more common, or are group-level (''aggregate'') attachment points more common? What are the trends? What are the common attachment points for employee-level and group-level policies?

4. How do insurers work with small employers to integrate stop loss insurance protection with self-insured group health plans? What kinds of options are generally made available? Are policies customized to meet the needs of different employers? How are the attachment points for a stop loss policy determined for an employer? Do self-insured group health plans purchase stop loss insurance anticipating that they will purchase it every year?

5. For a given attachment point, what percentage of total medical costs incurred by the employees is typically paid for by the employer and what percentage is typically paid for by the stop loss insurance policy? How much do the relative percentages vary for different attachment points? What are the loss ratios associated with stop loss insurance policies?

[5] See Department of Labor's Report to Congress: Annual Report on Self-Insured Group Health Plans, issued on 04/24/2012, available at *http://www.dol.gov/ebsa/pdf/ACAReportToCongress041612.pdf.*

[6] *Rush Prudential HMO, Inc.* v. *Moran,* 536 U.S. 355, 373 n.6 (2002) (a State law that regulates insurance—and which is otherwise saved from preemption—may not be applied to a self-insured ERISA plan).

[7] Kathryn Linehan, *Self-Insurance and the Potential Effects of Health Reform on the Small-Group Market,* Issue Brief 840, National Health Policy Forum (December 21, 2010) available at *http://www.nhpf.org/library/issue-briefs/IB840_PPACASmallGroup_12-21-10.pdf*, Russell B. Korobkin, *The Battle Over Self-Insured Health Plans,* or *'One Good Loophole Deserves Another',* Yale Journal of Health Policy, Law, and Ethics, Vol. 1, 89–136 (2005).

[8] A recent RAND report predicts that this effect, if any, is likely to be small. See *http://content.healthaffairs.org/content/31/2/324.abstract?sid=412e7755-0eb9-4b79-ac32-d39e6c739d0f. See also* Mark A. Hall, Regulating Stop-Loss Coverage May Be Needed to Deter Self-Insuring Small Employers From Undermining Market Reforms, *Health Affairs,* 31, no. 2 (2012): 316–323.

[9] Specifically, the 1995 model law prohibited an insurer from issuing a stop loss insurance policy that had: (a) An annual attachment point for claims incurred per individual lower than $ 20,000; and (b) an annual aggregate attachment point, for groups of fifty (50) or fewer, that was lower than the greater of: (i) $4,000 times the number of group members; (ii) 120 percent of expected claims; or (iii) $ 20,000. For groups of fifty-one or more, it prohibited an annual aggregate attachment point that was lower than 110 percent of expected claims.

[10] For example, Hall has cautioned that aspects of the Affordable Care Act could motivate some small businesses with younger, healthier employees to self-insure and buy relatively comprehensive stop loss coverage, and that this might increase premiums for small businesses that purchase insurance. See Mark A. Hall, Regulating Stop-Loss Coverage May Be Needed to Deter Self-Insuring Small Employers From Undermining Market Reforms, *Health Affairs,* 31, no. 2 (2012): 316–323. Eibner et al. generally conclude that self-insurance will have little effect on premiums for small group coverage, but suggest that this conclusion might change if affordable, attractive stop-loss policies become more available. See Christine Eibner, Carter C. Price, Raffaele Vardavas, Amando Cordova and Federico Girosi, Small Firms' Actions in Two Areas, And Exchange Premium and Enrollment Impact, *Health Affairs,* 31, no. 2, (2012): 324–331.

6. What are the administrative costs to employers related to stop loss insurance purchased for the employers' self-insured group health plans? How do these costs compare to the administrative costs related to purchasing a health insurance policy from an issuer?

7. Is stop loss insurance more prevalent in certain industries or sectors? Are there any minimum employee participation requirements for a small employer to be offered stop loss insurance?

8. What types of entities issue stop loss insurance? How many small entities [11] issue stop loss insurance policies?

9. Do stop loss issuers increase fees for groups below a certain size or exclude those groups? If so, how?

10. How do stop loss insurers evaluate the plans seeking coverage and how is this evaluation reflected in the coverage or premiums offered? Does the profile of the plan have an effect on the attachment points available?

11. How do States regulate stop loss insurance? In States that are regulating this insurance, what are the licensing processes and standards? Have States proposed laws, regulations, or best practices with regard to stop loss insurance? Do such proposals focus on attachment points, size of the group, percent of total claims paid by the stop loss insurer, or other criteria? What are the issues States face in regulating stop loss insurance?

12. What effect does the availability of stop loss insurance with various attachment points and other particular provisions have on small employers' decisions to offer insurance to employees?

13. What impact does the use of stop loss insurance by self-insured small employers have on the small group fully insured market?

[11] For this purpose, a small entity is defined as (1) a proprietary firm meeting the size standards of the Small Business Administration or (2) a nonprofit organization that is not dominant in its field.

Signed at Washington, DC, this 25th day of April, 2012.

Victoria A. Judson,

Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities, Internal Revenue Service, Department of the Treasury.

Signed at Washington, DC this 25th day of April, 2012.

George H. Bostick,

Benefits Tax Counsel, Department of the Treasury.

Signed this 23rd day of April, 2012.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Dated: April 25, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: April 25, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–10441 Filed 4–27–12; 11:15 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Sonoran Desert Area Bald Eagle as Threatened or Endangered; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2008–0059; 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Sonoran Desert Area Bald Eagle as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Sonoran Desert Area population of bald eagle (*Haliaeetus leucocephalus*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing the Sonoran Desert Area population of bald eagle does not qualify as a distinct population segment (DPS) and listing the Sonoran Desert Area population of bald eagle is not warranted at this time.

DATES: The finding announced in this document was made on May 1, 2012.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2008–0059. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Southwest Regional Office, 500 Gold Ave. SW., Room 6034, Albuquerque, NM 87102. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Michelle Shaughnessy, Assistant Regional Director, Southwest Regional Office (see **ADDRESSES**); by telephone at 505–248–6920; or by facsimile at 505–248–6788. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information indicating that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition. In this finding we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation is precluded by other pending proposals to determine whether species are threatened or endangered (warranted but precluded). Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring that we make a subsequent finding within 12 months. Such 12-month findings must be published in the **Federal Register.**

This document constitutes our revised 12-month finding on a petition to list the Sonoran Desert Area bald eagle. In this document, the Sonoran Desert Area population is the name given to the entity under evaluation for designation as a distinct population segment (DPS). For the purposes of this assessment, the Sonoran Desert Area population includes all bald eagle territories within Arizona, the Copper Basin breeding area in California near the Colorado River, and the territories of interior Sonora, Mexico, that occur within the Sonoran Desert and adjacent transitional communities. For more detail on the boundary of the DPS, see the discussion below under *Determination of the Area for Analysis.*

Previous Federal Action

Bald eagles (*Haliaeetus leucocephalus*) gained protection under the Bald Eagle Protection Act (16 U.S.C. 668–668d) in 1940 and the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712) in 1972. A 1962 amendment to the Bald Eagle Protection Act added protection for the golden eagle (*Aquila chrysaetos*), and the amended statute became known as the Bald and Golden Eagle Protection Act (BGEPA). On February 14, 1978, the Service listed the bald eagle as an endangered species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) in 43 of the contiguous States, and as a threatened species in the States of Michigan, Minnesota, Wisconsin, Oregon, and Washington (43 FR 6230). On July 12, 1995, we published a final rule to reclassify the bald eagle from endangered to threatened in the 43 States where it had been listed as endangered and retain the threatened status for the other 5 States (60 FR 36000).

On July 6, 1999, we published a proposed rule to delist the bald eagle throughout the lower 48 States due to recovery (64 FR 36454). On February 16, 2006, we reopened the public comment period to consider new information received on our July 6, 1999 (71 FR 8238), proposed rule to delist the bald eagle in the lower 48 States. On October 6, 2004, we received a petition from the Center for Biological Diversity (CBD), the Maricopa Audubon Society, and the Arizona Audubon Council requesting that the ''Southwestern desert nesting bald eagle population'' be classified as a distinct population segment (DPS) under the Act, that this DPS be reclassified from a threatened species to an endangered species, and that we concurrently designate critical habitat for the DPS under the Act. We announced in our 90-day finding on August 30, 2006 (71 FR 51549), that the petition did not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

On January 5, 2007, the CBD and the Maricopa Audubon Society (Plaintiffs) filed a lawsuit in the U.S. District Court for the District of Arizona challenging the Service's 90-day finding that the bald eagles nesting in the Sonoran Desert area of central Arizona did not qualify as a DPS, and further challenging the Service's 90-day finding that the population should not be uplisted to endangered status.

On July 9, 2007 (72 FR 37346), we published the final delisting rule for bald eagles in the lower 48 States due to recovery. This final delisting rule also included the bald eagles located in the Sonoran Desert. On August 17, 2007, the CBD and the Maricopa Audubon Society filed a Motion for Summary Judgment in their January 5, 2007, lawsuit. In early 2008, several Native American Tribes submitted *amicus curiae* (''friend of the court'') briefs in support of the August 17, 2007, Motion for Summary Judgment. The San Carlos Apache Tribe, Yavapai-Apache Nation, and Tonto Apache Tribe submitted *amicus curiae* briefs to the court on January 29, 2008; the Salt River Pima-Maricopa Indian Community submitted an *amicus curiae* brief to the court on February 4, 2008; and the Fort McDowell Yavapai Nation submitted an *amicus curiae* brief to the court on February 7, 2008.

On March 5, 2008, the court made a final decision in the challenge to the Service's 2006 90-day finding, ruling in favor of the CBD and the Maricopa Audubon Society. The court order (*Center for Biological Diversity* v. *Kempthorne,* CV 07–0038–PHX–MHM (D. Ariz)), dated March 6, 2008, required

the Service to conduct a status review of the Desert bald eagle population pursuant to the Act to determine whether that population may qualify as a DPS, and if so, whether listing that DPS as threatened or endangered pursuant to the Act is warranted. The court enjoined the Service's application of the July 9, 2007 (72 FR 37346), final delisting rule with respect to the bald eagles nesting in the Sonoran Desert area of central Arizona pending that status review and 12-month finding on the Plaintiffs' petition.

On May 1, 2008, to conform with the court's March 6, 2008, order, we published a final rule listing the potential Sonoran Desert bald eagle DPS as threatened under the Act (73 FR 23966). On May 20, 2008, we published a **Federal Register** notice (73 FR 29096) initiating a status review for the bald eagles nesting in the Sonoran Desert area of central Arizona.

On February 25, 2010, the Service published its 12-month finding on the October 6, 2004, petition, as required by the March 5, 2008, court order (75 FR 8601). The Service found that the bald eagles nesting in the Sonoran Desert area did not qualify as a DPS and, therefore, were not a listable entity under the Act. Concurrent with publication of our 12-month finding, the Service filed a motion for dissolution of the court's injunction. Plaintiffs asked the Court for leave to file a supplemental complaint challenging the merits of the new 12-month finding. By order dated September 30, 2010, the court denied the Plaintiffs' request to file a supplemental complaint, and dissolved the injunction. This had the effect of reinstating the provisions of the delisting rule for the bald eagles nesting in the Sonoran Desert area of central Arizona, thereby removing the bald eagles nesting in the Sonoran Desert area of central Arizona from the List of Endangered and Threatened Wildlife. (*Center for Biological Diversity, et al.* v. *Salazar, et al.,* 07–cv–00038–PHX–MHM, 2010 U.S. Dist. LEXIS 72664 (D. Ariz. Sept. 30, 2010). On September 2, 2011, the Service published a final rule to comply with the court's September 30, 2010, order.

On October 5, 2010, CBD and the Maricopa Audubon Society (Plaintiffs) filed a new lawsuit in the U.S. District Court for the District of Arizona, challenging the Service's February 25, 2010, 12-month finding that the bald eagles nesting in the Sonoran Desert area did not qualify as a DPS. On January 5, 2011, the court granted the San Carlos Apache Tribe of Arizona's November 24, 2010, motion to intervene as Intervenor-Plaintiff. On March 1, 2011, the court granted the Salt River Pima-Maricopa Indian Community's January 12, 2011, motion to intervene as Intervenor-Plaintiff.

On November 30, 2011, the court granted Plaintiffs' motions for summary judgment to the extent they asserted the Service's 12-month finding was procedurally flawed. The court order (*Center for Biological Diversity* v. *Kempthorne,* CV 10–2130–PHX–DGC (D. Ariz)) required the Service to produce a new 12-month finding by April 20, 2012, based on information gathered in the status review already conducted. The court order also directed the Service to address issues identified in the order in the new 12-month finding, specifically whether the Service has adopted a new interpretation of the DPS policy and provide a reasoned explanation for why loss of the desert eagle would not result in a significant gap in the range (assuming the Service reached this conclusion in its new 12-month finding).

Public Information

As noted above, on May 20, 2008, the Service published a notice to initiate a 12-month status review for the Sonoran Desert population of bald eagle in central Arizona and northwestern Mexico, and a solicitation for new information (73 FR 29096). To allow adequate time to consider the information, we requested that information be submitted on or before July 7, 2008. On January 15, 2009, a second **Federal Register** notice (74 FR 2465) was published announcing the continuation of information collection for the 12-month status review. In order to allow us adequate time to consider and incorporate submitted information, we requested that we receive information on or before July 10, 2009. Between May 2008 and February 2010, we received 31 responses via *http://www.regulations.gov,* and 5 letters by U.S. mail.

Tribal Information

In accordance with Secretarial Order 3206, the Service acknowledges our responsibility to consult with federally recognized Tribes on a government-to-government basis. Over the course of the previous bald eagle status review, we corresponded and met with various Tribes in Arizona, all of whom support protection of the bald eagle under the Act. On July 2, 2008, the Service and Tribal representatives from four Western Apache Tribes and one Nation (White Mountain Apache, San Carlos Apache, Tonto Apache Tribes, and Yavapai-Apache Nation) met to hear testimony from cultural authorities on a variety of subjects, including the history of the eagle in Arizona and the importance of the eagle to the Apache people. At the request of Tribal representatives, this meeting was recorded and incorporated into the administrative record for the 12-month finding. On July 3, 2008, the Service met with members of the Salt River Pima-Maricopa Indian Community, Gila River Indian Community, Tohono O'Odham Nation, Ak-Chin Indian Community, Tonto Apache Tribe, Fort McDowell Yavapai Nation, the Hopi Tribe, Pascua Yaqui Tribe, Zuni Tribe, and the InterTribal Council of Arizona. This meeting was held in Phoenix, Arizona, and a court reporter recorded the meeting minutes. Members of the Tribes and nations present, however, did not consider this meeting to constitute government-to-government consultation pursuant to Secretarial Order 3206. On July 20, 2009, an official consultation meeting between the Service and Salt River Pima-Maricopa Indian Community occurred. Written comments were provided by the Western Apache Tribes and Nation and the Salt River Pima-Maricopa Indian Community on July 10, 2009.

Although comments from the Native American communities were provided in writing, much of the knowledge about the bald eagle was offered during the above-referenced face-to-face meetings. Native American knowledge about the eagle is passed down orally from one generation to the next, which is often referred to in the literature as traditional ecological knowledge. Traditional ecological knowledge refers to the knowledge base acquired by indigenous and local peoples over many hundreds of years through direct contact with the environment. Traditional knowledge is based in the ways of life, belief systems, perceptions, cognitive processes, and other means of organizing and transmitting information in a particular culture. Traditional ecological knowledge includes an intimate and detailed knowledge of plants, animals, and natural phenomena; the development and use of appropriate technologies for hunting, fishing, trapping, agriculture, and forestry; and a holistic knowledge, or ''world view,'' which parallels the scientific discipline of ecology (Inglis 1993, p. vi).

Testimony by the Western Apache Tribes and Nation and Salt River Pima-Maricopa Indian Community clearly demonstrates the importance of the bald eagle to their culture, its relevance to their well-being, and their respect for its power. Their testimony also

demonstrates the Western Apache and Salt-River Pima Maricopa knowledge base of the bald eagle and its habitat. The Native American relationship with the bald eagle in the Sonoran Desert Area predates modern Western scientific knowledge of the bald eagle by thousands of years (Lupe *et al.* pers. comm. 2008, p. 1). Given the expertise and traditional ecological knowledge about the bald eagle in the Southwest demonstrated by the Western Apache Tribes and Nation and Salt-River Pima Maricopa Indian Community, we have incorporated this information into our status review and 12-month finding.

Species Information

The bald eagle *(Haliaeetus leucocephalus)* is the only species of sea eagle regularly occurring in North America (60 FR 35999; July 12, 1995). Literally translated, *H. leucocephalus* means white-headed sea eagle. Bald eagles are birds of prey of the Order Falconiformes and Family Accipitridae. They vary in length from 28 to 38 inches (in) (71 to 96 centimeters (cm)), weigh between 6.6 and 13.9 pounds (lbs) (3.0 and 6.3 kilograms (kg)), and have a 66- to 96-in (168- to 244-cm) wingspan. Distinguishing features of adult bald eagles include a white head, tail, and upper- and lowertail-coverts; a dark-brown body and wings; and yellow irises, beak, legs, and feet. Immature bald eagles are mostly dark brown and lack a white head and tail until they reach approximately 5 years of age (Buehler 2000, p. 2).

Biology and Distribution

In many Western Apache groups, the bald eagle is called *Isłgáí,* which translates to ''the white eagle'' and is distinguished from the golden eagle, which is called *Itsa Cho* or ''the big eagle.'' The bald eagle was first described in Western culture in 1766 as *Falco leucocephalus* by Linnaeus. This South Carolina specimen was later renamed as the southern bald eagle, subspecies *Haliaeetus leucocephalus leucocephalus* (Linnaeus) when Townsend identified the northern bald eagle as *Haliaeetus leucocephalus alascanus* in 1897 (Buehler 2000, p. 4). By the time the bald eagle was listed throughout the lower 48 States under the Act in 1978, ornithologists no longer recognized the subspecies (American Ornithologists Union 1983, p. 106).

The bald eagle ranges throughout much of North America, nesting on both coasts from Florida to Baja California, Mexico, in the south, and from Labrador to the western Aleutian Islands, Alaska, in the north. Fossil records indicate that bald eagles inhabited North America approximately 1 million years ago, but they may have been present before that (Stalmaster 1987, p. 5). An estimated quarter to a half million bald eagles lived on the North American continent before the first Europeans arrived.

Though once considered endangered, the bald eagle population in the lower 48 States has increased considerably in the last thirty years. Regional bald eagle populations in the Northwest, Great Lakes, Chesapeake Bay, and Florida have increased five-fold in the past 20 years. Bald eagles are now repopulating areas throughout much of the species' historical range that were unoccupied only a few years ago.

The bald eagle is a bird of aquatic ecosystems. It frequents estuaries, large lakes, reservoirs, major rivers, and some seacoast habitats. Fish is the major component of its diet, but waterfowl, gulls, and carrion are also eaten. The species may also use prairies if adequate food is available. Bald eagles typically nest in trees, but have also been documented nesting on cliffs, on the ground, in mangroves, in caves, and in manmade structures (e.g., cell phone towers). Trees must be sturdy and open to support a nest that is often 5 feet (ft) (1.52 meters (m)) wide and 3 ft (0.91 m) deep. Adults tend to use the same breeding areas year after year, and often the same nest, though a breeding area may include one or more alternate nests. Nest shape and size vary, but typical nests are approximately 4.9 to 5.9 ft (1.5 to 1.8 m) in diameter and 2.3 to 4.3 ft (0.7 to 1.2 m) tall (Stalmaster 1987, p. 53). In winter, bald eagles often congregate at specific wintering sites that are generally close to open water and offer good perch trees and night roosts.

Bald eagles are long-lived. One of the longest-living bald eagles known in the wild was reported near Haines, Alaska, as 28 years old (Schempf 1997, p. 150). In 2009, a female eagle nesting at Alamo Lake in Arizona turned 30 years old (J. Driscoll, Arizona Game and Fish Department (AGFD), pers. comm. 2009). In captivity, bald eagles may live 40 or more years. It is presumed that once they mate, the bond is long-term. Variations in pair bonding are known to occur. If one mate dies or disappears, the other will accept a new partner.

Bald eagle pairs begin courtship about a month before egg-laying. In the southern portion of its range, courtship occurs as early as September, and in the northern portion of its range, as late as May. The nesting season lasts about 6 months. Incubation lasts approximately 35 days, and fledging takes place at 11 to 12 weeks of age. Parental care may extend 4 to 11 weeks after fledging (Hunt *et al.* 1992, p. C9; Wood *et al.* 1998, pp. 336–338). The fledgling bald eagle is generally dark brown except the underwing linings, which are primarily white. Between fledging and adulthood, the bald eagle's appearance changes with feather replacement each summer. Young, dark bald eagles may be confused with the golden eagle, *Aquila chrysaetos.* The bald eagle's distinctive white head and tail are not apparent until the bird fully matures, usually at 4 to 5 years of age.

The migration strategies for breeding, nonbreeding, and juvenile or subadult age classes of bald eagles will vary depending on geographic location. Young eagles may wander widely for years before returning to nest in natal areas. Northern latitude bald eagles winter in areas such as the Upper Mississippi River, Great Lakes shorelines, and river mouths in the Great Lakes area. For midcontinent bald eagles, wintering grounds may be the southern States, and for southern latitude bald eagles, whose nesting may begin in the winter months, the nonbreeding season foraging areas may be the Chesapeake Bay or Yellowstone National Park during the summer. Eagles seek wintering (nonnesting) areas offering an abundant and readily available food supply with suitable night roosts. Night roosts typically offer isolation and thermal protection from winds. Carrion and easily scavenged prey provide important sources of winter food in terrestrial habitats far from open water.

The first major decline in the bald eagle population probably began in the mid to late 1800s. Widespread shooting for feathers and trophies led to extirpation of eagles in some areas. Shooting also reduced part of the bald eagle's prey base. Populations of big game animals like bison, which were seasonally important to eagles as carrion, were severely reduced. Hunters also reduced the numbers of waterfowl, shorebirds, and small mammals. Ranchers used carrion treated with strychnine, thallium sulfate, and other poisons as bait to kill livestock predators and ultimately killed many eagles as well. These were the major factors, in addition to loss of nesting habitat from forest clearing and development, which contributed to a reduction in bald eagle numbers through the 1940s. In 1940, Congress passed the Bald Eagle Protection Act (16 U.S.C. 668–668d). This law prohibits the take, possession, sale, purchase, barter, or offer to sell, purchase or barter, transport, export or import, of any bald eagle, alive or dead, including any part, nest, or egg, unless allowed by

permit (16 U.S.C. 668(a)). ''Take'' includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb (16 U.S.C. 668c; 50 CFR 22.3). The Bald Eagle Protection Act and increased public awareness of the bald eagle's status resulted in partial recovery or at least a slower rate of decline of the species in most areas of the country.

In the late 1940s, the use of dichlorodiphenyltrichloroethane (DDT) and other organochlorine compounds became widespread. Initially, DDT was sprayed extensively along coastal and other wetland areas to control mosquitoes (Carson 1962, pp. 28–29, 45–55). Later farmers used it as a general crop insecticide. As DDT accumulated in individual bald eagles from ingesting prey containing DDT and its metabolites, reproductive success plummeted. In the late 1960s and early 1970s, it was determined that dichlorophenyl-dichloroethylene (DDE), the principal breakdown product of DDT, accumulated in the fatty tissues of adult female bald eagles. DDE impaired calcium release necessary for normal eggshell formation, resulting in thin shells and reproductive failure.

In response to this decline, the Secretary of the Interior, on March 11, 1967 (32 FR 4001), listed bald eagles south of the 40th parallel as endangered under the Endangered Species Preservation Act of 1966 (16 U.S.C. 668aa–668cc). Bald eagles north of this line were not included in that action primarily because the Alaskan and Canadian populations were not considered endangered in 1967. On December 31, 1972, the Environmental Protection Agency banned the use of DDT in the United States. The following year, Congress passed the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

Nationwide bald eagle surveys, conducted in 1973 and 1974 by the Service, other cooperating agencies, and conservation organizations, revealed that the eagle population throughout the lower 48 States was declining. The Service responded in 1978 by listing the bald eagle throughout the lower 48 States as endangered except in Michigan, Minnesota, Wisconsin, Washington, and Oregon, where it was designated as threatened (43 FR 6233, February 14, 1978).

Between 1990 and 2000, the bald eagle population had a national average productivity of at least one fledgling per nesting pair per year. As a result, the bald eagle's nesting population increased at a rate of about eight percent per year during this time period. Since 1963, when the Audubon Society estimated that there were 417 nesting pairs, bald eagle breeding in the lower 48 States has expanded to more than 9,789 nesting pairs (60 FR 36001, July 12, 1995; 64 FR 36457, July 6, 1999). By 2007, bald eagles bred in each of the lower 48 States, with the greatest number of breeding pairs occurring in Minnesota (1,313), Florida (1,133), Wisconsin (1,065), and Washington (848) (72 FR 37349, July 9, 2007).

Regional bald eagle populations in the Northwest, Great Lakes, Chesapeake Bay, and Florida have increased five-fold from the late 1970s to the late 1990s. Bald eagles are now repopulating areas throughout much of the species' historical range that were unoccupied only a few years ago (64 FR 36454; July 6, 1999). The nationwide recovery of the bald eagle is due in part to the reduction in levels of persistent organochlorine pesticides (such as DDT) and habitat protection and management actions.

Historical and Current Status of the Sonoran Desert Area Population and Adjacent Areas

Below we present a discussion of eagle presence, nesting and breeding productivity in the Sonoran Desert Area population and throughout the entirety of each State surrounding the Sonoran Desert Area population in order to provide context for our evaluation of whether the Sonoran Desert Area is a distinct population segment of bald eagles. As described above, the Sonoran Desert Area refers to all Sonoran Desert bald eagle territories within Arizona, the Copper Basin breeding area along the Colorado River just into California, and the territories of interior Sonora, Mexico that occur within the Sonoran Desert and adjacent transitional communities. Bald eagles in Baja California are not included in our definition of the Sonoran Desert Area population because: (1) They are associated with a marine, rather than inland, environment (see Figure 1); (2) there is no documentation of Baja bald eagles interchanging with those in the Sonoran Desert Area; and (3) currently extant nests in Baja are limited to the Magdalena Bay region along the coast of the Pacific Ocean (Arnaud *et al.* 2001, p. 136; and King 2006, p. 4), in a coastal, rather than inland, climate.

Arizona

Hunt *et al.* (1992, pp. A11–A12) summarized the earliest records from the literature for bald eagles in Arizona. Coues noted bald eagles in the vicinity of Fort Whipple (now Prescott) in 1866, and Henshaw reported bald eagles south of Fort Apache in 1875. Bent (1937, pp. 321–333) reported breeding eagles at Fort Whipple in 1866 and on the Salt River Bird Reservation (since inundated by Roosevelt Lake) in 1911. Breeding eagle information was also recorded in 1890 near Stoneman Lake by S.A. Mearns. Additionally, there are reports of bald eagles along rivers in the White Mountains from 1937, and reports of nesting bald eagles along the Salt and Verde Rivers as early as 1930. Hunt *et al.* (1992, pp. D41–D46, D291–D326, Figures D4.0–1, D5.0–1, F3, F4, and F5) determined from reports and personal communications dating back to 1866 that historically there were 28 known breeding areas, 22 known and probable nest sites, and at least 60 unverified reports of possible nests/nest sites and unverified reports of bald eagles located across the State of Arizona. Many of the 60 possible nests/nest sites reported by Hunt *et al.* (1992) could be a collection of nests belonging to the same breeding territory. These reported locations ranged to the boundaries of the State from the Grand Canyon near Lake Powell, to the lower Colorado River where it separates Arizona and California, to the upper San Pedro River near the international border with Mexico, and east near the boundary with New Mexico (Hunt *et al.* 1992, Figures D4.0–1, D5.0–1, F3, F4, and F5).

More recent survey and monitoring efforts have increased our knowledge of bald eagle distribution in Arizona (these data take into account productivity for breeding areas throughout Arizona, and are not restricted to the Sonoran Desert population of bald eagles evaluated under the petition). The number of known breeding areas in Arizona in 1971 was 3; the number known in 2009 was 59. The number of bald eagle pairs occupying these sites increased from 3 in 1971 to 48 in 2009. The number of young hatched increased from a low of zero in 1972 to a high of 55 in 2006 (Driscoll *et al.* 2006, pp. 48–49; McCarty and Johnson 2009, p. 8, in draft). Productivity has also changed at the bald eagle breeding areas since the 1970s. Between 1975 and 1984, average annual productivity was 0.95 young per occupied breeding area. Between 1987 and 2005, average annual productivity was 0.78 young per occupied breeding area (derived from Table 7, pp. 48–50 in Driscoll *et al.* 2006).

Hunt *et al.* (1992, p. A155) conclude that it is likely that bald eagles nested on rivers throughout the Southwest before habitat modification occurred, as reports on the nature of river systems and the assemblage of prey fishes both seem conducive to nesting success and suggest ''richer and more extensive habitat in the lower desert'' than would have been available on the Mogollon

Plateau, where bald eagles are known to have occurred historically. Recent reoccupation of some of these historical breeding areas by bald eagles lends credibility to these reports. We evaluated a subset of the Allison *et al.* (2008, pp. 17–18) data to determine the status of 43 breeding areas within the Sonoran Desert Area of Arizona and concluded that 16 (37 percent) were pioneer breeding areas, or occupied for the first time. An additional 27 (63 percent) were either reoccupied, meaning they were known to have been occupied in the past, then vacated, and subsequently reoccupied, or are considered to have been existing before their discovery (Allison *et al.* 2008, pp. 15–16).

The Salt River Pima-Maricopa Indian Community states that the O'odham have inhabited the Sonoran Desert and have known eagles since ''time immemorial'' (Anton and Garcia-Lewis 2009, p. 1). Although anthropologists debate what this means, at least one noted archaeologist has documented detailed evidence of cultural remains in the nearby Pinacate area that date back more than 40,000 years (Hayden and Dykinga 1988, p. XIV). A local, informal consensus of 10,000 years is less controversial (Toupal 2003, p. 11). Bald eagles have been documented historically within the culture of the Four Southern Tribes of Arizona, which includes the Salt River Pima-Maricopa Indian Community, Ak-Chin Indian Community, Gila River Indian Community, and Tohono O'odham Nation (Anton and Garcia-Lewis 2009, p. 2). Because eagles are considered to have equal or greater standing to humans, eagle burials were carried out identical to human burial practices (Anton and Garcia-Lewis 2009, p. 2), and bald eagle burials have been recovered from archaeological sites ancestral to the O'odham culture. In addition, eagles are extremely prominent in the O'odham song culture (Anton and Garcia-Lewis 2009, p. 2). A paired set of songs recorded by Underhill (1938, p. 109) for a Tohono O'odham eagle purification ceremony recognized the bald eagle as the ''white-headed eagle.''

More recent evidence exists to demonstrate the importance and use of bald eagles in Apache culture. Herrington *et al.* (1939, pp. 13–15) noted the use of eagle feathers in religious practices and ceremonial dances. The Apache Tribes have documented numerous artifacts that were collected from the Tribes at Cibecue and East Fork/Whiteriver on the White Mountain Apache Reservation and on the San Carlos Reservation between 1901 and 1945. These Tribes note that these artifacts were made, in part, with eagle feathers, and include hats or caps; shields; medicine rings, shirts, and strings; amulets; war bonnets; armbands; hair ornaments; and wooden figurines and crosses. The Tribes note that these ceremonial items are of deep historical and ongoing importance, such that they are actively pursuing their return from the museums to the Tribes. The existence of these items demonstrates the use of eagle feathers by the Tribes for at least the last 100 years (Apache Tribes 2009, Tabs 6–10).

Traditional ecological knowledge from the Apache tribes report more breeding bald eagles 150 years ago than are present today. Specifically, tribal representatives note that many areas that were considered nesting sites on the San Carlos Apache Reservation such as Warm Springs Canyon, Black River Canyon, and Salt Creek Canyon no longer contain active bald eagle nests. Bald eagles are no longer found at four out of seven areas that have Apache place-names that reference bald eagles (Lupe *et al.* pers. comm. 2008, p. 4). The traditional ecological knowledge shared by the Tribes at a July 2, 2008, meeting indicates that historically more bald eagles were observed below Coolidge Dam and at Talkalai Lake than currently exist.

Nevada

There are few historical or current breeding records for the State of Nevada. The lone historical record describes bald eagles that nested in a cave on an island at Pyramid Lake in northwestern Washoe County in northwestern Nevada in 1866 (Service 1986, p. 7; Detrich 1986, p. 11; S. Abele, Service, pers. comm. 2008a; 2008b). Over 100 years later, the next verified nesting record occurred in 1985 along Salmon Falls Creek in Elko County in northeastern Nevada near the Idaho border. More modern nesting records are limited to approximately five breeding sites associated with human-made water impoundments. Reproductive performance and persistence of bald eagle pairs in Nevada has been varied. No breeding has been observed at the Salmon Falls site since 1985.

Colorado

According to the Northern Bald Eagle Recovery Plan, bald eagles in Colorado historically nested in the mountainous regions up to 10,000 ft (3,048 m). Successful nesting records exist for nests found in southwestern and west-central Colorado. Bald eagles were considered common residents in the 1940s and 1950s in and around Rocky Mountain National Park (Service 1983, p. 12). For southwestern Colorado, there were no verified records of nesting bald eagles in the 1960s (Bailey and Niedrach 1965 in Stahlecker and Brady 2004, p. 2). The first confirmed record for southwestern Colorado occurred in 1974 at Electra Lake (Winternitz 1998 in Stahlecker and Brady 2004, p. 2). In 1974, the Colorado Division of Wildlife reported that only a single nesting pair was known (Colorado Division of Wildlife 2008, p. 1). However, by 1981, there were five known occupied bald eagle territories in the State of Colorado (Service 1983, p. 23), and from the early 1980s to 2008, the known bald eagle population increased to nearly 80 territories, of which 60 are currently known to be active. Concentrations of breeding eagles are found east of the Continental Divide within the South Platte River watershed, on the Yampa River, on the White River, and on the Colorado River. Greater than 40 territories are monitored annually, with near 70 percent nest success, 1.19 young fledged per occupied site, and 1.72 young fledged per successful site (Colorado Division of Wildlife 2008, p. 1).

New Mexico

Available information indicates there was no specific, first-hand information on bald eagles nesting anywhere in New Mexico prior to 1979. Unverified reports (Bailey 1928, p. 180; Ligon 1961, p. 75) suggest one or two pairs may have nested in southwestern New Mexico, on the upper Gila River and possibly the San Francisco River, prior to 1928. These second-hand reports lacked specifics and may have referred to other species (Williams 2000, p. 1).

Since completion of the 1982 Recovery Plan, seven bald eagle territories have been discovered, five in northern New Mexico in Colfax and Rio Arriba Counties and two in southwestern New Mexico in Sierra and Catron Counties. Four have been recently occupied, and productivity has been fair with young produced in at least 6 to 15 years, depending on the territory (H. Walker, New Mexico Department of Game and Fish, pers. comm. 2008).

Southern California

Throughout southern California, historical bald eagle records are known from the Channel Islands and mainland counties along the Pacific Ocean (Detrich 1986, pp. 9–27). Prior to 1900, three bald eagle territory records were known (Detrich 1986, pp. 10–13). From 1900 to 1940, reports of 24 to 60 nest

sites existed on islands off the coast of California, and are believed to have been extirpated from the islands soon after 1958 (Detrich 1986, pp. 18, 24). In inland areas in southern California, at least eight bald eagle pairs were known from Santa Barbara, Ventura, Los Angeles, Orange, and San Diego counties between 1900 and 1940, with indications of presence prior to this timeframe (Detrich 1986, pp. 13–19). By 1981, largely due to adverse changes to bald eagle habitat and the effects of the pesticide DDT on reproduction, no breeding eagles were detected on the southern California mainland (Detrich 1986, pp. 32, 33, 36, 39; California Department of Fish and Game 2008, p. 2).

Beginning in 1980, bald eagles were translocated to Santa Catalina Island as chicks or eggs from wild nests on the mainland, or from captive breeding. Pairs of bald eagles have been breeding on the island since 1987. In a subsequent relocation effort between 1987 and 1995 in the central coast mountains of Monterey Bay, 66 eaglets were translocated and released. A nesting pair first formed from those releases in 1993, and there are currently three nesting pairs (California Department of Fish and Game 2008, pp. 2–3). Releases of birds occurred through 2000, with no releases conducted between 2002 and 2008 (Ventana Wildlife Society 2009, p. 1). Currently, there are approximately six pairs of bald eagles on Catalina Island, with an additional three pairs at Santa Cruz Island, and one pair at Santa Rosa Island. There are approximately 35 to 40 bald eagles around the Northern Channel islands, and another 20 birds around Catalina, for a total of approximately 60 birds among the Channel Islands (A. Little, pers. comm. 2008).

Presently, mainland southern California nesting bald eagles occur at inland isolated manmade reservoirs. Bald eagle breeding sites can be found in northwestern San Luis Obispo County (San Antonio and Nacimiento Lakes), central Santa Barbara County (Lake Cachuma), southwestern San Bernardino County (Silverwood Lake), extreme eastern San Bernardino County near the Colorado River (Copper Basin Lake), southwestern Riverside County (Hemet and Skinner Lakes), and central San Diego County (Lake Henshaw) (AGFD 2008, California Department of Fish and Game 2008, pp. 2–3; Driscoll and Mesta in prep. 2005, p. 110; Ventana Wildlife Society 2008, p. 1). Nesting attempts at Silverwood and Hemet Lakes are considered sporadic (Service 2005, p. 110). At Skinner Lake, reproduction efforts in the mid-1990s were affected by DDT, and the nest area subsequently burned down (Driscoll and Mesta in prep. 2005; AGFD 2008). Nest sites in northwestern San Luis Obispo County appear to be very productive, producing eaglets in all but one year from 1993 to 2006 (Ventana Wildlife Society 2008, p. 7). For 2001 to 2008, two or three young have fledged annually from the Copper Basin breeding area, with the exception of 2004 when the nest was blown down (M. Melanson, Metropolitan Water District of Southern California, pers. comm. 2006a, 2007, 2008). The blue aluminum leg bands of one of the adult bald eagles at the Copper Basin site indicate that the bird likely originated in Arizona (M. Melanson, Metropolitan Water District of Southern California, pers. comm. 2006b).

Utah

Bald eagles were recorded as ''more or less frequent'' by Allen in 1871 (p. 164) in the vicinity of Ogden in northern Utah. Throughout Utah, there are seven historical records between 1875 and 1928, with five records of nesting bald eagles, and two other records of nonbreeding bald eagle observations, all located between Great Salt Lake and Utah Lake in northern Utah. In 1967, a nest was found to the south in Wayne County at Bicknell, and in 1972, an additional nest was located at Joes Valley Reservoir in San Pete County in central Utah, but it has since fallen. Additional records from the 1970s were of nests along the Colorado River at Westwater Canyon in 1975, and at the head of Westwater Canyon between 1973 and 1977. Beginning in 1983, nesting attempts occurred at three nesting territories in southeastern Utah. Two of the territories were along the Colorado River near the eastern border of Utah, with the third near Castle Dale in the center of the State (Boschen 1995, pp. 7–8). Three known nest sites (Cisco, Bitter Creek, and Castle Dale) were reported following survey work completed in 1994. These three nest sites produced an average of approximately 1.4 nestlings, with 1.05 successfully fledged between 1983 and 1994 (Boschen 1995, p. 103). Approximately 11 breeding areas were known, considered active, and monitored between 1983 and 2005 (Darnell, Service, pers. comm. 2008).

West Texas

Historically, there were five nesting records for bald eagles in Texas, and they were all west of the 100th Meridian in Texas. Lloyd (1887, p. 189) reported nesting in Tom Green and Concho counties in 1886. Oberholser (1974, p. 246) and Boal (2006, p. 46) reported eggs collected in Potter County near Amarillo by E.W. Gates in 1916. Oberholser (1974, in Service 1982, p. 8) additionally reported eggs collected by Smissen in 1890 in Scurry County south of Lubbock. Oberholser also reported an undated sight record of breeding eagles in Armstrong County near Amarillo. Kirby (pers. comm., in Service 1982) reported an active nest in nearby Wheeler County in 1938, and indicated it had been active for approximately 20 years. Throughout the 1980s and early 1990s there were no known breeding bald eagles in western Texas (Mabie *et al.* 1994, p. 215; Service 1982, p. 9). In 2004 and 2005, two adult bald eagles and a nestling were observed at a nest in the southern Great Plains of the Texas Panhandle. One young was produced in 2004, and two in 2005. No leg bands were readily observable on the adult eagles (Boal *et al.* 2006, pp. 246–247).

Sonora, Mexico

Bald eagle territories were first recorded in Sonora, Mexico, along the Rio Yaqui drainage in 1986 (Brown *et al.* 1986, pp. 7–14). Since that time, seven bald eagle breeding areas have been verified, and they were all located in the Sonoran Desert Area of Sonora (Brown *et al.* 1986, pp. 7–14; Brown *et al.* 1987b, pp. 1–2, 1987b, p. 279; Brown 1988, p. 30; Brown and Olivera 1988, pp. 13–16; Brown *et al.* 1989, pp. 13–15; Brown *et al.* 1990, pp. 7, 9; Mesta *et al.* 1993, pp. 8–12; Russell and Monson 1998, pp. 62–63; Driscoll and Mesta 2005 in prep., pp. 78–90). Four of these bald eagle breeding areas have remained occupied (Driscoll and Mesta, in prep., pp. 78–90). However, reproductive performance of these nests has been relatively poor. Only a single nestling was recorded fledging in 2000 and 2001, and no successful nests were observed in 1999, 2002, and 2005 (Driscoll and Mesta in prep., p. 43). In 2008, no occupancy was detected at bald eagle territories (R. Mesta, Service, pers. comm. 2008). A bald eagle pair was observed in 2009; however, the previously used cliff nest is gone, and a new nest was not confirmed. Illegal drug activity in the area has increased human presence, making survey work difficult to accomplish. The area is also affected by extensive water withdrawals, and drought and dam operations, leaving the future of this site uncertain (R. Mesta, Service, pers. comm. 2009).

Distinct Vertebrate Population Segment Analysis

Section 3(16) of the Act defines ''species'' to include ''any species or subspecies of fish and 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)). To interpret and implement the distinct vertebrate population segment provisions of the Act and congressional guidance, the Service and the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries Service), published the *Policy Regarding the Recognition of Distinct Vertebrate Population Segments* (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). The DPS Policy sets forth a three-step process: the Policy requires the Service first to determine whether a vertebrate population is discrete and, if the population is discrete, then to determine whether the population is significant. Lastly, if the population is determined to be both discrete and significant, then the DPS Policy requires the Service to evaluate the conservation status of the population to determine whether the DPS falls within the Section 3(16) definition of an ''endangered species'' or ''threatened species.''

In accordance with our DPS Policy, this section details our analysis of whether the vertebrate population segment under consideration for listing qualifies as a DPS, specifically, whether: (1) The population segment is discrete from the remainder of the species to which it belongs: and (2) the population is significant to the species to which it belongs. Discreteness refers to the ability to delineate a population segment from other members of a taxon based on either: (1) Physical, physiological, ecological, or behavioral factors; or (2) international boundaries that result in significant differences in control of exploitation, management, or habitat conservation status, or regulatory mechanisms that are significant in light of section 4(a)(1)(B) of the Act.

Under our DPS Policy, if we have determined that a population segment is discrete under one or more of the discreteness conditions, we consider its significance to the larger taxon to which it belongs 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. In carrying out this examination, we consider available scientific evidence of the population's importance to the taxon to which it belongs. This consideration may include, but is not limited to, the following categories of information: (1) The persistence of the population segment in an ecological setting that is unusual or unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historical range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The first step in our DPS analysis was to identify the boundaries of the potential population—that is, the areas where the population we are evaluating occurs. The petition from CBD, the Maricopa Audubon Society, and the Arizona Audubon Council requested listing for the ''Southwestern desert nesting bald eagle population.''

Determination of the Area for Analysis

The March 6, 2008, court order directed the Service to conduct a status review of the ''Desert bald eagle population.'' The population referenced in the court order consists of those bald eagles in the Sonoran Desert of the Southwest that reside in central Arizona and northwestern Mexico. While we had specific information from the petitioner with respect to elevational parameters, bald eagle breeding areas, the Upper and Lower Sonoran Life Zones, and the State of Arizona, ambiguity remained with respect to where the boundaries of ''central Arizona'' are and which transition areas outside of the Upper and Lower Sonoran Life Zones to include. Because of these ambiguities and lack of a specific map in the petition, we were left to interpret them, primarily at the perimeters of those areas.

In responding to the 2008 court order, we published a rule on May 1, 2008, reinstating threatened status under the Act to the bald eagle in the Sonoran Desert Area of central Arizona in eight Arizona counties: (1) Yavapai, Gila, Graham, Pinal, and Maricopa Counties in their entirety; and (2) southern Mohave County (that portion south and east of the centerline of Interstate Highway 40 and east of Arizona Highway 95), eastern LaPaz County (that portion east of the centerline of U.S. and Arizona Highways 95), and northern Yuma County (that portion east of the centerline of U.S. Highway 95 and north of the centerline of Interstate Highway 8). We limited the reinstatement of threatened status to these areas because Sonoran Desert bald eagles were only listed under the Act in Arizona (and not in Mexico) at the time of the petition. Therefore, the court's order enjoining our final delisting decision applied only to those eagles that reside in the Sonoran Desert of central Arizona.

For the February 25, 2010, status review, we revisited the issue of where the population we are evaluating occurs, based on a more in-depth review of information received from the public, Tribes, and information in our files at that time. We determined that an appropriate delineation for the analysis includes all Sonoran Desert bald eagle territories within Arizona, the Copper Basin breeding area along the Colorado River just into California, and the territories of Sonora, Mexico, that occur within the Sonoran Desert and adjacent transitional communities. This expanded boundary was developed using vegetation community boundaries, elevation, and breeding bald eagle movement. This interpretation combines geographic proximity and recognized Sonoran Desert vegetation and transition life zones. We determined the transition areas based on our knowledge of their proximity to the Sonoran Desert itself, excluding territories more properly classified as montane or grassland habitat. Bald eagles in Baja California, Mexico, occur in an area where the Sonoran Desert vegetation community abuts a coastal environment. We excluded bald eagles in this area because they depend on marine resources rather than inland fisheries. We based delineation of the potential DPS on the best available scientific information, including the parameters provided by CBD (i.e., bald eagle territories, elevation, life zones, and transition areas), and the resulting expanded area for the population includes known bald eagle breeding areas within the Sonoran Desert vegetation community and transition areas, as defined by Brown (1994, pp. 181–221), except Baja California.

As noted above, we included Sonoran desert bald eagle territories in Sonora, Mexico, as part of the potential DPS because that area has the same vegetation and climate as the Sonoran Desert areas in Arizona. Bald eagles in Sonora use Sonoran Desert and transition vegetation communities as do bald eagles in the Sonoran Desert areas of Arizona and southern California. In addition, breeding season chronology in both areas appears to be similar (Driscoll *et al.* 2005 in prep., pp. 31–32),

occurring between December and June. Bald eagles in Sonora also nest in riparian trees and cliffs, as they do in Arizona (Driscoll *et al.* 2005 in prep., p. 31).

When based strictly on vegetation or elevation lines, the expanded area where the population occurs is irregular and complex, and would be difficult to interpret. For this reason, we delineated the area of the population with more easily identifiable road, county, and state lines.

Boundaries of the Potential DPS

In analyzing the potential DPS under this 12-month status review, we considered habitat use by bald eagles breeding in the southwestern United States and Sonoran Desert areas in Mexico, vegetation communities in which breeding areas occur, and elevation levels at which breeding areas occur, as we did at the 90-day petition finding stage. However, we have reevaluated all potential areas that may meet the criteria described below, including areas considered in the 90-day finding. As a result, in this review, we did not restrict the potential DPS to the State of Arizona, and have instead expanded the area covered by our previous analysis so that this analysis includes portions of southeastern California along the Colorado River, Arizona, and Sonora, Mexico. We now refer to this expanded potential DPS area as the ''Sonoran Desert Area population,'' which replaces the term ''Sonoran Desert Area of central Arizona,'' as described in our May 1, 2008, **Federal Register** rule (73 FR 23966) listing the Sonoran Desert bald eagle as threatened.

To determine which areas should be included within the expanded boundary for the Sonoran Desert Area, we considered three factors: (1) The Sonoran Desert vegetation community (Brown 1994, pp. 180–221; Brown and Lowe 1994, map); (2) an elevational range for known breeding areas within the Sonoran Desert (excluding Baja California); and (3) movement patterns of breeding bald eagles both into and out of the Sonoran Desert Area. We included within the boundary portions of the Sonoran Desert, including its subdivisions and ''transition areas.'' Subdivisions of the Sonoran Desert include the Lower Colorado River Valley, Arizona Upland, Vizcaino, Central Gulf Coast, Plains of Sonora, and Magdalena (Brown 1994, pp. 190–221). Transition areas are those vegetation communities adjacent to the Sonoran Desert community. Brown (1994, p. 181) includes as transition areas semidesert grasslands, Sinaloan thornscrub, and chaparral. The majority of the breeding areas within the boundary occur in the Arizona Upland Subdivision of the Sonoran Desert. Exceptions include those breeding areas in the transition communities (where 14 of 61 breeding areas are located) of Interior Chaparral, Plains & Great Basin Grassland, Semidesert Grassland, and Sinaloan Thornscrub (Brown 1994). These communities are most often adjacent to the Arizona Upland Subdivision of the Sonoran Desert, where bald eagles in these areas forage at least partially within the desertscrub.

We also based the boundary on those portions of the Southwest within the elevational range of 984 to 5,643 ft (300 to 1,720 m). This elevational range encompasses all known bald eagle breeding areas within the Sonoran Desert in the United States and Sonora, Mexico. Using Geographic Information Systems, the appropriate elevational ranges were overlapped with the Sonoran Desert vegetation community to determine where both criteria were met.

We also considered information on movement of bald eagles into and out of the Sonoran Desert, as determined through banding and monitoring information. Specifically, we included within the boundary those bald eagles known to originate in or breed in the Sonoran Desert and transition areas, excluding Baja California. The banding and monitoring information used to determine eagles originating or breeding in the Sonoran Desert Area is described in detail below.

Figure 1 below illustrates the boundary developed based on vegetation community, elevation, and breeding bald eagle movement. The boundary was modified from following strictly elevational or vegetation lines to follow more easily identifiable road, county, and state lines.

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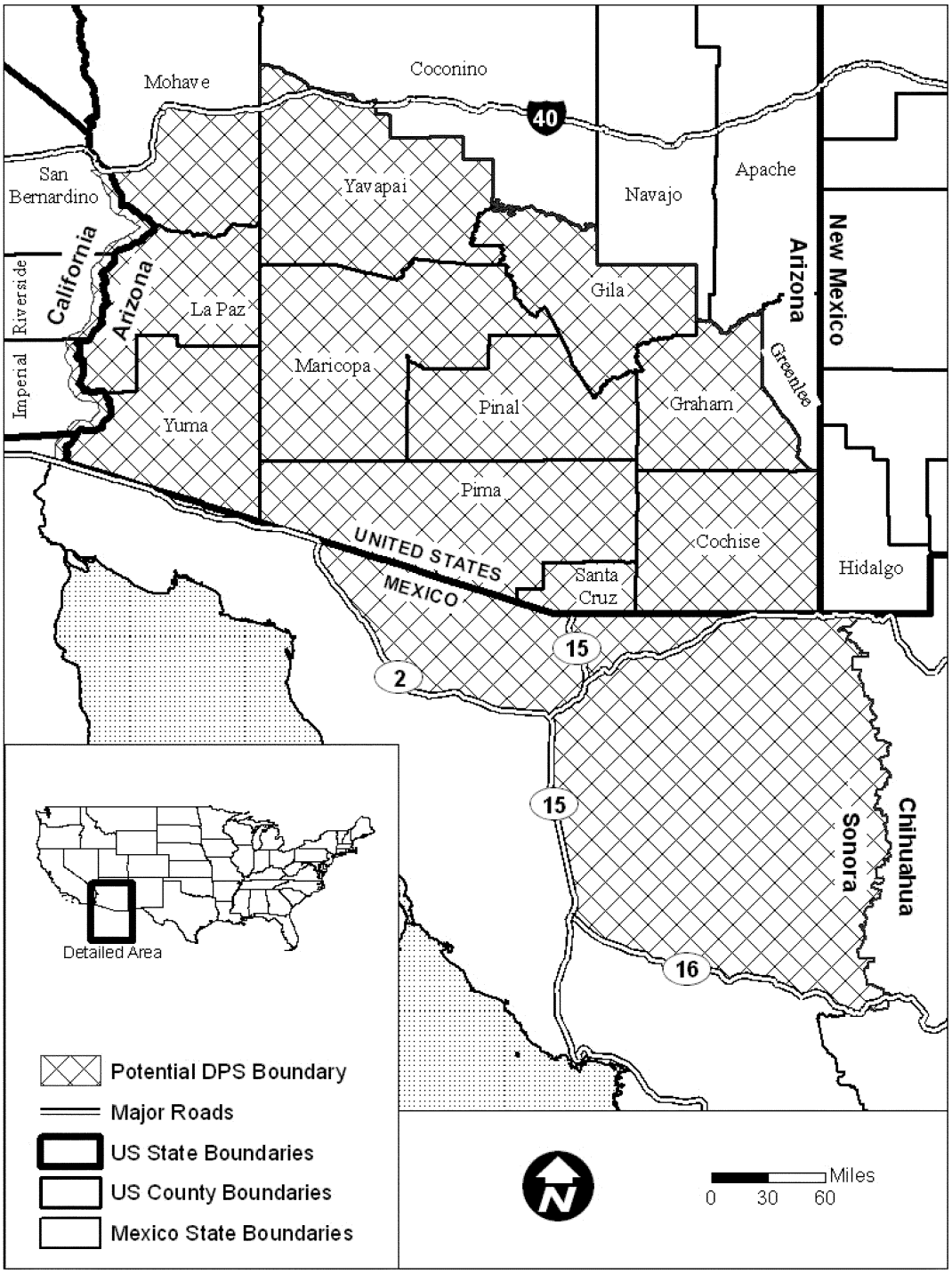
Figure 1. Boundary of potential Sonoran Desert Area distinct population segment (DPS)



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The northern perimeter of the expanded potential DPS boundary in Arizona is the same as the potential DPS boundary that we used in our May 1, 2008, **Federal Register** notice (73 FR 23966). This boundary follows the southern edges of Coconino and Navajo Counties, and portions of Apache County. It follows the Graham County line south on the east side until it reaches the Cochise County boundary.

On the west, the boundary drops south along the Mohave-Yavapai boundary until it reaches Interstate 40. The boundary then follows Interstate 40 west until its intersection with the State boundary. It continues west 5 miles (mi) (8 kilometers (km)) and then south along a line drawn 5 mi (8 km) west of and parallel to the Colorado River until it reaches Highway 2 in Sonora, Mexico.

The southern boundary of the expanded potential DPS follows Highway 2 in Mexico east until its intersection with Highway 15. It follows Highway 15 until its intersection with

Highway 16. The southern boundary continues along Highway 16 until it reaches the State boundary between Sonora and Chihuahua. The eastern boundary of the expanded potential DPS follows the State line between Sonora and Chihuahua north until it reaches the international boundary between the United States and Mexico at New Mexico, and continues west to the State boundary between Arizona and New Mexico. The eastern boundary then continues north along Cochise County, turning slightly west along the northern edge of Cochise County before rejoining the northern perimeter.

Bald eagles within the boundary that constitutes the expanded area for the potential DPS include those that occur within the appropriate vegetation communities and elevational range. It therefore includes the breeding area located in southeastern California, because it is within the Lower Colorado River subdivision of the Sonoran Desert. In addition, the bald eagles at that breeding area originated at the Horseshoe Breeding Area in Arizona. We have included part of Sonora, Mexico, within the expanded area for the potential DPS because bald eagles occur in Sonoran Desert and transitional communities there, as do those in Arizona and California. As discussed above, we have excluded from the expanded potential DPS bald eagles occurring in Baja California, Mexico, because that area is associated with a marine, rather than inland, environment.

Arizona has additional bald eagle breeding areas outside of the expanded potential DPS boundary. These breeding areas include Canyon de Chelly, Luna, Becker, Crescent, Greer, Woods Canyon, and Lower Lake Mary. These breeding areas were excluded because they are not located within the Sonoran Desert.

Discreteness

Under the DPS Policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Banding and Monitoring Information

Bird banding and resighting are important tools used to answer questions regarding the biology and movement of individual birds (U.S. Geological Survey 2008, p. 1). The techniques used on bald eagles in the Southwest are consistent with marking technique standards (Varland *et al.* 2007, pp. 222–228). Within this analysis, we use banding and resighting data for bald eagles to determine if bald eagles in the Sonoran Desert Area are markedly separate from other breeding populations of bald eagles. Specifically, we use banding and resighting data to determine if bald eagles originating in areas outside the Sonoran Desert Area have moved into the Sonoran Desert Area to breed (immigration), or if bald eagles originating in the Sonoran Desert Area have moved out of the Sonoran Desert Area to breed (emigration).

We used bald eagle banding and resighting information collected between 1987 and 2007 as this is the time period during which banding and resighting efforts were most thorough in the Southwest. Banding of bald eagle nestlings began prior to this time in Arizona, starting in approximately 1977, and multiple researchers contributed to early banding efforts (Hildebrandt and Ohmart 1978; Haywood and Ohmart 1980, 1981, 1982, 1983; Grubb 1986), as summarized in Hunt *et al.* 1992 (pp. C181–C202). However, early banding efforts were opportunistic, and the bands used at that time were difficult to read without capturing birds or recovering dead birds. As a result, little resight information was gained. Beginning in 1987, biologists increased efforts to band all nestlings and improved the effectiveness of banding and resighting by using color visual identification bands, which are more easily identified (Hunt *et al.* 1992, pp. C181–C202; Driscoll *et al.* 2006, p. 26). In total, the banding and resighting effort for bald eagles in Arizona has continued for 30 years with the last 20 years using the more informative color bands.

To determine the movement of breeding bald eagles in our target time period of 1987 to 2007, we relied on data from two datasets. The first dataset, called the Bird Banding Lab (BBL) dataset, is derived from data collected and collated by the U.S. Geological Survey Bird Banding Laboratory (U.S. Geological Survey 2008). The BBL dataset consists of over 19,000 records for bald eagles throughout the species' range, including those banded in the Southwest. The second dataset, called the AGFD dataset, is derived from data compiled and used by Allison *et al.* (2008) in a demographic analysis for bald eagles in Arizona.

Because our analysis focused on determining whether or not there is immigration or emigration of bald eagles to and from the Sonoran Desert Area, we analyzed bald eagles banded as nestlings and resighted as adults. Using only those birds banded as nestlings ensures that the origin of the banded birds is known, and that young birds originating in other areas are not included in the analysis. Using only resight information for breeding bald eagles eliminates data associated with juvenile migrants, which would not contribute to the breeding population. Generally, age five is accepted as the age at which adult bald eagles breed throughout most of the species' range. For this reason, when evaluating the nationwide BBL dataset, we considered bald eagles 5 years of age or older as breeding adults. However, for the AGFD dataset, where there are numerous instances of bald eagles breeding at 4 years of age in Arizona (Allison *et al.* 2008), we considered bald eagles 4 years of age or older as breeding adults.

Immigration Into the Sonoran Desert Area

For purposes of this analysis, immigration is defined as the movement of individuals that were banded as nestlings outside of the Sonoran Desert Area and then are subsequently resighted as breeding birds inside the Sonoran Desert Area. In our analysis of the likelihood of bald eagle immigration into the Sonoran Desert Area from areas in closest proximity to the Sonoran Desert Area, we used data from the AGFD and the broader BBL dataset and considered bald eagle banding and resighting information from the States in proximity to the Sonoran Desert Area, including California, Colorado, Nevada, New Mexico, Texas, and Utah, as well as birds in Arizona but outside of the Sonoran Desert Area (see Table 1).

TABLE 1—RECORDS FOR BALD EAGLES BANDED AS NESTLINGS IN AREAS OUTSIDE THE SONORAN DESERT AREA AND RESIGHTED AS BREEDING BIRDS FROM 1987 TO 2007

[U.S. Geological Survey 2008; K. McCarty, AGFD, pers. comm. 2009; Driscoll *et al.* 2006, p. 49]

State where banded	Number of nestlings banded in areas in close proximity to the Sonoran Desert area 1987–2002	Number of banded nestlings resighted as breeding birds 1987–2007	States where banded eagles were resighted	Number of resightings in the Sonoran Desert area
Arizona outside the Sonoran Desert Area	12	0		0
California	103	13 (12.6%)	British Columbia, CA, WA	0
Colorado	152	7 (4.6%)	CO, WY	0
Nevada	0	0 (0%)		0
New Mexico	0	0 (0%)		0
Texas	64	5 (7.8%)	AZ, CA, NE, NM, TX	0
Utah	6	0 (0%)	UT	0
Total	337	25 (7.4%)		0

Available data from 2008 are not as thorough, but they are consistent with the findings from the data reported. Further, the Texas bird resighted in Arizona occurs at a high-elevation nest outside of the Sonoran Desert Area. Note: We know of no banding information for birds banded in Mexico outside the Sonoran Desert Area.

Using the AGFD dataset, Allison *et al.* (2008, p. 25) indicate that anticipated survival rates for fledglings to age four is 28 percent. It should be noted that the mortality rates derived by Allison *et al.* (2008, p. 4) are based on modeling; however, the model was based on data collected over a 10-year period from 1993 to 2003.

The information summarized in Table 1 indicates that 337 bald eagles were banded as nestlings between 1987 and 2002 (the latest year for which a banded cohort could reach 5 years of age by 2007) in the areas outside of but in proximity to the Sonoran Desert Area. Applying the survival rate of 28 percent to the 337 bald eagles reported banded as nestlings in Table 1, we would anticipate that approximately 94 nestlings would have survived to age four. Only 25 of the banded nestlings were resighted as breeding birds, and the fate of the remaining 69 nestlings is unknown. However, none of the 25 banded nestlings were resighted as breeding birds within the Sonoran Desert Area (see Table 1).

While the number of banded and resighted birds in Table 1 is small, given the intensive effort in Arizona to identify the origins of banded breeding birds, we believe some inference is possible suggesting that the probability of nestlings originating outside of the Sonoran Desert Area and immigrating into the Sonoran Desert Area to breed is low.

There is no known immigration from the Canyon de Chelly, Lower Lake Mary, Becker, Woods Canyon, Crescent, Greer, and Luna Lake breeding areas located at higher elevations within Arizona outside of the Sonoran Desert Area. To date, 29 nestlings produced at these breeding areas have been banded. Twenty-five of these were banded at the Luna breeding area during 1994–2000, 2002–2005, and 2007, with 22 of them fledging successfully (K. McCarty, AGFD, pers. comm. 2009). As of 2008, none of these banded offspring are known to have entered the breeding population of bald eagles in the Sonoran Desert Area (AGFD 2008a, pp. 1–2). The male bird at the Crescent breeding area is from the Luna breeding area (the female is unbanded) (Jacobson *et al.* 2004, p. 16). Similarly, the male bird at the Greer breeding area is from the Luna breeding area, and the female is unbanded (McCarty and Jacobson 2008, p. 9). Lower Lake Mary fledged four young in 2005 and 2006, and the young were banded. The Woods Canyon and Greer breeding areas were first detected in 2008, and no young fledged that year from either breeding area. Six young have successfully fledged from Canyon de Chelly as of this date, none of which were banded (AGFD 2006, pp. 1–2; AGFD 2007, pp. 1–2; Jacobson *et al.* 2007, pp. 16–19; AGFD 2008a, pp. 48–49; AGFD 2008, unpubl. data; AGFD 2009, pp. 1–2).

Biologists, primarily R. Mesta, estimate that, due to difficulty in accessing territories in Sonora, Mexico, they are able to monitor approximately 40 to 60 percent of the known nest sites each year, and 20 to 30 percent of the known birds are observed while visiting these territories. Approximately 80 percent of the birds detected have been examined for auxiliary markers, such as colored bands, and biologists believe that if marked bald eagles were occupying known territories after 1990, they would likely have been detected. However, they note that, in years in which surveys are conducted, breeding areas are visited only once and for a short period of time, which would make it easy to miss an individual eagle. They note that, in 1992, an adult at the Fig Tree breeding area had a yellow wing tag (potentially indicating it had originated in Texas or Florida) that could not be read, but no one has observed the bird since ((Driscoll and Mesta 2005, in prep., p. 62; R. Mesta, Service, pers. comm. 2008, Ortego *et al.* 2009, p. 10).

Emigration From the Sonoran Desert Area

Emigration is defined here as the movement of individuals originating in the Sonoran Desert Area to areas outside the Sonoran Desert Area where they are resighted as birds of breeding age. Our analysis of data from the BBL dataset found that 41 of the 42 nestlings (97.6 percent) banded within the Arizona portion of the Sonoran Desert Area were subsequently resighted within the Sonoran Desert Area. Only one eagle (2.4 percent) of breeding age was resighted outside of the Sonoran Desert Area, near Temecula, California (see Table 2). The BBL dataset shows that there were 371 bald eagles banded in Arizona between 1987 and 2007. With anticipated survival rates from fledgling to 4 years of age at 28 percent, we estimate that approximately 104 nestlings should have survived to age four. While we know that 42 were resighted, the fate of the remaining 62 birds is unknown.

TABLE 2—BALD EAGLES BANDED IN ARIZONA BETWEEN 1987 AND 2002 AND RECAPTURED OR RESIGHTED AS BIRDS OF BREEDING AGE

[U.S. Geological Survey 2008]

State	Number of birds (percent recovered)	Notes
Within the Sonoran Desert Area:		
Arizona	40 (95.2%)	
Sonora, Mexico	1 (2.4%)	Records indicate this bird was an adult entangled in fishing line at El Novillo Reservoir in Sonora. There was no breeding area at the reservoir, and the bird was not subsequently detected at a breeding area.
Subtotal	41 (97.6%)	
Outside of the Sonoran Desert Area:		
California	1 (2.4%)	This bird established a breeding area in California near Temecula. Birds in this breeding area were not successful in reproducing, and the nest site subsequently burned down (AGFD 2008a, p. 6).
Colorado	0 (0%)	
Nevada	0 (0%)	
New Mexico	0 (0%)	
Oklahoma	0 (0%)	
Texas	0 (0%)	
Utah	0 (0%)	
Subtotal	1 (2.4%)	
Total	42 (100%)	

With respect to emigration, data in the AGFD dataset, a separate dataset from the BBL discussed above, illustrate the fate of 89 of 314 nestlings banded within the Sonoran Desert Area. Only 1 of the 89 birds was documented breeding outside the Sonoran Desert Area. Fifty returned to breed in the Sonoran Desert Area, 1 bred (unsuccessfully) in California, and 38 were known to have died before breeding (see Table 3) (Allison *et al.* 2008, p. 19). Allison *et al.* (2008, p. 7) note that, from 1987 through 2003, 83 percent of known fledglings in the Sonoran Desert Area were banded. Traditional ecological knowledge about bald eagles supports these data on emigration. Western Apache informants having expert knowledge of bald eagles in the Sonoran Desert Area testified that adult eagles do not leave Arizona.

TABLE 3—DISPOSITION OF ARIZONA BALD EAGLES BANDED AS NESTLINGS FROM 1987 TO 2003

[Allison *et al.* 2008, p. 19]

Fate of nestlings	Number of eagles
Dead before fledging	123
Unbanded Nestlings	62
Banded Nestlings—Fate Unknown	225

TABLE 3—DISPOSITION OF ARIZONA BALD EAGLES BANDED AS NESTLINGS FROM 1987 TO 2003—Continued

[Allison *et al.* 2008, p. 19]

Fate of nestlings	Number of eagles
Banded Nestlings—Fate Known:	
Dead before Breeding	38
Bred in Arizona	50
Bred in California	1
Total	499

Banding and resighting efforts have not been as intensive in the areas in close proximity to the Sonoran Desert Area as they have been in Arizona, including the Sonoran Desert Area. We sent a questionnaire to bald eagle biologists in surrounding States in 2008 in an attempt to determine the level of banding and monitoring efforts in some of these regions. In response to the questionnaire, we determined that surveys for breeding birds occur annually at Santa Cruz and Santa Rosa Islands off the coast of California, as well as in southern California at Lake Hemet. In survey efforts for these areas, all known territories and 100 percent of the known birds are visited, and no birds have bands or markers from Arizona (Hoggan 2008, pp. 1–2; P. Sharpe, pers. comm. 2008). Additionally, less-formal monitoring occurs in other areas in California through a variety of agencies and interested groups, including the U.S. Forest Service, the California Department of Fish and Game, the Ventana Wildlife Society, and the Channel Islands Live! Web site with similar results (i.e., no birds with bands from Arizona have been reported). In addition, sites known to support breeding pairs, such as the Copper Basin site, are monitored regularly.

Six New Mexico territories have been monitored closely since their discovery in 1979, with no bands or markers from Arizona observed (S. Williams, pers. comm. 2008). Since 1974, the Colorado Division of Wildlife has monitored nesting activity; State personnel currently monitor approximately 40 of their 80 nests each year and band eaglets at approximately one-third of those nests (Colorado Division of Wildlife 2008, p. 1). No bands or markers from Arizona were observed.

We have received no data for Utah or Nevada. Information on bald eagles banded within Arizona but outside the Sonoran Desert Area is summarized above under the ''Immigration into the Sonoran Desert Area'' discussion above.

The data from areas in close proximity to the Sonoran Desert Area are not as thorough as those collected in

Arizona, including in the Sonoran Desert Area. However, the banding and monitoring effort for breeding bald eagles in Arizona over a 30-year period has revealed only one breeding bird to date that immigrated into Arizona (Luna Lake, outside the Sonoran Desert Area). We anticipate that, if immigration is occurring at such a low level, the same could be true of emigration as there are no known barriers that would favor emigration over immigration.

Conclusion on Banding Data

We find that the data on banding and resighting, while not extensive for areas in proximity to the Sonoran Desert Area, are collectively sufficient to document that bald eagles in the Sonoran Desert Area experience limited or rare reproductive interchange with bald eagles outside the Sonoran Desert Area. Bald eagle banding and resighting studies have been ongoing for greater than 30 years in Arizona, with the last 20 years using the more informative color bands. As reported in the BBL dataset, of the 79 nestlings banded in Arizona and later resighted, 1 emigrated to California, outside of the Sonoran Desert Area, and never successfully reproduced. This finding indicates that 97.6 percent of the bald eagles banded and resighted as breeding birds originated and returned to breed in the Sonoran Desert Area, with only 2.4 percent (one bird) of breeding birds resighted in other areas (Table 2). Similarly, the AGFD dataset indicates that, for the nestlings banded between 1987 and 2003 in areas outside of but in close proximity to the Sonoran Desert Area and resighted as breeding birds, none have immigrated to breed in the Sonoran Desert Area.

While it is not possible to band and resight all bald eagles as breeding birds, the information provided suggests that the majority of breeding bald eagles within the Sonoran Desert Area population originated in the Sonoran Desert Area population, and have not been known to emigrate elsewhere to become part of a breeding population.

Data have been collected over a substantial time period under this effort, during which only one instance of a possible immigration and only one instance of emigration have been observed within the Sonoran Desert Area. We believe it is reasonable to conclude that in rare instances, immigration or emigration of an occasional bald eagle may occur; however, we consider the results from this 20-year period sufficient to document a marked separation of breeding populations. Our DPS Policy does not require complete isolation, and allows for some limited interchange among population segments considered to be discrete (61 FR 4722; February 7, 1996). Based on the results of these banding and resighting data in Arizona and in neighboring States, we conclude that the Sonoran Desert Area bald eagles are not interbreeding with other populations, although some intermixing may occur at a very small rate. We conclude that the best scientific data available indicates a marked separation of Sonoran Desert Area bald eagles from bald eagles outside of the Sonoran Desert Area.

Natal Dispersal and Fidelity

Bald eagles are known to return close to their place of birth to breed (Stalmaster 1987, p. 41). To illustrate the potential for breeding bird exchange between populations, the Service examined the records of bald eagles that were banded as nestlings and recovered 5 or more years later at breeding age. We analyzed data associated with the eagles in the lower 48 States to derive a median dispersal distance of 43 mi (69 km) from their natal site to their breeding area. Known nesting sites were then buffered by 43 mi (69 km) to determine the amount of breeding bird exchange that typically occurs (Service 2008, pp. 17–18). Based on this analysis, Sonoran Desert Area bald eagles in the United States are separated from other southwestern populations by distances exceeding the median dispersal distance of 43 mi (69 km) for the species. The higher-elevation breeding areas in Arizona are an exception to this separation, as they are less than 43 mi (69 km) from Sonoran Desert Area bald eagles; however, we believe these birds to be reproductively and markedly separate from Sonoran Desert Area bald eagles, as described in the discussions on immigration above, because no banded offspring from these higher-elevation areas have been known to enter the breeding population of bald eagles in the Sonoran Desert Area.

Observations of actual dispersal behavior support the same conclusion as that derived from the modeling exercise discussed above. Hunt *et al.* (1992, p. A144) surveyed biologists studying nine bald eagle populations throughout North America, consisting of more than 2,000 breeding pairs of bald eagles. Of those breeding pairs, only two adults were observed to breed outside of their natal area. Mabie *et al.* (1994, p. 218) similarly concluded through their study in Texas and the Greater Yellowstone ecosystem that bald eagles tend to breed near their natal area. Gerrard *et al.* (1992, pp. 159, 164) observed four marked adults in Saskatchewan, Canada, and determined that they bred within 15.5 mi (25 km) of their natal territory.

Natal dispersal patterns for Sonoran Desert Area bald eagles are similar to those in the studies discussed above. Data from 21 female and 35 male bald eagles in Arizona indicate that adult females dispersed an average of 68.1 mi (109.7 km) from their natal areas, while males dispersed an average of 28.0 mi (45.1 km) from their natal areas to breed (Allison *et al.* 2008, p. 30), but remained within the Sonoran Desert Area.

This information about natal dispersal patterns supports our conclusion above, based on the banding and monitoring data, that there is a marked separation of Sonoran Desert Area bald eagles from bald eagles outside of the Sonoran Desert Area.

Lack of Population Sources

The immigration of adult bald eagles into the Sonoran Desert Area population from populations in relatively close proximity to the Sonoran Desert Area is likely limited by small population sizes in surrounding States, and their separation from the Sonoran Desert Area by long distances, over unoccupied habitats. There are currently eight known breeding areas in southern California in addition to populations on Santa Cruz and Santa Rosa Islands off the coast of California (California Department of Fish and Game 2008, pp. 2–3; Ventana Wildlife Society 2008, p. 1). Colorado has a somewhat larger population, with approximately 80 active breeding areas (Colorado Division of Wildlife 2008, p. 1). Nevada has approximately one inactive and five active breeding territories. Two territories, Carson River and Lahontan Reservoir, last had eagles detected in 2002 and 2006, respectively. The occupancy of two others is not yet confirmed. The remaining breeding area produced only two young from 1996 to 2007 (K. Kritz, Service, pers. comm. 2008). Utah has approximately 10 active territories and one inactive breeding territory (N. Darnall, Service, pers. comm. 2008). For New Mexico, the population of bald eagles consists of four currently occupied territories (H. Walker, NMDGF, pers. comm. 2009). West Texas currently has one active breeding territory west of the 100th Meridian. This territory has been active since 1994 (C. Boal, pers. comm. 2009).

Marked Separation as a Consequence of Ecological Factors

A final factor markedly separating Sonoran Desert Area bald eagles is the unsuitability of habitat in areas surrounding the Sonoran Desert Area for

occupancy by breeding birds. The majority of the bald eagle population in the Sonoran Desert Area occurs in central Arizona within the riparian areas of the Sonoran Desert as described in Brown (1994, pp. 180–221) and adjacent vegetation communities. Across the western United States, there are large geographic areas where breeding bald eagles are rarely found. These areas are associated with the Great Basin and Mohave Deserts, indicating that conditions in these desert biotic communities are not suitable for occupancy. In contrast, the Sonoran Desert and its subdivisions, where nesting bald eagles within the Sonoran Desert Area are located, are suitable for breeding areas because of the availability of water, prey, and trees suitable for nesting and perching. The Sonoran Desert scrub vegetation community is unique from other desert scrub formations in North America in its tropical and subtropical influences. Within the community, the riparian or riverine habitat occupied by breeding bald eagles is limited to areas where there is sufficient winter precipitation to support vegetation along streams (Brown 1994, p. 269).

Western Apache traditional ecological knowledge corroborates these data regarding bald eagles within the Sonoran Desert Area being ecologically separated from other populations. Three Apache place names use the term Itsa Bigow (''bald eagle's home''). Apaches use the term gowa (meaning ''home'') referring to the eagle's entire habitat, as opposed to the term bit'oh (''its nest''). According to Basso (1996), the Western Apaches' perception of the land works in specific ways to influence Apaches' awareness of themselves. The process of ''place naming'' documents where and how Apaches learned about the environment and how they incorporated these names into social and environmental ethics (Basso 1996). This concept is further exemplified by the Apache word ''ni''; this expression translates to mean both ''mind'' and ''land,'' and thus the two words cannot be separated (Chairman Ronnie Lupe, pers. comm., 2008). The Apache bald eagle place names evoke an entire area or ecosystem of which the bald eagle is an intrinsic part. The place names include entire mountainsides composed of chaparral, pinyon-juniper woodland, and ponderosa pine forests, always in proximity to water (i.e., riparian areas) (Lupe *et al.* pers. comm. 2008).

Bald eagles, including those in the Sonoran Desert Area, typically nest within 1 mi (1.6 km) of water. Bald eagles require cliff ledges, rock pinnacles, or large trees or snags in which to construct nests (Driscoll *et al.* 2006, pp. 19–20). Those areas most immediately surrounding the Sonoran Desert Area fall within the Great Basin and Mohave Deserts, which contain no known breeding eagles or suitable habitat. These areas lack the appropriate bald eagle habitat parameters of water, fish, and nesting areas. Nonbreeding bald eagles from other populations would have to migrate through these areas to reach the Sonoran Desert Area. Therefore, we believe these desert areas result in a discontinuity of distribution of breeding birds, rather than as a barrier to dispersal, and serve to further isolate Sonoran Desert Area bald eagles from those in other populations.

Bald eagles nesting at high elevation in Arizona in areas in proximity to the Sonoran Desert Area occupy Petran Montane Conifer Forest and Plains, and Great Basin Grassland above the Mogollon Rim (Brown and Lowe 1994, map). These eagles are not believed to have originated from within the Sonoran Desert Area, as described above. Similarly, bald eagles occupying these areas are not known to have occupied Sonoran Desert habitat within the Sonoran Desert Area. These high-elevation areas appear to be unsuitable to Sonoran Desert Area bald eagles, as indicated by the lack of emigration to these areas by eagles originating in the Sonoran Desert Area.

Conclusion on Discreteness

Based on the available information in the petition, scientific literature, traditional ecological knowledge, and information in our files at the time of the February 25, 2010, finding, we have determined that the Sonoran Desert Area population of bald eagles is markedly separate from other populations of the species due to a lack of immigration to, and emigration from, surrounding bald eagle populations, and the fact that the areas immediately surrounding the Sonoran Desert Area lack the appropriate bald eagle habitat parameters of water, fish, and nesting areas and contain no known breeding bald eagles. Therefore, we have determined that the Sonoran Desert Area population meets the requirements of our DPS Policy for discreteness. Banding studies and resighting efforts demonstrate that breeding bald eagles in the Sonoran Desert Area are largely geographically separate from those in surrounding areas. Limited source populations and unsuitable habitat in surrounding areas further separate bald eagles in the Sonoran Desert Area from those in other areas. Although not absolute, we believe this separation to be marked, and to meet the intent of the DPS Policy for discreteness.

Significance

Since we have determined that the bald eagles in the Sonoran Desert Area meet the discreteness element of the DPS Policy, we now consider the population's biological and ecological significance based on ''the available scientific evidence of the discrete population segment's importance to the taxon to which it belongs'' (DPS Policy, 61 FR at 4725). We make this evaluation in light of congressional guidance that the Service's authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity (DPS Policy, 61 FR at 4722; S. Rep. No. 96–151 (1979)). The DPS Policy describes four classes of information, or considerations, to take into account in evaluating a population segment's biological and ecological importance to the taxon to which it belongs. As precise circumstances are likely to vary considerably from case to case, the DPS Policy does not state that these are the only classes of information that might factor into a determination of the biological and ecological importance of a discrete population.

As specified in the DPS Policy (DPS Policy, 61 FR at 4722), consideration of the population segment's significance may include, but is not limited to, the following classes of information:

(1) Persistence of the population segment in an ecological setting that is unusual or unique for the taxon;

(2) evidence that loss of the population segment would result in a significant gap in the range of the taxon;

(3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historic range; and

(4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Significance of the discrete population segment is not necessarily determined by existence of one of these classes of information standing alone. Rather, information analyzed under these considerations is evaluated relative to the biological or ecological importance of the discrete population to the taxon as a whole. Accordingly, all relevant and available biological and ecological information is analyzed for importance to the taxon as a whole.

Persistence of the Population Segment in an Unusual or Unique Ecological Setting

Under the DPS Policy the first consideration in determining whether a population is significant to the taxon to which it belongs is ''persistence of the population segment in an ecological setting unusual or unique for the taxon.'' Bald eagles are highly adaptable, wide-ranging habitat generalists. Across the range of the species, there is no ''usual'' ecological setting, in terms of the elevation, temperature, prey species, nest tree species, or type of water source, for the taxon. The bald eagle is capable of inhabiting areas throughout North America, so long as a sufficient food source persists. This contrasts with a situation where a portion of the range of a particular species exhibits one set of similar habitat characteristics but the distinct population segment utilizes a different set of habitat characteristics. For bald eagles, there are many options for suitable habitat. Though the Sonoran Desert Area may represent a unique set of habitat characteristics, we cannot say it is unusual or unique for the bald eagle such that persistence there is significant to the bald eagle as a whole.

In order to address the court's September 30, 2011, order, we reviewed previous DPS determinations that described the Service's analysis of whether the population's persistence in an unusual or unique ecological setting was significant to the taxon as a whole. A number of DPS determinations provided little detail—either regarding which of the four considerations identified in the DPS Policy had formed the basis for the determination, or regarding how the Service had analyzed the ''unusual or unique ecological setting'' consideration; this tended to be the case with determinations that were completed in the ensuing years after the DPS Policy was adopted. Subsequently, as the determinations provided more detail about the significance analysis, the analyses of ''unusual or unique ecological setting'' began to include discussions not only of whether there were any unusual habitat characteristics, but also of whether persistence among those habitat characteristics was unusual or unique for the taxon and made that population significant to the taxon as a whole. Elements that the Service often considered in these analyses included: (1) The extent to which there was evidence of adaptations—whether direct evidence of physical changes or indirect evidence of changes in life-history traits—that could be significant to the conservation of the taxon as a whole; and (2) the extent to which the taxon was a habitat generalist that could adapt to diverse ecological settings. In addition to those elements, we also considered the extent to which other populations of the species could or could not persist in the particular ecological setting such that the persistence of this population in that setting is biologically or ecologically important to the taxon as a whole. Consideration of these elements has been incorporated in the way the Service has interpreted ''persistence in an ecological setting unusual or unique for the taxon'' under the DPS Policy in previous DPS determinations.

General information about the biology and life history of the bald eagle can be found in the *Species Information* section above. The bald eagle is able to occupy a broad range of vegetation communities and ecosystems throughout North America. The bald eagle is distributed across the North American continent (stretching from the Aleutian Islands to Baja California, Mexico, and from northeastern Canada to Florida). The bald eagle breeds at elevations ranging from sea level to mountains as high as 10,000 feet. It also occupies a range of aridity; the bald eagle is known to live in some of the driest areas in the United States and in some of the wettest.

Bald eagles occur throughout North America wherever there is a sufficient source of prey. Habitat structure and proximity to a sufficient food source are usually the primary factors that determine suitability of an area for nesting (Grier and Guinn, p. 44). Nesting generally occurs along rivers, lakes, and seacoasts in proximity to a sufficient source of prey. Bald eagles primarily eat fish, but they will also eat amphibians, reptiles, other birds, small mammals, and carrion (dead animals) including carcasses of large mammals (*e.g.,* cows, elk, deer). Bald eagles typically nest in trees, but have also been documented nesting on cliffs, on the ground, in mangroves, in caves, and in manmade structures (e.g., cell phone towers). Bald eagles are not limited to nesting in or near any particular species of tree, nor are they limited to eating any particular species or even class of prey.

The bald eagle has also been shown to be highly adaptable to changes in the landscape. Data suggest that eagles across many parts of their range are demonstrating a growing tolerance of human activities in proximity to nesting and foraging habitats. Eagles in these situations continue to successfully reproduce in settings previously considered unsuitable. For example, in Florida, some bald eagle pairs have shown adaptation to human presence by nesting in residential subdivisions and commercial and industrial parks, and on cell phone towers and electric distribution poles. A common thread throughout these urban and suburban landscapes is the availability of ample food sources such as natural lakes, rivers, and ponds; artificial stormwater retention ponds; and public landfills (Millsap *et al.* 2002, p. 10). In light of this success in diverse habitats, the bald eagle appears to be highly adaptable to a variety of habitat conditions based on food availability.

According to Hunt *et al.* (1992, p. A163) and Glinski (1998, p. 52), bald eagle nesting habitats in Arizona are among the most unusual nesting habitats occupied by the species, with many of the nests located in open desert under conditions of high heat and low humidity. On its face, this suggests that the Sonoran Desert Area is an ecological setting that is unusual or unique for the species. However, as discussed above, we must assess persistence in this unique or unusual ecological setting in terms of the biological or ecological importance of the population's persistence to the species as a whole.

Consistent with previous DPS determinations, we took into account the ''unusual or unique ecological setting'' consideration by first evaluating whether there was any evidence of adaptations—whether direct evidence of physical changes or indirect evidence of changes in life-history traits—that could be significant to the conservation of the taxon as a whole. The DPS Policy does not require evidence of adaptation to a unique or unusual ecological setting in order to make a finding of significance; however, direct evidence of adaptation to an ecological setting could be a strong indication that persistence of the population segment in that ecological setting is significant to the taxon as a whole. The ecological setting of the Sonoran Desert is characterized by hot and dry summers. We examined a number of characteristics of bald eagles in the Sonoran Desert Area to determine if there was any direct or indirect evidence of adaptations to that ecological setting such that persistence of that population is significant (i.e., biologically or ecologically important) to the bald eagle as a whole. For example, we evaluated whether it is significant to the bald eagle as a whole that individuals in the Sonoran Desert Area population are possibly smaller than those in other populations or that the egg shell porosity for the Sonoran Desert Area population differs from egg

shell porosity for other populations. In addition, we evaluated whether there may have been changes in timing of breeding, specialized feeding on desert fish, cliff nesting, or juvenile migration characteristics that make persistence of the population in the Sonoran Desert Area significant to the taxon.

Bald eagles in the Sonoran Desert Area are smaller in size than many other bald eagles. One theory presented for this difference is that the smaller size indicates an adaptation to the hotter, drier Sonoran Desert environment. In fact, Hunt *et al.* (1992, p. A165) suggest that the smaller size of Arizona bald eagles was significant enough that the introduction of foreign genes into the population might disrupt coadapted gene complexes (a group of genetic traits that have high fitness when they occur together, but which without each other have low fitness) specific to the population.

However, we have found general differences in the size of bald eagles in the northern latitudes and birds in the southern latitudes. For instance, Stalmaster (1987, pp. 16–17) notes that northern eagles are much larger and heavier than their southern counterparts. This is consistent with Bergmann's Rule, which holds that animal size increases with increasing latitude due to changes in climate. Consistent with this rule, Hunt *et al.* (1992, pp. A158–A161) report that bald eagles in Arizona are smaller than those in Alaska and the Greater Yellowstone Region. Supporting this conclusion, Gerrard and Bortolotti (1988, p. 14) note that bald eagles in Florida, which is farther south than Arizona, are the smallest, with a gradation of large to small from north to south within the Florida populations. This information suggests that small size is not an adaptation unique to the Sonoran Desert but is rather part of the natural variability of the taxon as a whole.

Another theory presented of possible adaptation from the taxon as a whole is the possible differences in egg shell porosity of Arizona bald eagles from bald eagles in other parts of the range of the species. Hunt *et al.* (1992) discuss pores in eggshells of bald eagles in Arizona. Hunt *et al.* (1992) note that the pores of the eggs assessed are one to two orders of magnitude smaller than those in California bald eagle eggs. Some of the public comments received during the public comment period for our prior status review questioned whether or not these pores may have an effect on water loss from bald eagle eggs in the arid environment.

However, Hunt *et al.* (1992) did not reach any conclusions as to the significance this difference in egg shell porosity may have to Arizona eagles. No other reported studies analyzed the potential significance of this finding. Furthermore, the Hunt *et al.* (1992) study consisted of an extremely small sample size of only four eggs. Given the small sample size of this study, and the lack of analysis in the study, it would not be scientifically robust to draw any conclusions from the Hunt *et al.* (1992) study. As a result, we do not consider the potential difference of egg shell porosity to be evidence of adaption to the Sonoran Desert.

Therefore, based on our review of information as it relates to body size and eggshell porosity, it does not appear that there is direct evidence of an adaptation of the bald eagle to the Sonoran Desert Area. Additionally, we did not find any evidence of other traits or factors that would indicate evidence of an adaptation to the Sonoran Desert Area.

Next we discuss differences in life-history traits that may be an indirect indication of an adaptation to the Sonoran Desert Area that could indicate the population's persistence there is significant to the taxon as a whole. The life-history traits may include timing of breeding, feeding habits, nest site selection, and juvenile migration.

We assessed whether bald eagles in the Sonoran Desert Area breed earlier than many other bald eagles, a change in life history trait that could indicate there has been an adaptation to the Sonoran Desert Area setting such that persistence there is significant to the taxon as a whole. As discussed in the *Species Information* section above, bald eagle pairs begin courtship about a month before egg-laying. In the south, courtship occurs as early as September, and in the north, as late as May. The nesting season lasts about 6 months.

However, as with bald eagle size variation, a general examination by latitude reveals differences between bald eagles in northern and southern regions. Timing of various breeding events in bald eagles is tied to the latitude of the nesting area, with eagles at more northern latitudes breeding at later dates (Stalmaster 1987, p. 63). Gerrard and Bortolotti (1988, p. 76) note that bald eagles in Florida lay eggs from early November to mid-December. Henry *et al.* (1993, p. 208) report that Baja California bald eagles are already incubating by mid January, which indicates a mid-December to early-January egg-laying period. In Louisiana, bald eagles lay eggs between October and mid-March, but most clutches are complete by late December (Service 1989).

The timing of breeding chronology for the bald eagles in the Sonoran Desert Area is consistent with this latitudinal variation. Specifically, the breeding chronology of Florida birds (further south than the Sonoran Desert Area eagles) is even earlier than those in the Sonoran Desert Area. Therefore, we find it unlikely that the breeding chronology of bald eagles in the Sonoran Desert Area is a life-history trait that is biologically or ecologically important to the species as a whole.

We assessed whether there was evidence that bald eagles in the Sonoran Desert Area specialized on desert fishes. The most common fishes eaten by bald eagles in Arizona are: Sonora (*Catostomus clarki*) and desert suckers (*Catostomus insignis*); channel (*Ictalurus punctatus*) and flathead catfish (*Pylodictis olivaris*); common carp (*Cyprinus carpio*); largemouth (*Micropterus salmoides*), smallmouth (*Micropterus dolomieui*), yellow (*Morone mississippiensis*), and white bass (*Morone chrysops*); and black crappie (*Pomoxis nigromaculatus*) (Service 1982, p. 11; Driscoll *et al.* 2006, p. 6). However, although bald eagles are opportunistic feeders whose diet is mostly made up of fish, they will eat birds, amphibians, reptiles, small mammals, and carrion. Specifically, a study found that the diet of eagles in Arizona based on prey remains contained 76 percent fish, 14 percent mammals, and 10 percent birds (Hunt *et al.* 2002, p. 249). The same study found that of 10 breeding areas where prey remains were analyzed, suckers were the most common prey in only three breeding areas (Hunt *et al.* 2002, p. 250). Suckers often spawn in riffles, the shallowest of the riverine habitats, and may be consistently exposed to attack at this stage of their life cycle (Minckley 1973, pp. 162, 169; Hunt *et al.* 1992, p. A57). Water temperature is the catalyst for fish spawning and, therefore, also causes differences in timing of fish availability within breeding areas. When suckers (who spawn early) and carp or catfish (who spawn later) are common, the result may be a prolonged availability of food for eagles (Hunt *et al.* 1992, p. A70). Suckers are the first of essential species to become most available to eagles while they are incubating eggs or feeding small young. The movement of carp into shallow water to forage generally occurs seasonally after suckers have finished spawning (Hunt *et al.* 1992, p. A70). Because an eagle's foraging time is reduced due to the necessity of incubation or the care of newly hatched nestlings unable to regulate their own

body temperature, the sucker's place in the sequencing of available prey may be of added importance for successful reproduction for eagles relying on free-flowing and regulated streams. Additionally, there are no other fish species used by bald eagles within the Sonoran Desert Area along rivers that have the same spawning schedule and accessibility to nesting eagles. Although native Sonoran and desert suckers seem to be important to bald eagles in the Sonoran Desert Area, not only for how they become available, but also for when they become available, there are no data to suggest that bald eagles specialize on suckers or that foraging on suckers is the result of a unique adaptation to the desert environment that is biologically or ecologically important to the species as a whole.

We considered whether cliff nesting is an adaptation to the conditions in the Sonoran Desert Area that indicates that this population's persistence there is biologically or ecologically important to the taxon as a whole. Hunt *et al.* (1992, p. A-ii) report that, in the Sonoran Desert Area, when both tree and cliff nests were available, eagles nonrandomly chose cliffs rather than trees, indicating that Sonoran Desert Area bald eagles may have a preference for cliff nests.

Stalmaster (1987, p. 121) noted that cliff nesting is common in Arizona, but he also noted that exceptions to tree nests occur in other areas. Gerrard and Bortolotti (1988, p. 41) note that bald eagles in other areas may nest on cliffs if suitable trees are not available. This is supported by Buehler (2000), who states that bald eagles use ground nests (a category in which he includes nests built on cliff sides) in treeless regions such as Alaska, north Canada, islands off the coast of California, and Arizona. Bald eagles are also known to nest on cliffs on the Channel Islands off California (NOAA 2006). Bald eagles in areas of Alaska where there are no suitable nest trees also are known to nest on cliffs, sea stacks, hillsides, and rock promontories (Sherrod *et al.* 1976, p. 153). It is likely that up to 10 percent of the bald eagles in Alaska nest on the ground (Schempf pers. comm. 2007). Additionally, ground nesting has also been documented in limited situations in northwestern Minnesota and Florida (Hines and Lipke 1991, pp. 155–157; Shea *et al.* 1979, pp. 3–5). Eagles can also nest in a variety of unconventional situations, such as utility poles, abandoned heavy equipment, mangroves, cacti (in Baja), and root wads washed up on sandbars.

Additionally, bald eagles, across their range, will use whatever high nest sites are available near the aquatic areas they inhabit. In the Sonoran Desert Area these sites often happen to be cliffs, but eagles in the Sonoran Desert Area have also nested in cottonwood, willow, sycamore, pinyon pine, and ponderosa pine trees. Many Sonoran Desert Area eagle pairs have built and used both tree and cliff nests within their territories. This behavior demonstrates the flexibility in nest site selection that bald eagles have throughout the entire geographic range of the eagle, suggesting that nest site selection in the Sonoran Desert area is not likely ecologically or biologically important to the taxon as a whole.

We also considered whether the juvenile migration characteristics of Arizona bald eagles may suggest adaptation to the Sonoran Desert Area that is biologically or ecologically important to the taxon as a whole. Juvenile bald eagles from Arizona migrate north in the spring and return to natal territories in the fall (Hunt *et al.* 1992, p. A–v).

Hunt *et al.* (2009, p. 125) indicates that juvenile bald eagles from Arizona exhibit similar migrating characteristics to each other, and that the similarity of these characteristics, which were exhibited while migrating solitarily, is evidence of genetic control of migration. In other words, juvenile bald eagles behave similarly even while migrating individually. Kerlinger (1989, p. 57) discusses that natural selection has likely shaped the migratory strategy of birds. Natural selection likely exerts pressure over time to emphasize the survival of successful migration strategies and, therefore, successful genes. In other words, birds that make errors in migration are eliminated from the population, and do not go on to reproduce and pass their genes to the next generation. Thus, the birds that do survive migration and reproduce successfully may become more genetically similar. Accordingly, there is a belief that the migration characteristics of bald eagles in the Sonoran Desert Area demonstrates adaptation in this population with respect to juvenile migratory behaviors.

Bald eagles as a species exhibit a ''complex pattern of migration dependent on age of the individual (immature or adult), location of breeding site (north vs. south, interior vs. coastal), severity of climate at breeding site (especially during winter but also possibly during summer), and year-round food availability'' (Buehler 2000). For example, bald eagles in northeastern North America migrate south in the fall and return north in the spring, whereas bald eagles in Florida move north in late spring and early summer and return south in the fall (Kerlinger 1989, p. 12). This wide variety of migration strategies employed throughout the range of the species further demonstrates the flexibility of the species and further suggests that migrating characteristics of bald eagles in the Sonoran Desert area are not likely ecologically or biologically important to the taxon as a whole.

Finally, we consider whether there may be other considerations that make persistence in the Sonoran Desert significant to the bald eagle as a whole. We conclude that, if other populations of the bald eagle could not persist in the Sonoran Desert ecological setting, that might be an indication that the population has adapted in a way that could be significant to the bald eagle as a whole. We currently have no direct evidence proving or disproving the ability of other bald eagles to persist in the Sonoran Desert area. As mentioned above, the best available information suggests that in fact there has been very little immigration into the Sonoran Desert area. Nevertheless, an adult bald eagle located at a Sonora, Mexico breeding area in 1992 possibly originated from Texas or Florida. This could indicate that, in the rare instances in which eagle immigrate to the Sonoran Desert Area from other areas, they are able to persist there. Moreover, based on the general adaptability shown by eagles throughout their range, there is no reason to suspect that eagles from outside the Sonoran Desert Area would not be successful in the Sonoran Desert Area over time.

In summary, the combination of a highly adaptable species persisting in a varied habitat base leads us to conclude that the particular variations displayed in the Sonoran Desert Area population do not make that population more ecologically or biologically important than any other individual population. Therefore, while the Sonoran Desert Area represents a unique set of habitat characteristics, persistence of that population of bald eagles among those habitat characteristics is not significant (i.e., biologically or ecologically important) to the taxon as a whole. This is consistent with the Service's prior interpretations of the DPS Policy, and, as such, the Service has not adopted a new interpretation of the DPS Policy.

Significant Gap in the Range of the Taxon

The second consideration under the DPS Policy in determining whether a population is significant to the taxon to which it belongs is ''evidence that loss of the discrete population segment

would result in a significant gap in the range of a taxon'' (61 FR 4725). We therefore evaluated whether a hypothetical extirpation of the Sonoran Desert Area bald eagle would leave a significant gap in the range because of: (1) The size of the Sonoran Desert Area population in relation to the size of the taxon as a whole; (2) an unlikelihood that other populations would immigrate and repopulate that part of the range; (3) distinctive traits or genetic variation among the Sonoran Desert Area bald eagle; (4) the size of the range of the Sonoran Desert Area population in relation to the size of the range of the taxon as a whole; or (5) the role that the geographical location where the Sonoran Desert Area population occurs plays with respect to the status of the bald eagle as a whole.

Bald eagles in the Sonoran Desert Area are neither numerous nor constitute a significant percentage of the total number of bald eagles throughout the range of the taxon. In 2009, 48 pairs were documented in the Arizona portion of the Sonoran Desert Area (ADFG 2009a, p. 8), which is where most of the birds in the Sonoran Desert Area population occur. This represents less than one half of 1 percent of the current estimated number of breeding pairs of bald eagles in the lower 48 States. Because the taxon as a whole also includes bald eagles in Canada and Alaska, the number of breeding pairs in the Sonoran Desert Area represents much less than one half of a percent of the number of breeding pairs throughout the range of the species. In addition, the Arizona portion of the Sonoran Desert Area did not support a large proportion of the bald eagle population historically. A small number, estimated at 15–20 breeding pairs, historically bred in this area (Tilt 1976, p. 15). Given the historical and current population number of bald eagles throughout the range of the taxon, the Sonoran Desert Area population of bald eagles represents a relatively small number of breeding pairs in comparison.

Loss of the Sonoran Desert Area bald eagles would be likely to create some gap in the range of the taxon. As discussed in the *Discreteness* section above, available evidence indicates that little immigration into this population has occurred. The small number of bald eagles and large distances between neighboring populations currently limit immigration and emigration between them, and bald eagles in the neighboring populations would have to increase their population size and expand their distribution to occupy the gaps, such that loss of the Sonoran Desert Area population would be likely to create a gap. Therefore, it is unknown whether bald eagles would naturally repopulate the Sonoran Desert Area if extirpated.

However, it is not clear that any gap created in the range would be significant to the taxon as a whole. As discussed above, bald eagles in the Sonoran Desert Area are neither numerous nor constitute a significant percentage of the total number of bald eagles throughout the range of the taxon. Moreover, as discussed previously, there has been no evidence of distinctive traits or genetic variations among the Sonoran Desert Area population that suggests that loss of the population would have a negative effect on the bald eagle as a whole. For instance, we found no indication that bald eagles in the Sonoran Desert Area have a specialized prey base of native desert fishes, nor did we find any direct evidence for adaptation based on difference egg shell porosity or body size.

Further, the actual amount of suitable bald eagle habitat in the Sonoran Desert Area is in general limited and represents a minute fraction of the total suitable habitat available for bald eagles throughout their range. The limited size of the current and historical bald eagle population in the Sonoran Desert Area directly reflects that fact.

Finally, the Sonoran Desert Area itself does not play any particular role in the life history of the bald eagle such that loss of that part of the range would have a significant effect on the status of the species. For example, the Sonoran Desert Area is not the sole breeding or rearing location for bald eagles, nor is the Sonoran Desert Area only one of two parts of the species range such that loss of eagles in one part would result in a significant gap. As stated above, bald eagles are highly adaptable and are found across a wide range of habitats in North America.

Having reviewed the best available scientific information with respect to the biological or ecological significance of the Sonoran Desert Area bald eagles, we have determined that loss of eagles in the Sonoran Desert Area would not represent a significant gap in the range of the bald eagle as a whole.

In conclusion, while the loss of the Sonoran Desert Area bald eagle would likely result in some gap in the range of the taxon, we find that the gap does not constitute a significant gap in the range, such that information reviewed under this element does not suggest that Sonoran Desert Area bald eagles are biologically or ecologically significant to the taxon as a whole.

Natural Occurrence of a Taxon Abundant Elsewhere as an Introduced Population

The third consideration under the DPS Policy is ''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'' (61 FR 4725). As discussed above, naturally occurring bald eagles occur throughout much of their historical range in North America; thus, the Sonoran Desert Area population does not represent the only surviving natural occurrence of the bald eagle throughout the range of the taxon in North America.

Genetic Characteristics

As stated in the DPS Policy, in assessing the significance of a discrete population, the Service considers evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics (61 FR 4725).

Limited studies have been completed assessing the genetic characteristics of Sonoran Desert Area bald eagles in comparison to bald eagles throughout the rest of the range. Hunt *et al.* (1992, pp. E–96 to E–110) contains two studies that represent the genetic work completed on the Arizona bald eagle population, which includes the majority of bald eagles in the Sonoran Desert Area. Vyse (reported in Hunt *et al.* 1992, pp. E–96 to E–104) completed a DNA fingerprinting analysis of eagles from California, Arizona, and Florida, and was unable to identify population-specific genetic markers; however, the author notes that the results obtained could easily be explained by sampling procedures. Zegers *et al.* (reported in Hunt *et al.* 1992, pp. E–105 to E–110) conducted an enzyme electrophoresis analysis, and concluded that, although ''the bald eagle population in Arizona may have some genetic uniqueness, it is not significantly different from any other population. * * *'' The authors go on to question the reliability of the results because of the low numbers of individuals sampled from most States and because of the few loci examined. In summary, Hunt *et al.* (1992, p. A–163) note that neither study detected alleles or gene fragments that were not detected in other populations. In conclusion, neither study resolved any specific genetic markers with which Arizona bald eagles could be differentiated from other populations. Therefore, given the assumptions and cautions in using the data, we have determined that the best available data

do not support a conclusion that bald eagles in the Sonoran Desert Area have genetic characteristics that are markedly different from other bald eagles.

DPS Conclusion

On the basis of the best available information, we conclude that the Sonoran Desert Area population of the bald eagle is discrete, but it is not significant (i.e., biologically or ecologically important) to the taxon as a whole. We have reviewed the best available scientific information, and the evidence relative to natal site fidelity in breeding birds, the limited number of eagles in neighboring States, and the results of 30 years of monitoring data indicating that few, if any, eagles immigrate to or emigrate from the Sonoran Desert Area bald eagle population. We conclude that the best available scientific information with respect to the discreteness requirements of the DPS Policy warrant considering the Sonoran Desert Area bald eagle population as discrete from other bald eagle populations in North America.

We considered the four classes of information listed in the DPS Policy as possible considerations in making a determination as to significance, as well as all other information that might be relevant to making this determination for the Sonoran Desert Area population. The adaptability of the bald eagle allows its distribution to be widespread throughout the North American continent in a variety of habitat types. Further, the Sonoran Desert Area bald eagles do not appear to exhibit any direct or indirect adaptation or behavioral advantage that would indicate its persistence in the Sonoran Desert Area is biologically or ecologically important to the taxon as a whole. Moreover, we considered the other three considerations that the DPS Policy sets out for evaluating significance, and none of them provides evidence that the population is significant to the bald eagle as a whole: Loss of the population would not result in a significant gap in the range; the population does not represent the only surviving natural occurrence of the bald eagle; and the population's genetic characteristics do not differ markedly from those of other bald eagle populations.

We conclude that the discrete Sonoran Desert Area population of bald eagle does not meet the significance criterion of the DPS Policy, as detailed above and, therefore, is not a DPS pursuant to our DPS Policy. As a result, the Sonoran Desert Area population of bald eagles is not a listable entity under section 3(16) of the Act.

The DPS Policy sets forth a three-step process for determining whether a vertebrate population as a separate entity warrants listing: (1) Determine whether the population is discrete; (2) if the population is discrete, determine whether the population is significant to the taxon as a whole; and (3) if the population is both discrete and significant, then evaluate the conservation status of the population to determine whether it is endangered or threatened (typically presented as a 5-factor analysis of the threats to the discrete population (threats assessment) followed by a determination of whether the population meets the definition of ''endangered species'' or ''threatened species''). Although we have determined that the Sonoran Desert Area population of the bald eagle does not qualify as a DPS and, therefore, is not a listable entity because it is not significant to the taxon as a whole. However, we provide below a threats assessment of the Sonoran Desert Area population of the bald eagle and a determination of its conservation status. The DPS Policy neither requires nor prohibits completion of a threats assessment once we have determined that a population does not qualify as a DPS. Nevertheless, in this instance, we concluded that completing a threats assessment—and detailing the nature, scope, and likely effect of the threats to the population and the species—would provide us and the public with valuable information for understanding the status of the population.

Summary of Information Pertaining to the Five Factors

As discussed above, the bald eagle is known to have bred in every State and province in the United States and Canada except Hawaii (Johnsgard 1990, p. 145; Hunt *et al.* 1992, p. A9). Gerrard and Bartolotti (1988, p. 2) noted that, at the time Europeans first arrived on North America, bald eagles were believed to have nested on both coasts, along all major rivers and large lakes in the interior from Florida to Baja California in the south, and north to Labrador and Alaska. In general, three factors seem to determine the distribution and abundance of bald eagles and other raptors (*i.e.,* birds of prey): (1) An adequate and accessible supply of food, (2) availability of nest sites, and (3) suitable foraging habitat (Johnsgard 1990, pp. 15–17). Specifically, the bald eagle needs areas for nesting, perching, roosting, and foraging (Stalmaster 1987, pp. 119–131) and a reasonable degree of freedom from disturbance during the nesting season (Johnsgard 1990, p. 145). Hunt *et al.* (1992, p. A–v) goes further to suggest that the features of bald eagle habitat in Arizona that render it suitable for breeding include: (1) Nesting substrate offering security from large predators and human disturbance; and (2) two or more of the following fish taxa occurring in substantial numbers: carp, suckers (spp.), catfish (spp.), and perciforms (from the order Perciformes). Factors that appear to increase habitat quality include: (1) Reservoirs supporting warm water fisheries; (2) reservoir inflow areas; and (3) areas of river habitat containing fast, shallow water, moderate slope, turbulence, and exposed substrate that are maintained under a wide variety of flows.

Observations of bald eagles in Arizona are mentioned in the literature as early as 1866 by Coues in the vicinity of Fort Whipple (now Prescott). Henshaw reported bald eagles south of Fort Apache in 1875. The first bald eagle breeding information was recorded in 1890 near Stoneman Lake by S.A. Mearns. Additionally, Bent reported the presence of breeding eagles on the Salt River Bird Reservation, which was inundated by Roosevelt Lake in 1911. There are also reports from the 1930's of bald eagles nesting along rivers in the White Mountains and along the Salt and Verde Rivers in central Arizona (Hunt *et al.* 1992, pp. A11–A12).

The bald eagle population of the Southwest Recovery Region, as identified in the Service's final recovery plan for the species, reaches all of New Mexico and Arizona, throughout Oklahoma and Texas west of the 100th meridian, and the area of California bordering the Lower Colorado River (Service 1982, p. 1). The vast majority of the breeding bald eagles from this population are found within the State of Arizona, most of which are located within the Sonoran Desert Area. The occurrence of breeding bald eagles in the State of New Mexico is very limited (USFS 2004, p. 153). In 2001, the New Mexico Department of Game and Fish (NMDGF) reported the occurrence of four bald eagle nest sites, all on private lands, in New Mexico.

Nationwide, bald eagles are known to nest primarily along seacoasts and lakeshores, as well as along banks of rivers and streams (Stalmaster 1987, p. 120). In Arizona, bald eagle breeding areas (eagle nesting sites and the area where eagles forage) are located in close proximity to a variety of aquatic sites, including reservoirs, regulated river systems, and free-flowing rivers and creeks. In Arizona, nests are placed mostly on cottonwood trees, cliff edges, and rock pinnacles and may be used year after year. However, living and

dead junipers, pinyon pines, sycamores, willows, and ponderosa pines, and artificial structures also have supported eagle nests (Driscoll *et al.* 2006, p. 4). In 1992, of 111 known nests in Arizona within 28 breeding areas, 48 percent were on cliffs or pinnacles, 51 percent were on trees or snags, and one percent was on artificial structures. For breeding areas where both cliff and tree nests were available, cliff nests were selected 73 percent of the time, while tree nests were selected 27 percent of the time (Hunt *et al.* 1992, p. A17). Additionally, eagles nesting on cliffs were found to be slightly more successful in raising young to fledgling, though the difference was not statistically significant (Hunt *et al.* 1992, p. A17).

In the Sonoran Desert Area, essential bald eagle activities such as nesting, perching, roosting, and foraging occur from and in the large woody tree component of the riparian habitat found along rivers and streams. Eagles nesting in trees within the Sonoran Desert Area are less susceptible to heat stress and parasites than those nesting in cliff or pinnacle nests, but are more vulnerable to disturbance from the ground and from inundation during flooding (Hunt *et al.*1992, p. A17). Eaglets (young eagles) in tree nests are less likely to die from premature fledging. An abundance of trees provides more perching locations to capture prey, more locations to place nests, and greater opportunities to partition resources in order to increase territory density (Hunt *et al.*1992, pp. Aii, A21, A135).

The importance of riparian trees is demonstrated along the lower Verde River in Arizona, where the densest population of nesting bald eagles (seven territories along 30 river kilometers (18.6 miles)) exclusively uses cottonwood trees for nest placement. In Arizona, the majority of nests are located in the Upper and Lower Sonoran Life Zones (zones of plant and animal life associated with a given elevation), including the riparian habitats and transition areas of both zones (Hunt *et al.* 1992, p. A17). Representative vegetation of these life zones includes Arizona sycamore (*Platanus wrightii*), blue palo verde (*Parkinsonia florida*), cholla (*Opuntia* and *Cylindropuntia* spp.), Fremont cottonwood (*Populus fremontii*), Gooding willow *(Salix gooddingii*), mesquite (*Prosopis* spp.), saguaro (*Carnegiea gigantea*), and tamarisk or salt cedar (*Tamarix pentandra;* an exotic species) (Brown 1994, p. 200).

Bald eagles primarily eat fish, but they will also eat amphibians, reptiles, birds, small mammals, carrion (dead animals), and carcasses of large mammals (cows, elk, deer, etc.). Their food habits can change daily or seasonally, but when a choice is available, bald eagles invariably select fish over other prey. Bald eagles will scavenge, steal, or actively hunt to acquire food. Carrion constitutes a higher proportion of the diet for juveniles and subadults than it does for adult eagles. Bald eagles are primarily sit-and-wait hunters, perching in trees in order to detect available prey (Stalmaster 1987, p. 104). Food strongly influences bald eagle productivity (young fledged per occupied territory) (Newton 1979, pp. 95–96, 101–106; Hansen 1987, p. 1389). A female's health in the months preceding egg-laying can affect egg production, and prey availability during the breeding cycle affects the survivorship of nestlings and post-fledging juveniles. Any factor affecting the adults' ability to acquire food can influence productivity and adult survival (Newton 1979, pp. 95–96, 101–106).

The most common fishes eaten in Arizona are Sonora *(Catostomus clarki*) and desert suckers (*Catostomus insignis*); channel (*Ictalurus punctatus*) and flathead catfish (*Pylodictis olivaris*); common carp (*Cyprinus carpio*); largemouth (*Micropterus salmoides*), smallmouth (*Micropterus dolomieui*), yellow (*Morone mississippiensis*), and white bass *(Morone chrysops*); and black crappie (*Pomoxis nigromaculatus*). Less common are roundtail chub (*Gila robusta*), green sunfish (*Lepomis cyanellus*), bluegill (*Lepomis macrochirus*), tilapia, and rainbow trout (*Oncorhynchus mykiss*) (Service 1982, p. 11; Driscoll *et al.* 2006, p. 6). The introduction of predatory flathead catfish in the late 1970s nearly extirpated native fish populations on the upper Salt River (Driscoll *et al.* 2006, p. 19). Flathead catfish, while available as bald eagle prey when smaller, grow to large sizes (up to 50 pounds, or 22.6 kilograms) making them unavailable as a prey item (*i.e.,* too large for bald eagles to take). Flathead catfish populations have increased while other fish species have decreased (Driscoll *et al.* 2006, p. 19).

The Arizona Game and Fish Department (AGFD) notes that apparent changes in eagle productivity observed from before 1985 and after 1985 could be the result of a difference in monitoring protocols. Starting in 1985, their protocol incorporated monthly helicopter surveys of all breeding areas. The AGFD noted that the average productivity rate of 0.78 observed in Arizona between 1987 and 2005 is consistent with that observed in other areas of the species' range with larger populations, including Minnesota, British Columbia, Interior Alaska, and Washington (Driscoll *et al.* 2006, p. 5). Due to rugged terrain, the earliest formal surveys in Arizona—in the 1970's—only detected bald eagle breeding areas that were easily accessible (*e.g.,* along rivers and streams) (Driscoll *et al.* 2006, p. 9). Following intensive survey efforts over the last 25 years, the AGFD is aware of more breeding areas, and habitat conditions within them varies greatly. As a result, the AGFD is currently tracking productivity in breeding areas with a variety of habitat conditions, rather than tracking productivity in only those breeding areas that were easily detected. While the number of breeding areas detected in subsequent surveys in Arizona has increased, there is no expectation that pairs using these breeding areas would demonstrate increased reproductive performance. Productivity data between 1987 and 2008 indicates less variability. For example, in 1971, with only three known breeding areas, productivity was 1.33; in 1972 productivity was 0.0; and in 1973 productivity was 1.4. By comparison, with more breeding areas known, productivity now varies by only 0.20 to 0.30 units (Driscoll *et al.* 2006, pp. 48–50; AGFD 2007, pp. 33–34; AGFDa 2008, pp. 38–39).

The Sonoran Desert Area population consists of those bald eagles that breed predominantly within central and southern Arizona; Sonora, Mexico (Sonora); and portions of southeastern California along the Colorado River as described in detail above (see Distinct Population Segment). Based on opportunistic monitoring of the single nest located in southern California at the Copper Basin breeding area conducted since 2001 (Melanson 2006a, 2007, 2008, pers. comm.), we have limited information on potential threats to this breeding area, and demographic data from this site was not collected using the same protocol established in Arizona. We include information from this breeding area in the following threats analysis where appropriate. Information on breeding success in Sonora is limited. Bald eagle territories were first recorded in Sonora along the Rio Yaqui drainage in 1986 (Brown *et al.* 1986, pp. 7–14). Since that time, a total of eight bald eagle breeding areas have been verified (Driscoll and Mesta 2005, in prep.). Surveys there irregularly occur due to difficulties in accessing breeding areas. However, given the limited number of breeding areas and the infrequency of breeding noted during survey years, the overall impact of productivity from Sonora bald eagles

to the total productivity of the Sonoran Desert Area population of the bald eagle is minimal.

Historical records, literature, past reports, and interviews with agency personnel and other people knowledgeable about bald eagles in Arizona indicated that there was one known breeding area by the 1920s, two by the 1930s, four by the 1940s, five by the 1950s, six by the 1960s, and eight by the 1970s (Hunt *et al.* 1992, pp. C56–C61). The number of known breeding areas within the Sonoran Desert Area increased from a low of three in 1971 to a high of 52 in 2009. In addition, there were seven breeding areas located within Arizona but outside of the Sonoran Desert Area in 2009. From 1985 to 2009, productivity within the Sonoran Desert Area has ranged from a low of 0.54 in 1990 and 1992 to a high of 1.17 in 2008. The mean annual productivity for this time period in the Sonoran Desert Area was 0.81 (AGFD 2004, pp. 30–31; AGFD 2005, pp. 34–35; AGFD 2006a, pp. 35–36; AGFD 2007, pp. 33–34; AGFD 2008a, pp. 38–39; Allison *et al.* 2008, pp. 17–18; AGFD 2009a, pp. 42–43). For comparison, productivity in North America averaged 0.34 in three declining bald eagle populations, as compared to 0.75 in seven stable populations and 1.03 in four increasing populations (Swenson *et al.* 1986, p. 25).

Productivity data alone does not provide a clear indication of the status of a population without considering the additional influence of other demographic variables (e.g., survival, number of breeding areas). When all of this data is considered together, as is done through a population viability analysis (see Factor A discussion), estimates of population growth and extinction probabilities can be generated. For bald eagles nesting in the Sonoran Desert Area of Arizona, a population viability analysis conducted by the Service resulted in an estimated annual population growth rate of two percent, and none of the model iterations resulted in extinction of the population (Millsap 2009, in prep.) (see Factor E, Demographic Factors discussion).

Five-Factor Analysis

Pursuant to section 4 of the Endangered Species Act of 1973, as amended, we must determine whether any species, subspecies, or DPS of vertebrate taxa is an endangered or threatened species because of any of the following five factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The Endangered Species Act identifies the five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered. Our evaluation of these threats in terms of the petitioned action to list the Sonoran Desert Area population of the bald eagle as a distinct population segment (DPS) is presented below. Throughout this finding we refer to the Sonoran Desert Area population of the bald eagle, because that is the petitioned entity; however, we have determined that this population does not constitute a DPS and, therefore, is not a listable entity. Even though we have made this determination, we conducted the five-factor analysis below as an exercise to review the status of the Sonoran Desert Area population of the bald eagle.

In considering what factors might constitute a threat, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Endangered Species Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely to be negatively affected could suffice. The mere identification of factors that could affect a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of ''threatened species'' or ''endangered species'' under the Endangered Species Act.

The following analysis considers all known threats to bald eagles in the Sonoran Desert Area, as described below. Factors that are believed to have affected or continue to affect bald eagles in the Sonoran Desert Area include the degradation or loss of riparian habitat; loss of surface flows from groundwater pumping and surface water diversions; demographic factors; declining prey base; contaminants, pollutants, and eggshell thinning; climate change; and human disturbance. It is important to recognize that in most areas where bald eagles occur, two or more factors may be acting in combination in their influence on individuals of the population, the entire local population, or the suitability of habitat.

Within the Sonoran Desert Area, bald eagles on the Verde River accounted for 44 percent of total productivity between 1971 and 2008 while breeding areas on the Salt River accounted for an additional 34 percent of total productivity. In total, 78 percent of bald eagle productivity in the Sonoran Desert Area, exclusive of Sonora, is tied to breeding areas along these two river systems. Therefore, the following analysis places emphasis on threats to breeding areas along these two river systems. We also included threats to other river systems—including the Agua Fria, Bill Williams, and Gila Rivers—in our analysis of threats to bald eagles in the Sonoran Desert Area.

In our analysis of Factors A through E below, we describe current threats, as well as threats that we anticipate will increase, or will be realized in the future. For populations within Arizona, our analysis benefitted from the availability of specific research, monitoring, and other studies. The analysis of these factors as they pertain to the status and threats to the bald eagle in mainland Sonora is broader in scope, focusing on regional or statewide areas, because there has been less work completed for the bald eagle in this area. In some instances, we include a discussion on more refined geographic areas of Mexico when supported by the literature.

Traditional Ecological Knowledge

We included traditional ecological knowledge from Native American tribes in our consideration of threats to the Sonoran Desert Area population of bald eagle. Traditional ecological knowledge includes an intimate and detailed knowledge of plants, animals, and natural phenomena; the development and use of appropriate technologies for hunting, fishing, trapping, agriculture, and forestry; and a holistic knowledge, or ''world view,'' that parallels the scientific discipline of ecology (Bourque *et al.* 1993, p. vi). Native people depended upon the animals and plants of these environments for food, clothing, shelter, and companionship and as a result developed strong ties to the fish and land animals, the forests, and the grasslands (Pierotti and Wildcat 1999, pp. 192–195). We include bald eagle

traditional ecological knowledge provided to us by the White Mountain Apache Tribe, San Carlos Apache Tribe, Tonto Apache Tribe, Yavapai-Apache Nation, Salt River-Pima Maricopa Indian Community, Tohono O'odham Nations, and Fort McDowell Yavapai Nation.

Traditional ecological knowledge from the White Mountain Apache Tribe, San Carlos Apache Tribe, Tonto Apache Tribe, and Yavapai-Apache Nation (collectively referred to as Western Apache) indicates that bald eagles are absent from many nest sites where they were once observed. Feathers originating from native, living, wild bald eagles are obtained year round for ceremonial purposes. Part of the ritual use of these feathers requires obtaining power from the place in which the eagle lives, and, thus, these places are considered extremely powerful and are known to the user. The task of obtaining feathers is only accomplished by certain individuals who have cultural knowledge and the traditional ecological knowledge of these places. This knowledge is gained from years of experience through observation, which is then orally transferred to the next generation. Western Apache traditional ecological knowledge suggests that irresponsible urban expansion, agriculture, mining, and resultant climate change have brought the earth, and bald eagle habitat, to a crisis point. Traditional ecological knowledge additionally suggests that the riparian systems on which bald eagles depend have been severely damaged, and continue to be threatened with upland watershed decline, the region's dwindling water resources, multiple sources of pollution, water rights conflicts, and the spread of nonnative fauna species (Lupe *et al.* 2008, pers. comm.). Tribal information is consistent with published information documenting the modification and destruction of aquatic and riparian communities in the southwestern United States (Medina 1990, p. 351; Sullivan and Richardson 1993, pp. 35–42; Fleischner 1994, pp. 630–631; Stromberg *et al.* 1996, pp. 113, 123–128; Belsky *et al.* 1999, pp. 8–12; Webb and Leake 2005, pp. 305–310).

Traditional ecological knowledge from the Western Apache reports a decline of the bald eagle population and nesting sites throughout Arizona over the past 150 years. Bald eagle nests are no longer present in sites where they were known to the Western Apache, including Warm Springs Canyon, Black River Canyon, Paymaster Canyon, and Salt Creek Canyon on the San Carlos Reservation. According to traditional ecological knowledge of the Western Apache, more bald eagles were previously observed below Coolidge Dam and at Talkalai Lake than currently exist. In addition, bald eagles are no longer present in the canyon above Clarksdale, Box Canyon, Fossil Creek, Courthouse Butte around the Sedona area; Mazatzal Mountains near Payson; and Hackberry Mountain southeast of Camp Verde (Sparks 2009, entire). According to transcripts from a government-to-government consultation meeting held on July 3, 2008, the Fort McDowell Yavapai Nation reported up to 15 bald eagle nests historically occurred on their reservation lands, and now there are four. Western Apache experts with traditional ecological knowledge about the bald eagle note atmospheric changes, and alteration in bee, wasp, and hornet populations, as a few of the many key factors in bald eagle habitat decline. Declines and shifts in distribution and abundance in bald eagles in Arizona may have occurred within the last 150 years from areas where habitat and riverine systems may no longer exist (Mearns 1890, p. 53; Hunt *et al.* 1992, Ai, A10–A12; Mighetto *et al.* 2009, pp. 6–8). For example, Mighetto *et al.* (2009) reported eagles historically occupying areas around Window Rock, Lake Mead, Anderson Mesa near Big Horse Lake, Stoneman Lake, Fort Apache, and Mt. Graham, but they no longer exist in these locations.

The Salt River Pima-Maricopa Indian Community believes the Bald and Golden Eagle Protection Act (see discussion under Factor D below) will not provide the necessary level of protection needed to keep the bald eagle in the Sonoran Desert Area viable. The Community further believes that habitat protection is uncertain based on the new regulatory definition of ''disturb,'' which is untested in the courts. The Western Apache have expressed similar concern that habitat will not be protected. The Western Apache Tribes and Nation have indicated that, within reservation boundaries, there may be inadequate resources to address these threats. They indicate that the incentive for poaching bald eagles is high in Apache communities, primarily due to desperate economic conditions. A single bald eagle can be sold for more than $5,000. The Western Apache believe that even a perceived loss of protection for the bald eagle could bring about an increase in poaching activities. Tribal law enforcement agencies, already facing funding shortages, would be unable to respond properly to such threats (Lupe *et al.* pers. comm. 2008).

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Within Arizona, bald eagles are listed as a Tier 1a ''species of greatest conservation need'' in the State's ''Comprehensive Wildlife Conservation Strategy'' (AGFD 2006b, p. 155). Additional provisions are in place for the management of bald eagles. The management of bald eagles in Arizona is also overseen by the Southwestern Bald Eagle Management Committee, which is a multiparty committee initiated in 1984 that focuses on coordination of bald eagle conservation efforts in Arizona across various land ownerships. The AGFD, in 2006, developed the ''Conservation Assessment and Strategy for the Bald Eagle in Arizona,'' which described the current threats to bald eagles in Arizona and identified the best management practices necessary to maintain their distribution and abundance post-delisting. The ''Conservation Assessment and Strategy for the Bald Eagle in Arizona'' has been implemented following the signing of a Memorandum of Understanding in 2007. As a result, the AGFD continues to conduct bald eagle winter counts, monitor bald eagle distribution and productivity, support the ABENWP, and conduct other activities identified in the ''Conservation Assessment and Strategy for the Bald Eagle in Arizona.'' The AGFD believes that these conservation efforts will sufficiently manage the threats to bald eagles in the Sonoran Desert Area of Arizona absent the protections under the Endangered Species Act (AGFD 2008b, p. 6).

A number of potential threats to bald eagle habitat in the Sonoran Desert Area have been identified by the petitioners, the AGFD, and the Service. In our review of the best scientific and commercial data available, activities that are potentially affecting bald eagles and their habitat in the Sonoran Desert Area include urban and rural development, livestock grazing, groundwater pumping, and surface water diversions, in that each of these activities (or a combination of these activities, acting in concert) could degrade or remove riparian habitat. Because bald eagles rely on aquatic ecosystems as a source of fish for survival and reproduction and trees for nesting, any loss or degradation of riparian habitat is of particular concern (Stalmaster 1987, pp. 159, 170–171). The ''Conservation Assessment and Strategy for the Bald Eagle in Arizona'' identified riparian degeneration as a management challenge for 25 of 45 known breeding areas (or 58 percent)

located within the Sonoran Desert Area of Arizona at that time (Driscoll *et al.* 2006, pp. 51–53). Additionally, the potential loss of surface flows within sections of the Gila, Salt, Verde, Agua Fria, or Bill Williams Rivers would likely have negative impacts on the density and distribution of prey and the health and persistence of riparian vegetation. Below we present information about these factors, and discuss the magnitude and extent of the impacts from these factors on the Sonoran Desert Area population of the bald eagle.

Degradation and Loss of Riparian Habitat

Riparian communities are sensitive to even low levels (less than 10 percent) of urban development within a watershed (Wheeler *et al.* 2005, p. 154). Development along or in proximity to riparian zones can alter the nature of stream flow dramatically, changing once-perennial streams into ephemeral streams, which has direct consequences on the riparian community (Medina 1990, pp. 358–359). The distribution of breeding bald eagles in the Sonoran Desert Area follows major watersheds, with the highest productivity occurring along the Salt and Verde Rivers, and some of the breeding areas along these rivers are located in close proximity to metropolitan areas. The conversion of perennial streams into ephemeral (lasting a short time) streams or loss of open space can directly affect bald eagles along these rivers (Medina 1990, pp. 358–359; Ewing *et al.* 2005, p. 11). Loss of water and conversion to ephemeral streams eliminates or reduces the quality of riparian habitat, including the trees on which bald eagles depend for nesting and perching. Loss of open space or clearing of habitat for development removes vegetation directly, either in the watershed or in the riparian areas themselves, making the areas less suitable for bald eagles by removing key habitat components (*e.g.,* water, large trees).

The influence of urbanization and development can be observed within the greater Phoenix, Arizona, area, where impacts have modified riparian vegetation, structurally altered stream channels, facilitated nonnative fish species introductions, and dewatered large reaches of formerly perennial rivers where the bald eagle historically occurred (portions of the Gila and Salt Rivers). Urbanization on smaller scales can also affect habitat suitability for the bald eagle. Regional development and subsequent land use changes spurred by increasing human populations along lower Tonto Creek and within the Verde Valley may negatively affect the suitability of this habitat for bald eagles by reducing the quantity and quality of aquatic resources for native fish and reducing the width of riparian habitat (Paradzick *et al.* 2006, pp. 89–90). Studies conducted in other portions of the range of the bald eagle in North America, such as the Chesapeake Bay, indicated that human development and low availability of suitable perch trees combined to affect bald eagle use of shoreline habitat (Chandler *et al.* 1995, pp. 328–330). Bald eagles there preferred shoreline segments that contained more suitable perch trees, more forest cover, and fewer buildings. However, to have a significant effect, urbanization and development must be occurring at a scale and intensity that results in a risk to the Sonoran Desert Area population of the bald eagle at the population level. The ''Conservation Assessment and Strategy for the Bald Eagle in Arizona'' identified development as a management concern in 4 of 45 bald eagle breeding areas (or 9 percent) located within the Sonoran Desert Area of Arizona at that time (Driscoll *et al.* 2006, pp. 51–53). Although urbanization and development may be affecting breeding areas at a localized level, it does not appear that they are currently a threat at the population level, because the population remains stable or increasing.

The effects of urban and rural development on riparian habitat are expected to increase as human populations increase. Arizona increased its population by 394 percent from 1960 to 2000, and is second only to Nevada as the fastest growing State in terms of human population (Social Science Data Analysis Network (SSDAN) 2000, p. 1). Over the same time period, population growth rates increased in Arizona counties where the bald eagle occurs: Maricopa (463 percent), Yavapai (579 percent), Gila (199 percent), Graham (238 percent), Apache (228 percent), and La Paz (142 percent) (SSDAN 2000). Population growth trends in Arizona are expected to continue into the future. The Phoenix metropolitan area, founded in part due to its location at the junction of the Salt and Gila Rivers, is currently a population center of 3.63 million people. Arizona is predicted to have the sixth largest net increase in population (slightly over two million people) in the nation between 1995 and 2025 (U.S. Department of Commerce 1997, p. 1). The human population in Maricopa County alone is expected to reach five million people by 2025 (City of Phoenix 2004, p. 18), and the county stands to lose up to an estimated 347.2 square miles of open space that are currently in the path of development (Ewing *et al.* 2005, p. 11).

The human population in two towns along the Verde River, Cottonwood and Camp Verde, is expected to grow by approximately 70 and 77 percent, respectively, between 2006 and 2040 (Arizona Department of Administration 2012). The town of Chino Valley, at the headwaters of the Verde River, grew by 22 percent between 2000 and 2004; Gila County, which includes portions of the Salt River and Tonto Creek, grew by 20 percent between 2000 and 2003 (U.S. Census Bureau 2006). Human population growth is expected to continue to affect the riparian and aquatic communities of the Verde Valley through increased demand for water, increased runoff, shortened return intervals on flood events, water quality impacts, and increased recreational impacts where bald eagles are concentrated (Girmendock and Young 1997, p. 57; American Rivers 2006, p. 30; Paradzick *et al.* 2006, p. 89).

The human population and associated recreational developments in the Sonoran Desert Area, which are often tied to water bodies and riparian areas, are expected to continue to grow into the future. In the Sonoran Desert Area, an expanding human population has led to higher recreational use of riparian areas, as evidenced along reaches of the Salt and Verde Rivers in proximity to the Phoenix metropolitan area. Recreational impacts can include direct habitat losses for development of recreational facilities and infrastructure or indirect loss of habitat as a result of human disturbance (see Factor E for further discussion). Developments within occupied breeding areas include a turnaround for river tubing near Bulldog Cliffs (Salt River) and lakeside resorts on the north shore of Lake Pleasant. Additional developments that may affect bald eagle breeding areas include: a four-lane boat launch and a 1,000 person per day recreation area on Bartlett Lake; a new day use and emergency boat launch constructed on the lower Salt River; a new RV park constructed within 1300 feet (396.2 meters) of a nest on the lower Verde River; and a 100-unit campground and boat ramp along Tonto Creek (Driscoll *et al.* 2006, p. 14).

In many of the breeding areas within the Sonoran Desert Area of Arizona, effects from development have been mitigated through the implementation of seasonal closures and monitoring by the Arizona Bald Eagle Nest Watch Program (ABENWP). The ABENWP, managed by the AGFD, closely monitors breeding bald eagles in areas with high

recreational pressure. This program was initiated in 1978 with the goals of public education, data collection, and conservation of the species. Nest watchers collect behavioral data, contact and educate the public in the vicinity of breeding areas, and identify potential threats to the breeding success of bald eagles. Funding for the ABENWP comes from a variety of sources, including State Wildlife Grants, donations, AGFD Heritage Funds (State lottery), matching funds for Federal grants, and contributions from Federal agencies. As a result of the bald eagle being delisted, there is the potential that the ABENWP could face funding shortages or that the bald eagle could receive less priority from partner agencies; however, there is currently no indication that either of these scenarios has occurred or will occur in the future.

The AGFD's Projects Evaluation Program is available for Federal agencies or companies with a Federal nexus. This program can be used to evaluate the impacts of planned or future projects in areas where there may be a species of concern. The AGFD believes the program will help to ensure bald eagles and their habitat are considered and evaluated for possible effects from development projects (Driscoll *et al.* 2006, p. 14). In the future, similar levels of development and modification as those described above can be expected as recreational facilities age and recreational pressures increase with increasing human populations. However, as evidenced by the continued reproductive success (*e.g.,* pairs continue to produce young) of the above affected breeding areas, the ability of the bald eagle in the Sonoran Desert Area to adapt to increases in the human population and habitat modifications is an indication that these actions are not posing a significant risk at the population level.

Livestock grazing has been a prevalent industry in the Southwest for 200 years or more. Poorly managed livestock grazing has damaged approximately 80 percent of stream, cienega (spring), and riparian ecosystems in the western United States (Kauffman and Krueger 1984, pp. 433–435; Weltz and Wood 1986, pp. 367–368; Waters 1995, pp. 22–24; Pearce *et al.* 1998, p. 307; Belsky *et al.* 1999, p. 1). Overgrazing by domestic livestock has been a significant factor in the modification and loss of riparian habitats in the arid western United States (Schultz and Leininger 1990, p. 295; Belsky *et al.* 1999, pp. 1–3). If not properly managed, livestock grazing can significantly alter watershed hydrology; water quality; aquatic and riparian ecology; and the structure and composition of riparian plant communities. Excessive grazing can also prevent the establishment of seedlings (Carothers 1977, p. 2; Glinski 1977, pp. 119–121), which limits the growth of future nest and roost trees for bald eagles (Driscoll *et al.* 2006, p. 4). Important features of bald eagle habitat—such as large trees for roosting and nesting, sufficient flows, water temperatures, and water quality—are most affected by improper livestock grazing in riparian areas. Currently, active grazing is occurring within the Verde River floodplain in the Verde Valley, lower Verde River, and upper Salt River.

The impacts of improper livestock grazing have been reduced on many streams, in part through consultations completed under section 7 of the Endangered Species Act and in part through improved grazing management practices. Some of the consultations were for other species that use the same streams as habitat or for foraging (e.g., Southwestern willow flycatcher (*Empidonax trailii extimus*), razorback sucker (*Xyrauchen texanus*), spikedace (*Meda fulgida*), loach minnow (*Tiaroga cobitis*)). Therefore, despite the delisting of the bald eagle, impacts from livestock grazing on streams will continue to be minimized through consultations conducted for those other species and their designated critical habitats. Along many portions of the Verde River and Tonto Creek, livestock grazing has currently been discontinued. Riparian recovery, at least in response to a reduction in grazing pressure, may therefore be underway in some of these areas. Improper livestock grazing may still be an added stressor on those systems where it continues to occur (absent a separately listed species), where trespass or unauthorized cattle are grazing, or where habitat is already degraded due to other factors.

In Mexico, while the magnitude and significance of adverse effects to riparian communities related to development lags behind the United States due to slower population and economic growth, impacts to riparian and aquatic communities are currently occurring with increasing significance (Conant 1974, pp. 471, 487–489; Contreras Balderas and Lozano 1994, pp. 379–381; va Landa *et al.* 1997, p. 316; Miller *et al.* 2005, pp. 60–61; Abarca 2006, pers. comm.; Rosen 2006, pers. comm.). Mexico's population increased by 245 percent from 1950 to 2002, and is projected to grow by another 28 percent by 2025 (EarthTrends 2003, pp. 1–2). As a result of the North American Free Trade Agreement, the number of maquiladoras (export assembly plants) is expected to increase by as many as 3,000 to 4,000 (Contreras Balderas and Lozano 1994, p. 384). To accommodate Mexico's increasing human population, rural areas are largely devoted to food production based on traditional methods, which has led to serious losses in vegetative cover and soil erosion (va Landa *et al.* 1997, p. 316). In addition, changes in land legislation within Mexico related to free market policies and local agricultural production methods may result in the loss of land management practices that protect the natural environment (Ortega-Huerta and Kral 2007, p. 1). Much of the riparian woodland in the broad floodplains along the Rio Bavispe has been cleared for agriculture and pasturelands. Similarly, portions of the riparian habitat along the Rio Yaqui have also been affected by agriculture, and heavy livestock grazing has occurred throughout the Rio Yaqui and Rio Bavispe (Brown *et al.* 1986, pp. 3, 5). In one breeding area along the Rio Yaqui, the nest failed in 1986 due to the construction of a fence in preparation for agricultural development. The nest was then destroyed in 1987 as a result of a fire set to clear the land for agriculture (Driscoll and Mesta 2005, in prep.).

Several recent development projects in Mexico have affected bald eagle breeding areas. In 1998, a new road was created from the Town of Sahuaripa to the Rio Yaqui/Sahuaripa confluence, which was followed by a cement property marker placed above the eagle's cliff nest in 1999 (Driscoll and Mesta 2005, p. 58). From 2000 to 2002, construction and completion of a new highway bridge occurred immediately at the Sahuaripa bald eagle nest, which had formerly been the most successful mainland Sonora bald eagle territory. Associated with the bridge construction, development of worker living quarters, an equipment staging area, and a construction material borrow site near the nest resulted in further habitat degradation. The placement and development of the new road and bridge generated increased human activity (e.g., fishing, swimming, picnics), and development of four ranch buildings in the Sahuaripa breeding area. In 2009, this pair was located in the vicinity of the Sahuaripa breeding area, and it is likely that they have relocated to a new site below the bridge (Mesta 2009, pers. comm.).

Despite the increase in human population and associated impacts to the riparian habitat on which the bald eagle depends, the known number of breeding areas within the Sonoran

Desert Area has increased from a low of three in 1971 to a high of 52 in 2009, and the population has expanded into areas not previously occupied. As a result of this growth, the density of breeding areas along sections of the Salt and Verde Rivers has increased in recent years. AGFD survey data showed that the bald eagle population in Arizona continued to grow during approximately the same time period that Arizona experienced a 394 percent increase in human population (*e.g.,* from 1960 to 2000). While the magnitude of the effects described above may be moderate in localized areas, they are not occurring at all breeding areas or throughout the range of the Sonoran Desert Area population of the bald eagle. In addition, the eagle population has continued to increase at the same time that urbanization and the loss of riparian habitat have increased. Therefore, the urbanization and loss of riparian habitat are not affecting bald eagles at such a scale or magnitude that they constitute a threat at the population level.

At this time, there is no indication of additional or new impacts to riparian areas that would accelerate or increase the current pressures to riparian habitat beyond what is currently occurring. Based upon what we know about how impacts to these key features can affect bald eagles, it would not be unreasonable to anticipate that if there is continued degradation of habitat, especially key features such as trees, at some point reproductive performance or breeding area occupancy could be affected. At what point and to what extent continued human population growth, associated resource use, and degradation of riparian habitat will manifest itself in effects to the Sonoran Desert Area population of the bald eagle is unknown. Unlike species with a narrow habitat requirement, the bald eagle uses broader landscapes, and as a result, some change to habitat is not expected to impede their ability to adjust and use the available landscape features successfully. As a result, the best available information does not suggest the increase in human population occurring in Arizona now and predicted to continue into the future will result in declines to the Sonoran Desert Area population of the bald eagle.

Loss of Surface Flows From Groundwater Pumping and Surface Water Diversions

Increased urbanization and population growth also results in an increase in the demand for water and, therefore, water development projects. American Rivers (2006, p. 30) found that municipal water use in central Arizona increased by more than 39 percent between 1998 and 2006, and that the demand for water will only increase as the human population increases. Water for development and urbanization is often supplied by groundwater pumping and surface water diversions from sources that include reservoirs and Central Arizona Project's (the steward of central Arizona's Colorado River water entitlement) allocations from the Colorado River. The impacts of groundwater pumping on surface water flows are of particular concern along the Salt and Verde Rivers (University of Arizona 2004, p. 69), as well as the Gila River, all of which occur within the Sonoran Desert Area. Most of the recent bald eagle breeding areas have become established along the Salt and Verde Rivers (Allison *et al.* 2008, pp. 17–18), and elimination of key habitat elements (e.g., water, prey base, large trees) could affect the ability of bald eagles to continue to reproduce and expand along these river systems.

The Verde River was identified as one of the country's most endangered rivers of 2006 (American Rivers 2006, pp. 30–31) due to groundwater pumping. As a result of rapidly growing communities in Arizona, groundwater pumping has caused portions of the Verde River to have limited or no flow during portions of the year (Stromberg *et al.* 1996, pp. 113, 124–128; Rinne *et al.* 1998, p. 9; Voeltz 2002, pp. 45–47, 69–71). Specifically, more than 6 miles of perennial stream segments on the Verde River have been lost since approximately 1950, and water levels near Sullivan Lake in the headwaters of the Verde River have declined by greater than 80 feet since 1947 (Wirt 2006, pp. 5–6).

Because of increasing demands for water and decreasing groundwater levels, the State Legislature adopted the Arizona Groundwater Management Act (A.R.S. § 45–555) in 1980. The Arizona Groundwater Management Act designated four Active Management Areas where groundwater supplies are critical or imperiled for whole or multiple groundwater basins. The Arizona Groundwater Management Act limits existing uses of groundwater within an Active Management Area, and restricts new uses (Marder 2009, p. 183). The City of Prescott is out of compliance with the Arizona Groundwater Management Act, and, in order to achieve compliance, has had to secure new resources, teaming up with Prescott Valley in developing a plan to pump water from the Big Chino Aquifer. This plan and the associated well field development and water transfer is commonly known as the Big Chino Ranch Project. In 1992, the Arizona Legislature adopted A.R.S. 45–555(E), which explicitly authorizes the City of Prescott to pump up to 14,000 acre-feet per year from the Big Chino Aquifer. In addition, the town of Chino Valley has plans for their own groundwater pumping, which would be located in the Big Chino aquifer, and would allow the development of approximately 20,000 new homes (Marder 2009, pp. 183–187).

Many scientists, conservationists, and water providers, such as the Salt River Project, are in agreement that groundwater pumping has already had an impact on the Verde River and that—given the plans of Prescott, Prescott Valley, and Chino Valley—further reductions in the Verde River instream flows are inevitable (Marder 2009, p. 187). The proposed groundwater pumping and inter-basin transfer project is projected to deliver 2.8 billion gallons of groundwater annually from the Big Chino sub-basin aquifer to the rapidly growing area of Prescott Valley for municipal use (McKinnon 2006, p. 1). It is estimated that 80 to 85 percent of base flow in the upper Verde River comes from the Big Chino aquifer, and it is possible that that these groundwater withdrawals could dewater the upper 24 miles of the Verde River (Wirt and Hjalmarson 2000, p. 44; Wirt 2005, p. G7; Blasch *et al.* 2006, updated 2007, pp. 1–2). The loss of water on the upper Verde River would affect fish populations and consequently productivity in at least one bald eagle breeding area (Driscoll *et al.* 2006, p. 15).

The effects of large-scale groundwater pumping associated with the proposed Big Chino Water Ranch Project and its associated 30-mile pipeline have yet to be realized in the Verde River. It is uncertain that this project will occur given the legal and administrative challenges it faces; however, Prescott, Prescott Valley, and Chino Valley have invested millions of dollars in planning and property acquisition, and the pumping has already been authorized by State law. In 2009, a Memorandum of Understanding was signed between the Town of Chino Valley and the Service that may help to mitigate some of the impacts of their groundwater withdrawals in the future. The Town of Chino Valley has agreed that, as it develops its water development plan, it will confer with the Service to assess potential impacts to the Verde River and its native species and habitats, and will cooperate with the Service to remove or reduce impacts (Service 2009, p. 2).

Additional groundwater withdrawal projects that may affect the Verde River include developments associated with the proposed consolidation of checkerboard land ownership in the Big Chino Valley. Authorized by Title I of Public Law 109–110 in November 2005, the Yavapai Ranch Limited Partnership will acquire 15,400 acres of land within Prescott National Forest in the Big Chino Valley, consolidating private ownership of 30,440 acres. At full buildout, the development could result in water use of an additional 1,039 acre-feet pumped from the Big Chino aquifer. Existing groundwater withdrawals for the Big Chino sub-basin between 1990 and 2003 averaged 11,840 acre-feet (Blasch *et al.* 2006, updated 2007, p. 82). Those withdrawals—in conjunction with proposed pumping from the City of Prescott, Town of Prescott Valley, and the Yavapai Ranch—would exceed the total rate of recharge to the Big Chino aquifer of approximately 21,500 acre-feet.

The middle Verde River has experienced low flows that have at times resulted in only 5,982 acre-feet of runoff into Horseshoe reservoir, considerably less than the normal of 7,478 acre-feet (Verde Natural Resources Conservation District 1999, p. 1). Multiple diversions and groundwater pumping are likely contributing to low flows in this portion of the Verde River (Miller 1961, pp. 398–399; Owen-Joyce and Bell 1983, pp. 33–37; Sullivan and Richardson 1993, pp. 96, 124; Stromberg 1993, p. 101; Glennon and Maddock 1994, pp. 578–585; Glennon 1995, pp. 133–134; Tellman *et al.* 1997, pp. 46–49).

In Tonto Creek, which feeds into Roosevelt Lake on the Salt River, groundwater pumping is one of the factors that contribute to a loss of surface flows during part of the year between the winter and spring runoff and summer monsoon (Abarca and Weedman 1993, p. 2). However, Tonto Creek supports only two bald eagle breeding areas, both of which continue to produce young on a regular basis. In addition, the adults from one of these breeding areas may acquire additional resources from Roosevelt Lake during years of high water or during the winter (Service 2003, p. 63).

Groundwater pumping has also led to identification of the Gila River as the nation's seventh most endangered river in 2008 (American Rivers 2008, p. 33). Congress, through the Arizona Water Rights Settlement Act of 2004 (Pub. L. 108–451, 118 Stat. 3478, December 10, 2004), allocated up to $128 million for implementation of water projects designed to meet New Mexico's future water needs (NMISC 2006, pp. 6–7). The State of New Mexico must provide notice to the Secretary of the Interior by December 2014 whether or not it will use the allocation to develop water projects.

The New Mexico Interstate Stream Commission has proposed a project that would divert up to 14,000 acre-feet of water from the Gila River and its tributary, the San Francisco River, annually. The project would also require a diversion structure, pumping station, power station, a pipeline or canal system, and potentially an offsite dam and reservoir. The amount of water diverted would negatively affect groundwater wells, impair the river's natural flows, impede the growth of riparian vegetation, and negatively affect native fish and birds (American Rivers 2008, p. 33). While existing water rights of the San Carlos Apache Tribe would ensure that adequate flows remain in the Gila River to allow for the San Carlos Reservoir in Arizona to be at least partially filled, a reduction in flows would mean that less water would be available for storage in the reservoir, and, consequently, less water would be released from the reservoir into areas on the Gila River downstream of the reservoir.

Decreased flows from the reservoir could negatively affect the prey base (fish) and habitat for the three bald eagle breeding areas located downstream. However, it is important to note that the adults at only two of these breeding areas rely solely on free-flowing sections of the Gila River for foraging resources, and neither of them has ever produced young (Allison *et al.* 2008, pp. 17–18). The adults at the third breeding area use the San Carlos Reservoir as their primary foraging area and are less likely to be affected by decreased flows in the Gila River.

The construction and management of reservoirs may result in adverse effects to the river ecosystem. However, the presence of reservoirs, dams, or regulated river reaches did not appear to have a negative effect on bald eagle reproduction in a sample of 21 bald eagle territories studied in Arizona in the 1980's (Hunt *et al.* 1992, p. A-iv). The presence and management of reservoirs can lead to sediment entrapment, reductions in total annual flow and annual flood peaks, changes in the timing and size of high and low flows, altered surface area due to water releases, and altered short-term fluctuations. These in turn cause changes to plant species, including a loss of some species, and a decrease in recruitment of new vegetation (Service 2002, pp. I9–I12). However, eagle populations have not been shown to decline as a result of reservoirs, and may even benefit over the long term. For example, some reservoir storage has also created habitat for bald eagles in places where they may not have occurred, even before large-scale human development. Reservoirs provide additional habitat diversity, especially in a desert ecosystem, and may create a more stable food source for bald eagles during the winter months due to congregations of waterfowl. The creation of reservoirs usually coincides with the introduction of exotic species of fish, some of which (*e.g.,* catfish, bass, carp) can deplete native fishes. However, these exotic species make up a large portion of bald eagle diets in the Sonoran Desert Area, both in Arizona and Sonora (Hunt *et al.* 1992, pp. A25–A26; Hunt *et al.* 2002, pp. 249–251).

Similarly, eagle populations do not necessarily decline as a result of changes in vegetation due to the presence or management of reservoirs. Downstream from reservoirs, regulated flows have caused declines of riparian cottonwood and willow forests throughout the western United States (Service 2002, p. I12). The timing of water releases from many dams has also impeded riparian regeneration, destroyed riparian habitat and stream banks, and can influence the abundance, distribution, and diversity of fish species (Stromberg *et al.* 1996, p. 114; Poff *et al.* 1997, pp. 769–770). Although the persistence of riparian trees is not a management concern in most breeding areas upstream of dams or where appropriate cliffs are available, within some breeding areas located below dams, existing trees have become old, are dying, and are not being replaced (AGFD 2008, p. 9). This is in part due to modification of flood regimes by dams, which leads to a lack of sediment deposition, seed dispersal, and timing of flows adequate for seed germination.

When reservoir management leads to reduced surface area by releasing water and lowering the level of the reservoir, bald eagles established there may have fewer perches for foraging, loafing, feeding, and display (Stalmaster 1987). Similar impacts may also occur in Mexico, where water for agriculture is supplied through dams, specifically timed water releases, diversions, and surface water pumping (Driscoll and Mesta 2005, in prep.). Inundation from dams and reservoirs can have similar impacts, and can also eliminate spawning fish runs and remove nest sites, foraging areas, and gravel bars that accumulate carrion (Hunt *et al.* 1992, p. A46). The continuous drop of lake

levels at Roosevelt Lake from almost 100 percent storage capacity to near 10 percent between 1993 and 2001 was shown to have a negative effect on productivity at five bald eagle breeding areas that relied on the lake for foraging resources (Service 2003, pp. 65–67). Yet even with the drop in lake size, occupancy rates remained high, and young continued to be produced from the affected breeding areas. On the Verde River below Bartlett Reservoir, the release of cold water from the reservoir and other management activities contributed to this area's having the greatest increase in the number of bald eagle breeding areas in Arizona from 1994 to 2002 (Service 2003, pp. 72–73). Therefore, the best available information suggests that reservoir management may result in short-term, localized impacts to some bald eagle breeding areas in the Sonoran Desert Area by negatively affecting productivity, but these impacts are not resulting in a reduction of the eagle population.

Congress passed the Arizona Water Settlement Act approving the Gila River Indian Community Water Rights Settlement Agreement in 2004. In 2005, the Secretary of the Interior signed the Gila River Indian Community Water Rights Settlement Agreement confirming the Community's claim to 653,500 acre-feet of water per 10-year period, providing Federal funding for water development projects, assuring rights to use existing water delivery systems, and adding protections for the Community's groundwater supplies (DOI 2005, p. 4; ADWR 2006, p. 3–2). Potential projects to be developed, and the impacts any projects are likely to have on the Gila River, are not yet known; however, passage of the law in 2004 and development of the Gila River Indian Community Water Rights Settlement Act make certain that some level of diversion or pumping will occur in the future. We do not anticipate that such projects would have a population-level effect on the Sonoran Desert Area bald eagle population. As mentioned above, there are only two bald eagle breeding areas that rely solely on free-flowing sections of the Gila River for foraging resources, and neither of them has ever produced young (Allison *et al.* 2008, pp. 17–18).

In the Sonoran Desert Area, flood control has led to channelization, bank stabilization, and levees. These engineering activities affect riparian systems by preventing overbank flooding, reducing the extent of the floodplain, reducing water tables adjacent to streams, increasing stream velocity and the intensity of extreme floods, and generally reducing the volume and width of wooded riparian habitats (Szaro 1989, pp. 77–80; Poff *et al.* 1997, pp. 769–770). Southwestern streams are known for their ''flashy'' (*i.e.,* rapid changes in water levels following heavy rains) hydrology. In the past 30 years, 100-year flood events have occurred twice in Arizona, in 1983 and 1993. Other major floods occurred in Arizona in 1926, 1942, 1962, 1966, 1970, and 1974 (Arizona Geological Survey 1984, p. 1; USGS 1989, pp. 1–2; Arizona Geological Survey 1993, p. 1). This flooding history may be an indication that similar events are likely to occur in the Sonoran Desert Area in the foreseeable future, and, as a result, flood control measures will also likely continue to be implemented. These flood control measures and their associated impacts to riparian systems can decrease the amount of suitable habitat available to bald eagles for perching and nesting. On the other hand, the creation of berms, dams, and diversions has benefited some breeding pairs of bald eagles in the Sonoran Desert Area by making prey species more available, but these activities, in addition to water table pumping on rivers and creeks with limited flow, could at the same time be making prey species less available by reducing the size of bald eagle foraging areas (Driscoll *et al.* 2006, pp. 14–15).

A decrease in, or complete loss of, surface flows within portions of the Verde, Salt, or Gila Rivers could result in a loss of riparian habitat and a reduction or loss of prey (e.g., fish) at a localized level (for the affected breeding areas). The breeding areas associated with the Verde River are responsible for 22 percent of the total productivity within the Sonoran Desert Area. Because of the importance of river systems, particularly the Verde River, to the Sonoran Desert Area population of the bald eagle, accurately quantifying the potential effects of lost surface flows at the population level would be valuable. Statistical methods can be used to quantitatively estimate population growth and extinction probabilities for a species under different demographic and environmental scenarios. The simplest type of model to perform this can be referred to as a simple population viability analysis (PVA). A simple PVA quantitatively estimates population growth and extinction probabilities for a single population (Dennis et al. 1991, p. 116). The only PVA analyzing the potential impacts from the loss of surface flows to the Sonoran Desert Area population of the bald eagle was conducted in 2009. The Service used a PVA to analyze the potential impact that complete loss of surface flows on the upper Verde River would have on bald eagles breeding in the Sonoran Desert Area of Arizona. The preliminary results of this analysis indicated that, even with the hypothetical loss of breeding areas along the Verde River, the bald eagle population as a whole would remain stable (Millsap 2009, in prep.). This suggests that the loss of surface flows within portions of the Verde River may be a threat of moderate magnitude at a localized or regional scale, but the impact to Sonoran Desert Area bald eagles at the population level is predicted to be low.

Summary of Factor A

The Service has identified potential threats to the Sonoran Desert Area population of the bald eagle from the present or threatened destruction, modification, or curtailment of the Sonoran Desert Area population of the bald eagle. These threats include the degradation and loss of riparian habitat and the loss of surface flows from groundwater pumping and surface water diversions. There is little doubt that the human population in Arizona, specifically within areas occupied by bald eagles, will continue to grow into the future. Associated with this growth, there will likely be an increase in development and modifications to some of the habitat on which bald eagles depend for nesting, roosting, perching, and foraging.

Although available information indicates that urban and rural development, livestock grazing, groundwater pumping, and surface water diversions have likely resulted in historical and continued loss of habitat and negative impacts to specific breeding areas or individual eagles, there is no indication that ongoing impacts are affecting the Sonoran Desert Area population of the bald eagle at the population level. Thus, they are not significantly contributing to the risk of extinction of the population.

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

We do not have any evidence of risks to the Sonoran Desert Area population of the bald eagle from overutilization for commercial, scientific, or educational purposes, and we have no information to indicate that this factor will become a threat to the species in the future.

C. Disease or Predation

We do not have any evidence of risks to the Sonoran Desert Area population

of the bald eagle from disease or predation, and we have no information to indicate that this factor will become a threat to the species in the future.

D. Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the Sonoran Desert Area population of the bald eagle discussed under Factors A and E. Section 4(b)(1)(A) of the Endangered Species Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species * * *.'' We interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, plans, regulations, Memoranda of Understandings (MOUs), Cooperative Agreements, and other such mechanisms that may minimize any of the threats we describe in threat analyses under all five factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations, and management direction that stems from those laws and regulations. An example would be the terms and conditions attached to a grazing permit that describe how a permittee will manage livestock on a BLM allotment. They are nondiscretionary and enforceable, and are considered a regulatory mechanism under this analysis. Other examples include State governmental actions enforced under a State statute or constitution, or Federal action under statute. Some other agreements (MOUs and others) are more voluntary in nature; in those cases we analyze the specific facts for that effort to ascertain the extent to which it can be relied on in the future, and how effective it is, and will continue to be, at mitigating the threat.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may preclude the need for listing if we determine that such mechanisms adequately address the threats to the species such that listing is not warranted. Within its distribution in the Sonoran Desert Area, the bald eagle occurs on lands managed by a myriad of Federal and State agencies, Native American tribes, local municipalities, and private lands. In this section, we review existing State and Federal regulatory mechanisms to determine whether they effectively reduce or remove threats to the Sonoran Desert Area population of the bald eagle. Specifically, the regulatory mechanisms discussed below address some of the effects to bald eagles from the direct take of individuals, as well as the indirect take through disturbance, loss of riparian habitat, and development.

Federal laws and regulatory mechanisms protecting bald eagles throughout the United States include the Migratory Bird Treaty Act (MBTA, 16 U.S.C. 703–712), Bald and Golden Eagle Protection Act (BGEPA, 16 U.S.C. 668 *et seq.*), Executive Order 13186, the Lacey Act Amendments of 1981 (16 U.S.C. 3372–3378), Section 404 of the Clean Water Act (CWA, 33 U.S.C. 1251 *et seq.*), Fish and Wildlife Coordination Act (16 U.S.C. 661–666c), National Environmental Protection Act (NEPA, 42 U.S.C. 4321 *et seq.*) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). For more information regarding these regulatory mechanisms, please refer to the February 16, 2006, **Federal Register** notice (71 FR 8238) reopening the comment period on the proposed rule to delist the bald eagle in the lower 48 States. Below we summarize the protections provided to bald eagles under the NEPA, MBTA, BGEPA, and CWA.

All Federal agencies are required to comply with NEPA for projects they fund, authorize, or carry out. Additionally, activities on non-Federal lands are subject to NEPA if there is a Federal nexus, such as permitting by the U.S. Army Corps of Engineers or the Federal Energy Regulatory Commission. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1518) state that environmental impact statements shall include a discussion on the environmental impacts of the various project alternatives (including the proposed action), any adverse environmental effects that cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR part 1502). The NEPA itself is a disclosure law that provides an opportunity for the public to submit comments on the particular project and propose other conservation measures that may directly benefit listed or sensitive fish and wildlife species; however, it does not require subsequent minimization or mitigation measures by the Federal agency involved. Although Federal agencies may include conservation measures for listed species as a result of the NEPA process, there is no requirement that impacts to the Sonoran Desert Area population of the bald eagle from actions analyzed under NEPA would be precluded. Any such measures are typically voluntary in nature and are not required by the statute.

The MBTA implements various treaties and conventions between the United States and other countries and, unless permitted by regulations, it provides that it is unlawful to pursue; hunt; take; capture; kill; possess; offer to sell, barter, purchase, deliver; or cause to be shipped, exported, imported, transported, carried, or received any migratory bird, part, nest, egg, or product, manufactured or not. The BGEPA, originally passed in 1940, prohibits the take, possession, sale, purchase, barter, offer to sell, purchase, or barter, transport, export or import, of any bald or golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit. ''Take'' is defined as to ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb'' a bald or golden eagle. To provide a consistent framework in which to implement the BGEPA after bald eagle delisting, on June 5, 2007, the Service clarified its regulations implementing the BGEPA (72 FR 31132). These modifications to the implementing regulations for the BGEPA established a regulatory definition of ''disturb,'' a term specifically prohibited as ''take'' by the BGEPA.

As per the regulatory definition, ''disturb'' means to ''agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, injury to an eagle; a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior; or nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.'' The BGEPA was initially designed to protect eagles from intentional take, and lawfully permit intentional take for such purposes as education, depredation, research, and Native American religious purposes. However, the regulatory definition of ''disturb'' described above may have the added benefit of providing indirect protection of bald eagle habitat (*e.g.,* if destruction of habitat results in disturbance).

In 2009, the Service promulgated new permit regulations under the authority of the BGEPA for the limited take of bald eagles and golden eagles ''for the protection of * * * other interests in any particular locality'' where the take is compatible with the preservation of

the bald eagle and the golden eagle, is associated with and not the purpose of an otherwise lawful activity, and cannot practicably be avoided (74 FR 46836). The Service has interpreted ''compatible with the preservation of the bald and golden eagle'' to mean allowing take that is consistent with the goal of stable or increasing breeding populations. We will evaluate permit applications based on whether: (1) The take is necessary to protect a legitimate interest in a particular locality; (2) the take is associated with, but is not the purpose of the activity; (3) the take cannot practicably be avoided (or for programmatic authorizations, the take is unavoidable); and (4) the applicant has minimized impacts to eagles to the extent practicable, and for programmatic authorizations, the taking will occur despite application of Advanced Conservation Practices developed in coordination with the Service. Although the effects of implementing these regulations have not been realized, the Service's goal of a stable or increasing breeding population of bald and golden eagles indicates a commitment to their conservation and management into the future.

As discussed earlier in this document, bald eagle activities such as nesting, perching, roosting, and foraging in the Sonoran Desert Area occur from and in the large woody tree component of the riparian habitat found along rivers and streams, and section 404 of the CWA regulates fill in wetlands and streams that meet certain jurisdictional requirements. Activities that result in fill of jurisdictional wetland and stream habitat require a section 404 permit. The Service can review permit applications and provide recommendations to avoid and minimize impacts and to implement conservation measures for fish and wildlife resources, including the bald eagle. However, incorporation of Service recommendations into section 404 permits is at the discretion of the U.S. Army Corps of Engineers. In addition, not all activities in wetlands or streams involve fill, and not all wetlands or streams fall under the jurisdiction of the U.S. Army Corps of Engineers. Regardless, earlier in this finding we evaluated threats to the Sonoran Desert Area population of the bald eagle where effects to riparian habitat may occur. We found no information indicating that the degradation or loss of riparian habitat is acting on the species to the point that the species itself may be at risk, nor is it likely to become so in the future.

In Mexico, the bald eagle is listed at the species level as ''En Peligro de Extincion,'' or In Danger of Extinction, by the Secretaria de Medio Ambiente y Recursos Naturales (SEDESOL 2001, p. 20). Species in danger of extinction are ''those whose areas of distribution or size of their populations in the national territory have diminished drastically putting at risk their biological viability in their entire natural habitat, due to factors such as the destruction or drastic modification of the habitat, unsustainable exploitation, disease or depredation, among others'' (SEDESOL 2001, p. 4). This classification coincides partly with the International Union for Conservation of Nature's categories of ''in critical danger'' and ''in danger of extinction.'' This designation prohibits taking of the species, unless specifically permitted, as well as any activity that intentionally destroys or adversely modifies its habitat. Additionally, in 1988, the Mexican Government passed the General Law of Ecological Equilibrium and Environmental Protection that is similar to NEPA in the United States. This Mexican statute requires an environmental assessment of private or government actions that may affect wildlife or their habitat. However, while these laws in Mexico prohibit intentional destruction or modification of the bald eagle's habitat, they do not appear to be adequate to preclude impacts to the species' habitat. Currently, we know of no regulatory mechanisms or conservation planning in place that specifically targets the conservation of bald eagle habitat in Mexico. Legislation in Mexico has removed regulations that promoted intact protection of important riparian and aquatic habitats. Based upon the lack of conservation detected through existing regulations over the last 20 years of monitoring bald eagles in the mainland of Sonora, we anticipate there will continue to be future limitations to the regulatory mechanisms in Mexico.

Despite concerns expressed through an apparent lack of adequate protection for the bald eagle in Mexico, Federal regulatory mechanisms in place in the Sonoran Desert Area in Arizona, where most of the breeding areas are located, appear to be adequate to alleviate some of the threats to the population. The apparent lack of protection for bald eagles in Mexico may contribute to localized or regional impacts to bald eagle breeding areas in that country. However, these impacts only have the potential to affect the eight known breeding areas located in Mexico, which would not be sufficient to result in impacts at the population level.

Summary of Factor D

The Sonoran Desert Area population of the bald eagle is protected by many Federal laws and other regulatory mechanisms. Whether or not the population is listed under the ESA, the take of bald eagles in the United States—including the Sonoran Desert Area population—will continue to be prohibited under the MBTA, BGEPA, and the Lacey Act. While legislation in Mexico prohibits intentional destruction or modification of the bald eagle's habitat, and prohibits take, the legislation does not appear to be adequate to preclude impacts to the species' habitat. Nevertheless, even if this apparent lack of protection for habitat has impacts upon the bald eagles in Sonora, those impacts would only be localized or regional in scope, and would not affect the Sonoran Desert Area bald eagle as a population level.

After reviewing the best available commercial and scientific information, we conclude that the inadequacy of existing regulatory mechanisms does not significantly contribute to the risk of extinction of the Sonoran Desert Area population of the bald eagle, because the bald eagle is protected by many Federal laws and other regulatory mechanisms and our analysis of Factors A and E concluded that there are no significant threats to the population.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Demographic Factors

Three different demographic models have been completed for the bald eagle in Arizona; two of those models specifically analyzed only those bald eagles nesting in the Sonoran Desert Area of Arizona (Allison *et al.* 2008, pp. 26–38; Silver and Taylor 2008, pp. 17–25; and Millsap 2009, in prep.). The analysis associated with the first model estimated, based on resightings of eagles at breeding areas, that juvenile mortality increased substantially over the period of time between 1975 and 2007. If juvenile mortality is at the high levels estimated and it stays at those levels, the model estimated the probability of extinction for the Sonoran Desert Area population of the bald eagle in Arizona by 2075 at 69.5 percent. This analysis assumed that juvenile mortality would continue to occur unabated at that level and concluded that, should fish stocking on the Salt and Verde Rivers be decreased or the management efforts carried out under the ABENWP be discontinued, the probability of extinction would be even higher. However, if juvenile mortality could be reduced to the average mortality value of the entire period of study, the extinction risk would be reduced to four

percent by 2075 (Silver and Taylor 2008, pp. 2, 25–26, 52–55).

In the Arizona-wide model, the AGFD conducted its own demographic analysis of the bald eagle in Arizona in 2008. This analysis incorporated data from all breeding areas in Arizona, including six that were located outside of the Sonoran Desert Area. The model developed by the AGFD concluded that—depending on the age at first reproduction, sex ratios, and the proportion of females that breed each year—future annual declines in breeding will likely range between 3.6 and 5.5 percent. This is consistent with a stable or declining population (Allison *et al.* 2008, p. ii). In the same analysis however, simple counts of bald eagles breeding in Arizona each year indicated that the breeding segment has been increasing at an average rate of 4.0 percent per year from 1987 to 2003 (Allison *et al.* 2008, p. 26). The discrepancies between the demographic model and the count-based estimates may reflect incorrect assumptions about newly discovered breeding areas, idiosyncrasies of their data, low estimates of survival, emigration, shifting age of first reproduction from an expanding population, or recruitment of breeders from unmarked populations. The AGFD concluded that their work did not determine whether or not the bald eagle population in Arizona, including the Sonoran Desert Area, was stable, but instead identified gaps in data that limit the ability to accurately predict population stability through demographic models (Allison *et al.* 2008, pp. ii, 30–31).

The Service reviewed the above-mentioned models conducted by the AGFD and Silver and Taylor (2008, pp. 17–26). A concern with these models is that both have led to estimates of the annual rate of population change (or replacement rate (λ)) that are less than 1.0, indicative of a declining population, whereas actual counts of occupied territories have increased almost annually since 1983 (Allison *et al.* 2008, p. 20). Although there are many factors that might contribute to this discrepancy, the Service believes the most likely factor is that juvenile and subadult bald eagle survival is underestimated. Underestimation of survival rates for nonbreeding age classes and cohorts of raptors in mark-recapture studies is common (Kenward *et al.* 2000, p. 277; Millsap and Allen 2006, p. 1396), and both Silver and Taylor (2008, p. 24) and Allison *et al.* (2008, pp. 14, 33) recognized this as a possible reason for the incongruence between model-based results and reality. This can bias results from the fact that most detections of marked bald eagles occur once birds settle on a territory and begin breeding. Bald eagles marked as nestlings do not typically settle on a territory for 4 years or longer, and probabilities of detection are confounded by potential for long-distance natal dispersal, rates of which may differ between the sexes. As evidence of the potential that this bias exists for the Arizona study, the juvenile and subadult annual survival rate for the selected model in Allison *et al.* (2008) was 73 percent. Annual survival estimates from studies employing radio or satellite telemetry, which do not have the same resighting bias for juvenile and subadult bald eagles, ranged from an average of 95 percent in Virginia (Buehler *et al.* 1991, pp. 610–611), to 85 percent (Wood and Collopy 1995, pp. 83–85) in one Florida study and 84 percent in another (Millsap *et al.* 2004, pp. 1025–1027).

The Service has concerns about using model results that are inconsistent with known historic population trajectories to evaluate extinction risk. However, we believe it is reasonable to conclude that biased juvenile and subadult survival rates are the main reason for the discrepancy, and a logical fix is to iteratively adjust these rates until the annual rate of population change reaches the observed value and then to evaluate extinction risk using models that incorporate these demographic estimates. Using the adjusted survival rates, in 2009 the Service developed a third model, which specifically analyzed the Sonoran Desert Area population of bald eagles in Arizona (Millsap 2009, in prep.). For the baseline model, productivity was set at 0.76, nonadult survival (*i.e.,* fledgling to age four) was set at 0.805, adult survival was set at 0.88, and the number of suitable breeding territories was set at 42. Under this scenario, none of the 100 iterations in the model resulted in extinction, and the annual rate of population change was equal to 1.02 (i.e., the population was growing at an annual rate of 2 percent) (Millsap 2009, in prep.).

Mortality rates of bald eagles in Arizona appear to be consistent with those reported for other populations of bald eagles. An average of 16 percent adult mortality was reported between 1987 and 1990 (5.25 breeding adults annually) (Hunt *et al.* 1992, p. A137) for bald eagles in Arizona. This mortality rate is within the range reported for other populations, which ranged from 5 to 17 percent (Allison *et al.* 2008, p. 25). Nestling mortality rates of 22.6 and 25 percent have been reported in Arizona (Driscoll *et al.* 1999, p. 222; Allison *et al.* 2008, p. 33). In mainland Sonora, over 20 years of monitoring, 14 nestlings died (26 percent) of the 54 nestlings known to have hatched (Driscoll and Mesta 2005, in prep.). These rates are higher than the 15 percent reported in rangewide studies (Stalmaster 1987, p. 143). However, the higher rate of mortality reported in Arizona may be in part attributable to more intensive monitoring and consequently better detection of mortalities through the ABENWP. Subadult survival in Arizona is generally lower than that reported elsewhere, but this should be considered apparent survival, since estimates may include losses due to emigration as well as mortality.

Two adult bald eagles and two nestlings were discovered dead below nests within the mainland Sonora population in 1988 and 1993 (Driscoll and Mesta 2005, in prep.). Both of these dead adults are likely the result of aggressive interactions with other bald eagles. The two nestlings found dead were located within the crop of one of the dead adult eagles. In Arizona, intruding eagles have killed nestlings and fought with breeding eagles (Hunt *et al.* 1992, p. A146), and a breeding eagle killed and ate its own nestling while still in the nest (Beatty *et al.* 1995, p. 21). While the existence of these intruding eagles identifies the presence of an important ''floating'' population, these aggressive interactions may be a result of all serviceable breeding areas being occupied, therefore necessitating ''stealing'' of a territory (Hunt *et al.* 1992, p. A146). As a result, with only a few territories known to be occupied by bald eagles in mainland Sonora, these incidents could be an indication that additional suitable territories are not available. However, due to the difficulty of surveying and monitoring bald eagle nest sites in Sonora, we are not certain that this type of conclusion can be supported at this time.

The Sonoran Desert Area population of the bald eagle in Arizona had a mean estimated productivity rate of 0.80 between 1987 and 2003. Four other populations documented by Allison *et al.* (2008, p. 31) had estimates of productivity equal to or lower than that reported here, while the remainder of the populations had higher rates. Exact comparisons of productivity reported between studies are difficult, as different methods were used to measure productivity, and these studies occurred over different time periods. Studies in Arizona were more intensive and, therefore, more likely to document mortality of nestlings and fledglings beyond 8 weeks of age. This resulted in lower productivity and nest success

estimates than would be obtained under a conventional protocol (Allison *et al.* 2008, pp. 31–32).

In general, bald eagles in the Sonoran Desert Area of Arizona had lower fledgling success than bald eagles elsewhere, but this has not resulted in depressed productivity compared to other regions. The occupancy rate of known breeding areas in Arizona was about 90 percent, which is the same as that reported for Florida (Millsap *et al.* 2004, p. 1023). These high occupancy rates may indicate that the populations are large enough to saturate available breeding areas (Stalmaster 1987, p. 141). If this is the case, further growth of the breeding population would be limited by the lack of available nesting and foraging habitat. However, as mentioned above in the Factor A discussion, the known number of breeding areas within the Sonoran Desert Area has increased from a low of three in 1971 to a high of 52 in 2009, and the population has expanded into areas not previously occupied. This may indicate that the population has not yet reached the point of saturation. Allison *et al.* (2008, p. 32) noted that mechanisms such as habitat saturation, density dependence, or continuing external threats to productivity cannot be assumed at this point, and that low productivity levels by themselves should not be used to interpret the status of the species in Arizona. By themselves, productivity estimates are difficult to interpret, because low productivity in a population may indicate a population decline or, conversely, a recovered population.

Declining Prey Base

Appropriate prey resources are essential for the presence and distribution of bald eagle breeding areas, and similarly for the success of breeding attempts. Stalmaster (1987, p. 131) found that foraging areas are the most essential components of the habitat used by bald eagles, and they must provide an adequate amount of food in a fairly consistent fashion. He further noted that food may be abundant and nutritious, but if prey species are not accessible, they have no value to an eagle. Stalmaster (1987, pp. 170–171) noted that food must show a high level of continuity in its distribution, both in time and space, to have the maximum benefit. Eagles are able to fast for long periods; however, disruptions in prey abundance may cause excessive nestling mortality, increase susceptibility to disease, or reduce the general health of the bird.

Bald eagles rely on aquatic ecosystems as a source of a continuous and accessible supply of fish for survival and reproduction (Stalmaster 1987, pp. 159, 170–171). Dams can affect both the habitat and prey base of bald eagles by altering the flows of water and sediment in a stream (Service 2002, p. I8). River damming, regulation, and diversion can interrupt, reduce, or prevent the availability of fish to bald eagles. Conversely, dams can provide an additional source of food for bald eagles from fish that are killed in turbines, float downstream, and are scavenged (Stalmaster 1987, pp. 131, 159). As mentioned above under Factor A, reservoirs provide additional habitat diversity, especially in a desert ecosystem, and may create a more stable food source for bald eagles during the winter months due to congregations of waterfowl. The creation of reservoirs usually coincides with the introduction of exotic species of fish, some of which (*e.g.,* catfish, bass, carp) can deplete native fishes. However, these exotic species make up a large portion of bald eagle diets in the Sonoran Desert Area, both in Arizona and Sonora (Hunt *et al.* 1992, pp. A25–A26; Hunt *et al.* 2002, pp. 249–251).

Native fishes have been declining rapidly across the desert Southwest over the last century, and the desert aquatic environments in which they have evolved have been altered by various chemical, physical, and biological impacts. Within Arizona, populations of native fishes have been reduced by dam construction, altered flow regimes, loss of surface water, riparian vegetation degradation, and the introduction of various nonnative species. Introduction of nonnative fishes has had detrimental effects on native fishes through competition, hybridization, alteration of habitat, disease transfer, and predation (Bonar *et al.* 2004, p. 3; Minckley and Deacon 1991, pp. 15–17). As a result of competition and predation, nonnative fish have replaced native fish in many central Arizona rivers (Rinne and Minckley 1991, p. 40), and competition with nonnative fishes is now the most consequential factor preventing conservation and recovery of native fishes in the Southwest (Meffe 1985, pp. 184–185; Minckley and Deacon 1991, pp. 15–17; Marsh and Pacey 2005, p. 62).

Unlike bald eagles that rely primarily on dead and dying fish collected from the surface of lakes, bald eagles in the Sonoran Desert Area that forage primarily in free-flowing streams (and regulated stretches) rely upon capturing live fish (Hunt *et al.* 1992, p. A55). Hunt *et al.* (1992, p. A70) cited fish diversity as a crucial feature of suitable bald eagle breeding locations and native Sonoran and desert suckers as an important prey item in riverine systems. Other important fish species included exotic carp and channel catfish (Hunt *et al.* 1992, A26).

Various fish species become available to bald eagles as prey in different ways and at different times. Live fish become vulnerable to attack when they enter shallow water or swim near the surface. Within the Sonoran Desert Area, the most vulnerable species in shallow water are the bottom-feeders (e.g., Sonora sucker, desert sucker, carp, channel catfish, flathead catfish) because of their downward visual orientation (Hunt *et al.* 1992, p. A44). Species that spawn in shallow water such as carp and suckers are especially vulnerable. Of the 134 depth measurements at strike points where Sonoran Desert Area bald eagles captured fish, 70 (52 percent) were in water 20 cm (7.9 in) or less in depth, and 92 percent were in water less than 100 cm (39.4 in) deep (Hunt *et al.* 1992, p. A55).

Bald eagles in the Sonoran Desert Area are able to successfully exploit a wide range of prey including nonnative fish, but there is a specific sequence in the timing of prey availability such that one species rarely dominates the diet of an eagle pair throughout an entire breeding season. Pulses of increased prey availability occur throughout the breeding season. This diversity of their foraging suggests that threshold levels of prey, as well as habitat variation, may be requisite to nest site selection and nestling success (Hunt *et al.* 1992, p. A70).

Within the sequencing of increased prey availability to bald eagles nesting in riparian environments within the Sonoran Desert Area, native Sonoran and desert suckers seem to be important, not only for how they become available but also for when they become available. Suckers often spawn in riffles, the shallowest of the riverine habitats, and may be consistently exposed to attack at this stage of their life cycle (Minckley 1973, pp. 162, 169; Hunt *et al.* 1992, p. A57). Water temperature is the catalyst for fish spawning and, therefore, also causes differences in timing of fish availability within breeding areas. For example, the fact that suckers spawn early and carp (and catfish) spawn later in the eagles' breeding season may be of considerable advantage to nesting pairs of eagles. When both species are common, the result may be a prolonged availability of food for eagles (Hunt *et al.* 1992, p. A70). Suckers are the first of essential species to become most available to eagles while they are incubating eggs or

feeding small young. The movement of carp into shallow water to forage generally occurs seasonally after suckers have finished spawning (Hunt *et al.* 1992, p. A70). Because an eagle's foraging time is reduced due to the necessity of incubation or the care of newly hatched nestlings unable to regulate their own body temperature, the sucker's place in the sequencing of available prey may be of added importance for successful reproduction for eagles relying on free-flowing and regulated streams. Additionally, there are no other fish species used by bald eagles within the Sonoran Desert Area along rivers that have the same spawning schedule and accessibility to nesting eagles.

In the mid-1990s, an increase in nesting failure of previously successful bald eagle breeding areas along the free-flowing upper Salt River led to an examination of fish species diversity along this portion of the river. The introduction of predatory flathead catfish in the late 1970s nearly extirpated native fish populations, including previously abundant suckers. Flathead catfish, while available as bald eagle prey when smaller, grow to large sizes (up to 50 pounds), making them too large to be of use as prey. Large flathead catfish have also been observed preying upon smaller flathead catfish. The situation on the Salt River allowed observation of how the absence (or significant reduction) of a previously abundant prey species disrupted the temporal sequencing of prey availability and may have affected bald eagle productivity. The productivity of breeding areas along the upper Salt River decreased from the 1980s to the 1990s, and an increase in predatory catfish may have contributed to this decline (Driscoll *et al.* 2006, p. 19).

A similar trend in productivity (e.g. decline from the 1980s to the 1990s) was observed in the entire Sonoran Desert Area population of bald eagles during this time period, and it is possible that other factors may have contributed to the decline observed in the upper Salt River breeding areas. However, low productivity continues to occur in the upper Salt River breeding areas, while productivity has increased in other portions of the Sonoran Desert Area. Overall, productivity of bald eagles within the Sonoran Desert Area, even with the reductions observed in the upper Salt River, is consistent with that observed in other areas of the species' range (Driscoll *et al.* 2006, p. 5). It is possible that changes in fish populations (among other manmade impacts to streams) may be affecting the likelihood of expansion of bald eagles into currently unoccupied sections of other Sonoran Desert Area rivers.

On the free-flowing middle Verde River between Camp Verde and Horseshoe Lake, two previously productive bald eagle breeding areas are now observed to fail with consistency. For the first 39 years of their existence up to 1999, they were successful a combined 26 times. Since 2000, in a combined 18 nest years, they were successful only once (Driscoll *et al.* 2006, pp. 35–36, 48–50; AGFD 2007, pp. 33–34; AGFD 2008a, pp. 38–39). However, during the same time period, two other breeding areas located on this section of the Verde River have been successful a combined 14 times. Investigations into the distribution, abundance, and proportion of native and nonnative fish species along this length of the Verde River found native species the least abundant and nonnative the most abundant in this section of the Verde River. The conclusion for this distribution was that the low densities of native fish may be caused by continual predation since the early 1900s (Bonar *et al.* 2004, p. 3). Hunt *et al.* (1992, p. A46) also concluded that the rarity of suckers in river sections upstream of the reservoirs is also partially a result of sucker populations being overwhelmed by large numbers of carp and catfish from the reservoirs. Other predatory exotic fish, like smallmouth bass, may also contribute to the predation of native fish in this section of the Verde River.

It is informative to observe where bald eagles have established breeding areas and whether there is any relationship between those locations and the locations where impacts to prey resources may have already occurred prior to the modern day monitoring of bald eagle territories. For example, as discussed above, the majority of bald eagle productivity in the Sonoran Desert Area, exclusive of Sonora, is tied to breeding areas along the Salt and Verde Rivers. The Gila River and Lower Colorado River within the Sonoran Desert Area both provide miles of river with similar attributes to the Salt and Verde Rivers (e.g., presence of large-bodied fishes, cliffs and large trees for nesting, perennial flow, and existing bald eagle breeding areas). Five productive bald eagle breeding areas exist along or adjacent to these waterways. However, unlike the Salt and Verde Rivers, where eagles exist upstream and downstream of reservoirs, no bald eagle breeding areas are solely associated with the regulated mainstem Colorado River or the free-flowing Gila River above San Carlos Lake within the Sonoran Desert Area. All of their foraging areas are primarily associated with reservoirs (San Carlos Lake, Talkalai Lake, and Copper Basin/Gene Wash Reservoir). While two breeding areas were established along the regulated Gila River below Coolidge Dam at San Carlos Lake since the mid- to late-1990s, these pairs have never been successful (and only laid eggs five times) in their 23 combined nest years. These observed patterns and lack of success along the free-flowing and regulated sections of the Gila and Colorado Rivers within the Sonoran Desert Area are indicative that conditions are not conducive to successful nesting, and, based upon similar patterns observed along the upper Salt and Verde Rivers, lack of prey diversity may be a contributing factor.

Similar to bald eagles in the Sonoran Desert Area of Arizona, fish species eaten by nesting eagles in Mexico are a combination of nonnative and native fishes. Identified fish found in prey remains collected from nests were nonnative channel catfish, carpsucker (*Carpiodes carpio*), carp, tilapia (Tilapia sp.), largemouth bass, and native Yaqui catfish (*Ictalurus pricei*) and Yaqui sucker (*Catostomus bernardini*) (Driscoll and Mesta 2005, in prep.). Nonnative species, such as bullfrogs and sport and bait fish, have been introduced throughout Mexico, and continue to disperse naturally, broadening their distributions (Conant 1974, pp. 487–489; Miller *et al.* 2005, pp. 60–61; Luja and Rodriguez-Estrella 2008, pp. 17–22). The damming and regulation of Mexican rivers and the addition of nonnative fishes are expected, over time, to continue to provide conditions favorable to nonnative fish and declines in native fish (Unmack and Fagan 2004, p. 233).

Minckley and Miller (in Miller *et al.* 2005, p. 61) noted that Mexico's critical need for domestic, irrigation, and industrial water supplies and electrical power are being met through the impoundment of both major and minor rivers. They conclude that dams have remarkably harmful effects on riverine systems and native fishes, and that they result in the establishment of nonnative fishes, which is considered the single greatest challenge to survival of native fish species. Unmack and Fagan (2004, p. 233) noted that the current status of nonnative fishes in the Yaqui Basin is remarkably similar to what was evident from the Gila Basin in Arizona and that, without strong action, the native fish of the Yaqui Basin will become increasingly imperiled over the next several years. While nesting bald eagles can take advantage of the variety of

fishes along rivers, including introduced catfish and carp (Hunt *et al.* 1992, pp. Aii, Aiii), it is unclear to what extent nonnative fishes may be affecting the reproductive success of bald eagles in Mexico.

The ''Conservation Assessment and Strategy for the Bald Eagle in Arizona'' identifies the need to concentrate efforts on restoring native fish populations and fish diversity to stabilize bald eagle productivity and enhanced survival (Driscoll *et al.* 2006, pp. 51–53). However, efforts to accomplish increased fish diversity along regulated and free-flowing streams within the Sonoran Desert Area are difficult, complex, and require considerable funding, time, and public support. Even then, there is uncertainty over their success. For example, stocking of Colorado pikeminnow and razorback suckers has occurred within the Sonoran Desert Area on the Verde, Salt, Gila, and lower Colorado Rivers with little to no success. The Service is not aware of any management actions designed to improve the diversity of native Sonoran or desert suckers along the mainstem of these rivers within the Sonoran Desert Area, whereas sportfish stocking of nonnative species such as catfish and largemouth bass continue to be widespread in Arizona.

There is little evidence to suggest that without active management the balance of native and nonnative fish will be maintained or improved. At present, nonnative fish stocking continues with stocking schedules posted online, including schedules for stocking of the Salt and Verde Rivers. Each year, the AGFD stocks more than three million fish—including rainbow, Apache, brook, and cutthroat trout; largemouth bass; and channel catfish—in approximately 160 of Arizona's lakes, rivers, and streams (AGFD 2009b, p. 1). The stocking program is supported with Federal funds through the Federal Aid in Sport Fish Restoration Program, along with State funds from the sale of licenses and trout stamps. The Service is undergoing consultation in coordination with AGFD on the proposed stocking program for the next 10 years. The consultation will include an assessment of anticipated impacts of stocking of nonnative fish and their impacts on prey diversity for bald eagles into the future.

Based upon continued sportfish stocking, we anticipate continued increases in nonnative fish and reduced abundance and distribution of native fish on central Arizona rivers and reservoirs within the Sonoran Desert Area. Regarding recovery of native fishes in the southwestern United States, Clarkson *et al.* (2005, pp. 20, 23) noted, ''no amount of habitat restoration can successfully advance biological recovery unless preceded or accompanied by elimination of nonnatives.'' They further noted that nonnative species already occupy reservoirs and the few natural lakes in the Southwest, and that it is impractical to eliminate these fishes from lake habitats. They noted that medium and small warm-water streams and stream systems may be suitable for recovery of native fishes. However, for the most part, these are not the streams that support bald eagles. For those pairs relying on prey from regulated or free-flowing streams, the loss of fish diversity may be causing negative effects to reproduction at the localized level.

Despite this apparently continuing decrease in fish diversity, the best available information suggests that the scope and intensity of the effect this decrease in diversity is having or will have on the Sonoran Desert Area population of the bald eagle does not appear to be sufficient to result in population-level effects. While previously successful breeding areas located on the middle Verde River and upper Salt River have declined in productivity in recent years, these breeding areas continue to be occupied, and young are occasionally produced; new breeding areas and other non-riverine sites are producing eagles; and overall productivity rates within the Sonoran Desert Area are within the range of rates observed in other bald eagle populations. Therefore, after a review of the best available commercial and scientific information, we conclude that a declining prey base does not constitute a significant threat to the Sonoran Desert Area population of the bald eagle at the population level.

Contaminants, Pollutants, and Eggshell Thinning

As a barometer of environmental health at the top of the food chain, bald eagles are susceptible to impacts from contaminants that can accumulate in the bodies of fish (Newton 1979, pp. 230–231) and pollutants that can affect prey (Newton 197, p. 259). Water pollution was identified in a list of threats to aquatic biota in Mexico by Miller *et al.* (2005, pp. 60–61), and, clearly, contaminants such as organochlorides (*e.g.,* Dichlorodiphenyldichloroethylene (DDE), Dichlorodiphenyltrichloroethane (DDT)) and heavy metals (e.g., mercury, lead) continue to be threats to bald eagles. These contaminants can typically be associated with agriculture, urbanization, mining, and other resource uses (Newton 1979, pp. 230, 254–255). Similarly, pollution that kills or reduces fish populations directly affects the abundance, diversity, or availability of food needed for bald eagle reproduction.

The AGFD and the Service analyzed 27 addled bald eagle eggs in Arizona from 1994 to 2004 that showed mercury levels ranging from 0.55 to 8.02 parts per million (ppm). Of these eggs, 10 were classified as toxic (exceeding 2.0 ppm), 11 had elevated levels (1.5 to 2.0 ppm), and four had lesser concentrations (1.0 to 1.5 ppm). The 10 eggs classified as toxic came from breeding areas located on the Salt, Verde, and Gila Rivers and Tonto Creek (Driscoll *et al.* 2006, p. 21). While eggs tested for mercury were addled and did not produce young, successful production of young has occurred at all of these breeding areas following the year or years in which mercury was detected (viable eggs are not collected and tested for mercury). For example, a breeding area located on Tonto Creek had the highest ever recorded mercury level for eggs from Arizona in 1995, but the pair successfully produced young in 1996 through 2001, 2007, and 2008. Assuming mercury was the cause of nest failure, these data indicate that high levels of mercury in eggs at a given nest site may cause nest failure for one season, but future reproduction may not be affected.

Lead poisoning is an additional stressor for breeding areas within the Sonoran Desert Area. Lead poisoning in bald eagles has been linked to ingestion of lead gunshot, consumption of lead sinkers, and secondary consumption of lead-contaminated prey. Research indicates that toxic liver lead levels for bald eagles rangewide is somewhere between 6.0 and 10.0 ppm (Pattee *et al.* 1981, pp. 808–809; Driscoll *et al.* 2006, p. 20). From 1998 to 2004, 22 bald eagles (or 39 percent of all documented mortalities rangewide) had liver lead levels averaging 32.9 ppm and ranging from 0 to 9 times the toxic threshold. Only one of the eagles confirmed to have lead poisoning was fledged from a nest in Arizona. Because bald eagles travel large distances, the ingestion of lead could occur in any area along their migration, making it difficult to determine the source of the poisoning (Driscoll *et al.* 2006, pp. 20–21).

Organochlorides continue to be detected in bald eagle eggs within the Sonoran Desert Area, with a recent measurement of DDE at 4.23 ppm wet weight in one egg from a breeding area on the lower Verde River in 2002. A reduction in productivity is known to occur when DDE values in bald eagle

eggs are between 3 and 5 ppm (wet weight) (Wiemeyer *et al.* 1984, p. 541). This level has been reached in eggs collected from three breeding areas along the Verde River and one located on Tonto Creek. The most complete DDE data set over time is from a breeding area located on the upper Verde River, where DDE concentrations declined from 3.2 ppm in 1994 to 0.91 ppm in 2001. Following DDE levels of 3.20 ppm (wet weight), this breeding area produced young in 1996 through 2003, and 2005 through 2007. At another breeding area located on the upper Salt River, young have been produced since DDE levels of 4.17 ppm (wet weight) were found in 2001. At one breeding area located on the lower Verde River, DDE levels of 7.00 ppm (wet weight) were detected from an egg collected in 1997, but the breeding area produced young in 1998, 1999, and 2001 through 2008. Similarly, another breeding area in the same area, with DDE levels of 4.23 ppm in 2002, produced young in 2004 and 2006 through 2008 (Driscoll *et al.* 2006, p. 22).

DDT is known to cause eggshell thinning. For bald eagles, eggshell thinning greater than 10 percent can cause difficulties in reproduction (Wiemeyer *et al.* 1984, p. 543). The AGFD found five separate occasions on which eggshell thinning in Arizona equaled or exceeded 10 percent between 1993 and 2004 (Driscoll *et al.* 2006, p. 23). However, the AGFD concluded that other factors may have a greater influence on productivity than DDT, but that egg collection and eggshell measurements will continue to ensure that the effects of DDT and other organochlorides are monitored. The Service agrees with this conclusion, and believes that eggshell thinning warrants further study and monitoring; however, at this time, the Service is not aware of any data to indicate eggshell thinning at the levels cited is resulting in lost reproduction.

In mainland Sonora, bald eagle eggs collected in the late 1980s were analyzed for metabolized DDE. Organochloride levels were well below concentrations that reduce productivity, and eggshell thickness was near pre-DDT levels (Driscoll and Mesta 2005, in prep.). In addition to pesticides, other contaminants may be in use near bald eagle breeding areas in mainland Sonora. Gold mines are located sporadically along the Rio Yaqui. Many of the mines are old and inoperable, but some have been reopened, with strychnine used to leach gold from the ore. These mines are often adjacent to the rivers in arroyos where runoff could lead to stream contamination (Driscoll and Mesta 2005, in prep.). Based upon increasing human populations and proximity of agriculture and mining to rivers where eagles nest or could nest in the future, the current and future impacts of contaminants and pollution on bald eagle health and reproduction in Mexico are unknown.

In addition to monitoring bald eagle eggs, the Service has been evaluating the effects of mercury, organochlorides, and other pesticides for many years. The AGFD and the Service have developed a protocol for identifying, documenting, and processing all bald eagle carcasses found in Arizona, which will allow for the continued monitoring of mortality factors, including lead poisoning and other contaminants.

Based on the above information, contaminants, pollutants, and eggshell thinning have likely resulted in historical and continued impacts to the reproductive success of bald eagles in the Sonoran Desert Area. Specifically, organochlorides and mercury have been detected within the Sonoran Desert Area at levels that are known to affect productivity, but all of the affected breeding areas have continued to produce young. Many of these are among the most productive breeding areas located within the Sonoran Desert Area. Bald eagles in the Sonoran Desert Area are potentially exposed to contaminants and pollutants throughout their range. However, the impact from these threats has been of low magnitude, and does not persist for long periods of time. The best scientific information suggests that contaminants, pollutants, and eggshell thinning do not constitute a significant threat to the Sonoran Desert Area population of the bald eagle at the population level.

Fishing Line and Tackle

Fishing line and tackle have been found in bald eagle nests, and have entangled bald eagles within the Sonoran Desert Area of Arizona. In response to this problem, the AGFD developed a monofilament recovery program in 2002. Although this program is voluntary, it has helped to educate anglers and reduce the amount of improperly disposed monofilament. Fishing line entanglement is most frequent on the lower Verde River (19 percent of occurrences), the upper Salt River (17 percent of occurrences), and Alamo Lake (14 percent of occurrences) (Driscoll *et al.* 2006, p. 18). Bald eagles encounter fishing line primarily by catching dead or dying fish with fishing line or tackle still attached, and they may also collect it for use as nest material (Hunt *et al.* 1992, p. A135; AGFD 1998, p. 5). For probable causes of mortality in bald eagles in Arizona between 1987 and 2005, monofilament was the cause of one adult mortality and two nesting mortalities (Driscoll *et al.* 2006, pp. 17–18). It was ranked as the fifteenth most common cause of mortality, and responsible for 3 out of 281 deaths, or approximately 1.1 percent (Driscoll *et al.* 2006, p. 25). Although monofilament has been shown to affect bald eagles within the Sonoran Desert Area of Arizona, it represents a minor threat, because the magnitude of the effects to the bald eagle is small (*i.e.,* representing 1.1 percent of known mortality). We attribute the limited effect that monofilament is having on bald eagles within the Sonoran Desert Area of Arizona to the active management of the ABENWP, which we anticipate will continue. Additionally, wildlife personnel entering nests to conduct annual banding are instrumental in removing large quantities of monofilament (Driscoll *et al.* 2006, p. 11).

Climate Change

Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Seager *et al.* (2007, pp. 1181–1184) analyzed 19 computer models that used many different variables to estimate the future climatology of the Southwestern United States and northern Mexico in

response to predictions of climatic patterns. All but one of the 19 models predicted a drying trend within the Southwest; one predicted a trend toward a wetter climate. Researchers created 49 projections using 19 models, and all but 3 predicted a shift to increasing aridity (dryness) in the Southwest as early as 2021–2040. Recently published projections of potential reductions in natural flow on the Colorado River Basin by the mid-21st century range from approximately 43 percent by Hoerling and Eischeid (2007, p. 35) to approximately six percent by Christensen and Lettenmaier (2006, pp. 3727–3729). The U.S. Climate Change Science Program (CCSP), in a recent report on climate change, concluded for the Southwest that ''subtropical aridity is likely to intensify and persist due to future greenhouse warming'' (CCSP 2008, p. 2).

The anticipated effects from climate change in the Southwest can be separated into three general predictions. First, climate change is expected to shorten periods of snowpack accumulation, as well as lessen snowpack levels. With gradually increasing temperatures and reduced snowpack (due to higher spring temperatures and reduced winter-spring precipitation), annual runoff will be reduced (Smith *et al.* 2003, p. 226; Garfin 2005, p. 42), consequently reducing groundwater recharge. Second, snowmelt is expected to occur earlier in the calendar year, because increased minimum winter and spring temperatures could melt snowpacks sooner, causing peak water flows to occur much sooner than the historical spring and summer peak flows (Smith *et al.* 2003, p. 226; Stewart *et al.* 2004, pp. 217–218, 224, 230; Garfin 2005, p. 41) and reducing flows later in the season. Third, the hydrologic cycle is expected to become more dynamic on average, with climate models predicting increases in the variability and intensity of rainfall events. This will modify disturbance regimes by changing the magnitude and frequency of floods.

Climate change will likely cause an increase in river temperatures in drier climates. This will in turn result in periods of prolonged low flows and stream drying and an increased demand for water storage and conveyance systems (Rahel and Olden 2008, pp. 521–522, 526). Warmer water temperatures across temperate regions are predicted to expand the distribution of existing aquatic nonnative species by providing more suitable habitat. These species are often tropical in origin and adaptable to warmer water temperatures. This conclusion is based upon studies that compared the thermal tolerances of 57 fish species with predictions made from climate models (Mohseni *et al.* 2003, p. 389).

We are uncertain about the magnitude of the threat posed by climate change, because we do not currently understand all potential impacts of climate change on bald eagles or the human population. However, based on the best information available, we conclude that climate change is not a significant threat, because the extent to which the bald eagle will respond to climate change is unclear. We have to date not detected climate change-related impacts to the Sonoran Desert Area population of the bald eagle; moreover, bald eagles in the Sonoran Desert Area, and elsewhere within their range, have been shown to be highly adaptable (e.g., feed on a variety of prey, nest in many types of structures, breed in a variety of habitats throughout their range). This life-history trait contributes to the ability of the Sonoran Desert Area population of the bald eagle to continue to exist even under some of the possible effects from climate change.

Human Disturbance

Small planes and helicopters are the most common human activities in bald eagle breeding areas in Arizona (Driscoll *et al.* 2006, p. 18). From 1998 to 2005, low-flying aircraft were responsible for 37.1 percent (n = 23,905) of all human activities and 25.3 percent (n = 1,273) of the significant responses (*e.g.,* restless, flushed, and left the area) by a breeding pair. For the period from 1998 to 2005, significant responses to low-flying aircraft ranged from 10.6 percent to 44.1 percent of all significant responses by a breeding pair. The potential impacts from an eagle responding to low-flying aircraft include the inadvertent cracking of an egg as a result of flushing an incubating adult or premature fledging. Driscoll *et al.* (2006, p. 18) concluded that, while no direct link of a nest failure to low-flying private aircraft has occurred, this activity will increase with the demand for tourism flights, especially in remote breeding areas. In addition to private aircraft, many Sonoran Desert Area breeding areas are located near military training routes used by the Department of Defense. The Salt River Pima-Maricopa Indian Community is also concerned with military helicopter flights disturbing nesting bald eagles. While high-speed aircraft may not disturb bald eagles when an appropriate buffer distance is maintained, noise disturbance and sonic booms can cause a reaction (Ellis *et al.* 1991, p. 53; Grubb *et al.* 1997, pp. 216–217).

Driscoll *et al.* (1999, p. 220) noted that, of 24 eggs (in 13 clutches) for which we knew the cause of mortality, 11 involved human disturbance (over a 7-year period). The ABENWP has recorded a three-fold increase in the average number of human activities that occur within 1 km (0.6 miles) of all monitored bald eagle breeding areas in the last 16 years (Driscoll *et al.* 2006, p. 16). Anticipated human population growth, as described above, will lead to an increased demand in water-based recreation in areas currently supporting breeding areas. Monitoring and seasonal closures by the ABENWP around some breeding areas help to minimize these impacts. However, not all breeding areas are covered by these measures. In addition, disturbance from recreational activities may affect the ability of bald eagles to forage, as adults need foraging areas without constant human disturbance in order to capture prey.

Recreation outside of nesting areas may limit foraging opportunities and affect adult, nestling, and juvenile survival, as well as egg production (Driscoll *et al.* 2006, p. 17). It is anticipated that increasing recreational pressures will continue to occur on the lower Gila River, San Carlos River, Salt River, Verde River, Tonto Creek, Alamo Lake, and Lake Pleasant. The ''Conservation Assessment and Strategy for Bald eagles in Arizona'' identified 'human activity' as a management challenge for 36 of 45 breeding areas (or 80 percent) located within the Sonoran Desert Area at that time (Driscoll *et al.* 2006, pp. 51–53). However, human activity within close proximity to nests does not in itself necessarily result in negative effects to the productivity of a bald eagle breeding area.

As an example of the ability of the bald eagle to adapt to human activity, a 5-year study in Florida of rural (< 5 percent intensive human use within 1,500 meters) and suburban (> 50 percent intensive human use within 1,500 meters) bald eagle nests did not detect a significant difference between the two groups in occupancy rates or productivity. These results suggest that bald eagles in their study area may have adapted to, or at least tolerated, increasing human populations and disturbance (Millsap *et al* 2004, p. 1023). However, the authors caution that their results merely point out that some eagles can successfully coexist with intensive human activity, but this should not be interpreted to mean that all eagles can. Within the Sonoran Desert Area of Arizona, the bald eagle breeding areas located in closest proximity to the Phoenix metropolitan area on the lower Verde and Salt Rivers

are also some of the most productive (Allison *et al.* 2008, pp. 17–18). Therefore, we conclude that human disturbance is not a significant threat to the Sonoran Desert bald eagle population.

Summary of Factor E

We evaluated a number of other factors that could affect the continued existence of the Sonoran Desert Area population of the bald eagle: Demographic factors; declining prey base; contaminants, pollutants, and eggshell thinning; fishing line and tackle; climate change; and human disturbance. After analyzing the best available information regarding these potential threats and the data regarding how eagles have responded to these factors, we concluded that none of them poses a significant threat to the Sonoran Desert Area bald eagle at a population level.

Three models have been completed that analyzed the future risk of extinction to the Sonoran Desert Area population of the bald eagle taking into consideration a number of demographic variables. The results of the model that best matched observed population trajectories—because it used an adjusted survival rate for juvenile and subadult eagles—suggest that the Sonoran Desert Area population of the bald eagle is not at a risk of extinction in the future. In addition, observed mortality rates, productivity, and survival rates for bald eagles within the Sonoran Desert Area are all within the range of observed values for other bald eagle populations throughout the United States.

The availability of an adequate and accessible supply of prey is essential to the success of breeding bald eagles in the Sonoran Desert Area. The presence of reservoirs, dams, or regulated rivers does not appear to have had a negative impact on bald eagle reproduction, and may be providing a more stable food source for bald eagles than would otherwise be available in the Sonoran Desert ecosystem. Native fish populations have been declining in the Sonoran Desert Area of Arizona due to the introduction of nonnative fish and alterations to their habitat. Declining populations of native fish along portions of the Salt and Verde Rivers may be a factor contributing to a localized reduction in productivity for pairs of bald eagles nesting in these areas. However, bald eagles are capable of exploiting a wide range of prey species, and nonnative fishes make up a large portion of their diet within the Sonoran Desert Area.

Several breeding areas within the Sonoran Desert Area have experienced high levels of mercury or organochlorides. The productivity of pairs at those breeding areas indicates that, while nest failure may occur when those levels are detected, young continue to be produced in subsequent years. Several bald eagles have died of lead poisoning while in Arizona, but only one of these eagles is known to have fledged from a nest in Arizona. The long distance traveled by migrating eagles could mean that the ingestion of lead is occurring outside of Arizona. The protocol developed by AGFD and the Service for identifying, documenting, and processing bald eagle carcasses will allow for the continued monitoring of mortality factors, including lead poisoning and other contaminants. Based on the best available information, the Service concludes that the effects of contaminants should continue to be monitored, but they are currently not a significant threat to the Sonoran Desert Area population of the bald eagle.

Fishing line and tackle have been found in bald eagle nests, and have entangled bald eagles within the Sonoran Desert Area of Arizona. However, fishing line is ranked as the fifteenth most common cause of mortality, responsible for only 1.1 percent of known mortalities. Our review of the best available information indicates that fishing line is not a significant threat to the Sonoran Desert Area population of the bald eagle.

Bald eagles in the Sonoran Desert Area depend on aquatic ecosystems for survival, and those aquatic ecosystems are predicted to be at risk due to drying under climate change scenarios. Potential drought associated with changing climatic patterns may adversely affect streams, rivers, and reservoirs—not only reducing water characteristics and availability, but also altering food availability. These changes may in turn exacerbate existing threats to bald eagles and their habitat in the Sonoran Desert Area. However, to date no impacts to bald eagles from climate change have been recorded, and it is unclear whether the bald eagle will adapt to these changes or respond at a population level.

Human disturbance to nesting and foraging bald eagles from small planes, helicopters, military aircraft, and recreational activities has occurred in the past, is occurring now, and will likely continue to occur within the Sonoran Desert Area. The activities of the ABENWP and seasonal closures of breeding areas have helped to mitigate this impact at the local level, and will continue to be implemented into the future. As stated above, there has not been any indication that human disturbance has led to the failure of bald eagle breeding attempts, or to population-level effects.

After reviewing the best available commercial and scientific information, based on our analysis above, we conclude that demographic factors; a declining prey base; contaminants, pollutants, and eggshell thinning; fishing line and tackle; climate change; and human disturbance are not significantly contributing to the risk of extinction of the Sonoran Desert Area population of the bald eagle at the population level.

Finding

In making this finding, as directed by the court, we used the information contained in our 2010 administrative record which included information provided by the petitioners, as well as other information in our files, and otherwise available. The information we reviewed included information submitted by the public and the Tribes, and available published and unpublished scientific and commercial information. Additionally, we had information from Federal, State, and Tribal land managers, along with recognized experts in conservation and bald eagle biology. This 12-month finding reflects and incorporates information from our 2010 administrative record that we received from the public and through consultation, literature research, and field visits. Based on the rationale detailed above, we find that bald eagle population in the Sonoran Desert Area is discrete from other bald eagle populations, but is not significant to the bald eagle as a whole, and therefore is not a valid DPS, pursuant to the DPS Policy (61 FR 4722).

Next, we reviewed our 2010 administrative record regarding the past, present, and future threats faced by the Sonoran Desert Area population of the bald eagle. This status review identified threats to the Sonoran Desert Area population of the bald eagle under Factors A and E. The primary threats to the Sonoran Desert Area population of the bald eagle—the activities that the population has responded to most significantly—are from the degradation and loss of riparian habitat and the loss of surface flows from groundwater pumping and surface water diversions (Factor A). In the Sonoran Desert Area, bald eagle breeding areas are located in close proximity to a variety of aquatic sites, including reservoirs, regulated river systems, and free-flowing rivers and creeks. The essential components of these sites for bald eagles are the

availability of trees for roosting, perching, hunting, and nesting, and access to prey, primarily fish. The decline of riparian habitat stems specifically from direct loss from development and indirect impacts from the loss of surface flows.

With respect to each kind of threat, the best available information has confirmed a response to the threat, such as a decrease in breeding rates or survival rates. However, the potential for population-level impacts to bald eagles throughout their range—including in the Sonoran Desert Area—from the degradation or loss of riparian habitat and the loss of surface flows from groundwater pumping and surface water diversions has been reduced by the regulatory mechanisms in place within the United States and locally, the strong ability of bald eagles to adapt to changes in their environment, the widespread distribution of bald eagles along rivers within the Sonoran Desert Area, and the availability of reservoirs. Additional potential threats to the Sonoran Desert Area population of the bald eagle include demographic factors; declining prey base; contaminants, pollutants, and eggshell thinning; fishing line and tackle; climate change; and human disturbance. However, based on the best available information none of these poses a significant threat at a population level.

We must also evaluate whether these combined potential threats present a significant threat to the Sonoran Desert Area bald eagle population. If these threats were acting, either independently or cumulatively, in such a manner as to likely cause a significant risk of extinction to the population, we would expect to see them expressed in terms of the demographic factors that we reported in our analysis. In fact, all of the rates (e.g., mortality, survival, productivity, and occupancy) associated with the demographic factors for the Sonoran Desert Area population of the bald eagle were within the range of values observed in other populations of the bald eagle in the United States. More importantly, simple counts of bald eagles breeding in Arizona each year indicated that the breeding segment increased at an average rate of 4.0 percent per year from 1987 to 2003 (Allison *et al.* 2008, p. 26). Therefore, although the threats described above vary in their scope and intensity, the Service considers the overall threat to the Sonoran Desert Area population of the bald eagle from these factors to be low.

On the basis of the best scientific and commercial data available, we find that listing the Sonoran Desert Area population of the bald eagle as threatened or endangered is not warranted. We arrive at this determination because, despite the presence of these same threats for decades, the Sonoran Desert Area population of the bald eagle remains stable or increasing. In our analysis, we have indicated that some of the threats are likely to increase in the future. However, we do not have any information to suggest that these are significant threats or threats that could cause the Sonoran Desert Area population of the bald eagle to be in danger of extinction, or likely to become so in the foreseeable future.

We encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding the bald eagle, you may submit your information or materials to the Field Supervisor, Arizona Ecological Services Office (see **ADDRESSES** section above). The Service continues to strongly support the cooperative conservation of the Sonoran Desert Area bald eagle.

References Cited

A complete list of all references cited herein is available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2008–0059, upon request, from the Southwest Regional Office of the U.S. Fish and Wildlife Service (see **ADDRESSES** section above).

Author

The primary authors of this notice are the staff of the Southwest Region of the U.S. Fish and Wildlife Service.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 17, 2012.

Daniel M. Ashe,

Director, Fish and Wildlife Service.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Seismic Survey in the Beaufort Sea, Alaska; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY11

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Seismic Survey in the Beaufort Sea, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS received an application from BP Exploration (Alaska), Inc. (BP) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment only, incidental to a proposed 3-dimensional (3D) ocean bottom cable (OBC) seismic survey in the Simpson Lagoon area of the Alaskan Beaufort Sea during the open water season of 2012. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to BP to take, by Level B harassment, 11 species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than May 31, 2012.

ADDRESSES: Comments on the application should be addressed to Tammy Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.guan@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* 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.

A copy of the application used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Summary of Request

NMFS received an application on December 20, 2011, from BP for the taking, by harassment, of marine mammals incidental to a 3D OBC seismic survey in the Simpson Lagoon area of the Alaskan Beaufort Sea during the open water season of 2012.

Description of the Specified Activity

The proposed seismic survey utilizes receivers (hydrophones and geophones) connected to a cable that would be deployed from a vessel to the seabed or would be inserted in the seabed in very shallow water areas near the shoreline. The generation of 3D seismic images requires the deployment of many parallel cables spaced close together over the area of interest. Therefore, OBC seismic surveys require the use of multiple vessels for cable deployment and recovery, data recording, airgun operation, re-supply, and support. The proposed 3D OBC seismic survey in Simpson Lagoon would be conducted by CGGVeritas.

Seismic Source Arrays

A total of three seismic source vessels (two main source vessels and one mini source vessel) would be used during the proposed survey. The sources would be arrays of sleeve airguns. Each main source vessel would carry an array that consists of two sub-arrays. Each sub-array contains eight 40 in^3 airguns, totaling 16 guns per main source vessel with a total discharge volume of 2×320 in^3, or 640 in^3. This 640 in^3 array has an estimated source level of ~223 dB re 1 μPa (rms). The mini source vessel would contain one array with eight 40 in^3 airguns for a total discharge volume of 320 in^3. The estimated source level of this 320 in^3 array is 212 dB re 1 μPa (rms).

The arrays of the main source vessels would be towed at a distance of ~30 feet (ft, or 10 m) from the stern at 6 ft (2 m) depth, which is remotely adjustable if needed. The array of the mini source vessel would be towed at a distance of ~20 ft (7 m) from the stern at 3 ft (1 m) depth, also remotely adjustable when needed. The source vessels will travel along pre-determined lines with a speed varying from ~1 to 5 knots, mainly depending on the water depth. To limit the duration of the total survey, the source vessels would be operating in a flip-flop mode, with the operating source vessels alternating shots; this

means that one vessel discharges airguns when the other vessel is recharging. Outside the barrier islands, the two main source vessels would be operating with expected shot intervals of 8 to 10 seconds, resulting in a shot every 4 to 5 seconds due to the flip-flop mode of operation. Inside the barrier islands all three vessels (the two main source vessels and the mini vessel) may be operating at the same time in this manner. The exact shot intervals would depend on the compressor capacity, which determines the time needed for the airguns to be recharged. Seismic data acquisition would be conducted 24 hours per day.

Receivers and Recording Units

The survey area in Simpson Lagoon has water depths of 0 to 9 ft (0 to 3 m) between the shore and barrier islands and 3 to 45 ft (1 to 15 m) depths north of the barrier islands. Because different types of receivers would be used for different habitats, the survey area is categorized by the terms onshore, islands, surf-zone and offshore. Onshore is the area from the coastline inland. Islands are the barrier islands. Surf zone is the 0 to 6 ft (0 to 2 m) water depths along the onshore coastline. Offshore is defined as depths of 3 ft (1 m) or more. There is a zone between 3 and 6 ft (1 and 2 m) which may be categorized both as surf zone and as offshore.

The receivers that would be deployed in water consist of multiple hydrophones and recorder units (Field Digitizing Units or FDUs) placed on Sercel ULS cables. Approximately 5,000 hydrophones would be connected to the ULS cable at a minimum of 82.5 ft (27.5 m) intervals and secured to the ocean bottom cable. Surface markers and acoustic pingers will be attached to the cable at various intervals to ensure that the battery packs can be located and retrieved when needed and to determine exact positions for the hydrophones. This equipment would be deployed and retrieved with cable boats. The data received at each FDU would be transmitted through the cables to a recorder for further processing. This recorder will be installed on a boat-barge combination and positioned close to the area where data are being acquired. While recording, the boat-barge combination is stationary and expected to utilize a two or four point anchoring system.

In the surf-zone, receivers (hydrophones or geophones) would be bored or flushed up to 12 ft (4 m) below the seabed. These receivers will transmit data through a cable (as described above) and have an attached line to facilitate retrieval after recording is completed.

Autonomous recorders (nodes) would be used onshore and on the islands. The node is located on the ground and its geophone would be inserted into the ground by hand with the use of a planting pole. Deployment of the autonomous receiver units would be done by a lay-out crew on the ground using helicopters for personnel and equipment transport and/or approved summer travel vehicles (onshore) and a support boat (for the islands). Data from nodes can be remotely retrieved from a distance (up to a kilometer). Retrieval of data may be from a boat or a helicopter. Equipment would be picked up after recording is complete.

Survey Design

The total area of the proposed seismic survey is approximately 110 mi^2, which includes onshore, surf-zone, barrier islands, and offshore (see Figure 1.2 of the BP's IHA application). For the proposed survey, the receiver cables with hydrophones and recording units would be oriented in an east-west direction. A total of approximately 44 receiver lines would be deployed at the seafloor with 1,100–1,650 ft (367–550 m) line spacing. Total receiver line length would be approximately 500 miles (825 km). The source vessel would travel perpendicular over the offshore receiver cables along lines oriented in a north-south direction. These lines would have a length of approximately 3.75 miles (6.2 km) and a minimum spacing of 660 ft (220 m). The total length of all source lines is approximately 4,000 miles (6,600 km), including line turns.

The position of each receiver deployed onshore, in the surf zone and on the barrier islands will be determined using Global Positioning System (GPS) positioning units. Due to the variable bathymetry of the survey area, determining positions of receivers deployed in water may require more than one technique. A combination of Ocean Bottom Receiver Location (OBRL), GPS and acoustic pingers will be used. For OBRL, the source vessel fires a precisely positioned single energy source multiple times along either side of the receiver cables. Production data may also be used instead of dedicated OBRL acquisition. Multiple energy sources are used to triangulate a given receiver position. In addition, Sonardyne acoustical pingers would be located at predetermined intervals on the receiver lines. The pingers are located on the ULS cables and transmit a signal to a transponder mounted on a vessel. This allows for an interpolation of the receiver locations between the acoustical pingers on the ULS cable and also serves as a verification of the OBRL method. The Sonardyne pingers transmit at 19–36 kHz and have a source level of 188–193 dB re μPa at 1m.

Vessels and Other Equipment

The proposed Simpson Lagoon OBC seismic survey would involve 14 to 16 vessels, as listed in Table 1 below. The contracting of vessels has not been finalized to date. However, BP states it would contract vessels with parameters similar to those described in this table. If contracted vessels differ significantly from those described, BP would submit an amendment to address these changes where required.

TABLE 1—SUMMARY OF NUMBER AND TYPE OF VESSELS INVOLVED IN THE PROPOSED SIMPSON LAGOON OBC SEISMIC SURVEY

[The dimensions provided are approximate]

Vessel type	Number	Dimensions	Main activity	Frequency
Source Vessel: Main	2	71 × 20 ft	Seismic data acquisition inside and outside barrier islands.	24-hr operation.
Source Vessel: Mini	1	55 × 15 ft	Seismic data acquisition inside barrier islands	24-hr operation.
Recorder barge with tug boat.	1	116.5 × 24 ft (barge); 23 × 15 ft (tug)	Seismic data recording	24-hr operation.
Cable boats	5–6	42.6 × 13 ft	Deploy and retrieve receiver cables (with hydrophones/geophones).	24-hr operation.
Crew transport vessels	2	44 × 14 ft	Transport crew and supplies to and from the working vessels.	Intermittently, minimum every 8 hours.

TABLE 1—SUMMARY OF NUMBER AND TYPE OF VESSELS INVOLVED IN THE PROPOSED SIMPSON LAGOON OBC SEISMIC SURVEY—Continued

[The dimensions provided are approximate]

Vessel type	Number	Dimensions	Main activity	Frequency
Shallow water crew and support boats.	2–3	34 × 10.5 ft	Transport 2–5 people and small amounts of gear for the boats operating in the shallower parts of the survey area.	Intermittently.
HSSE vessel	1	38 × 15 ft	Support SSV measurements, HSSE (health, safety, security, and environmental) compliance.	As required.

To deploy and retrieve receivers in water depths less than those accessible by the cable boats (surf-zone), equipment such as airboats, buggies or an Arktos (amphibious craft) and/or Jon boats may be used. Helicopters and/or approved tundra travel vehicles would be used for deployment of receiver units onshore as well on the barrier islands. In the case of helicopters being used, the flight altitude would be at 1,500 feet for 3 to 6 times each day during gear deployment and retrieval on barrier islands and on shore (i.e., for about 14 days in late July and early August for deployment and for about 14 days probably after the Cross Island hunt, which typically ends around September 10).

Vessels and other equipment would be transported to the North Slope in late May/early June by trucks. Equipment would be staged at the CGGVeritas pad for preparation. Vessel preparation would include assembly of navigation and source equipment, cable deployment and retrieval systems and safety equipment. Once assembled, vessels would be launched at either West Dock or Milne Point. Deployment, retrieval, navigation and source systems will then be tested near West Dock or in the project area prior to commencement of operations.

Crew Housing and Transfer

The total number of people that would be involved is about 220, including crew on boats, camp personnel, mechanics, and management. There are no accommodations available on the source vessels or cable boats for the crew directly involved in the seismic operations, so crews would be changed out every 8 to 12 hours. Two vessels would be used for crew transfers.

The recorder barge/boat (*M/V Alaganik* and *Hook Point*) may accommodate up to 10 people. The barge portion is dedicated to recording and staging of cables, hydrophones and batteries and fuelling operations.

Refueling of vessels would be via other vessels at sea, and from land based sources located at West Dock and Milne Point Unit following approved U.S. Coast Guard procedures. Sea states and the vessel's function will be the determining factors on which method is used.

Dates, Duration and Action Area

BP seeks an incidental harassment authorization for the period July 1 to October 15, 2012. Anticipated duration of seismic data acquisition is approximately 50 days, depending on weather and other circumstances. Transportation of vessels to West Dock would occur by road in late May/early June. It is not anticipated that vessels would need to transit by sea; however, in case this does occur the transit would take place when ice conditions allow and in consideration of the spring beluga and bowhead hunt in the Chukchi Sea.

The project area encompasses 110 mi^2 in Simpson Lagoon, Beaufort Sea, Alaska. The approximate boundaries of the total surface area are between 70°28′ N and 70°39′ N and between 149°24′W and 149°55′ W (Figure 1.2 of BP's IHA application). About 46 mi^2 (41.8%) of the survey area is located inside the barrier islands in water depths of 0 to 9 ft (0 to 3 m), and 36 mi^2 (32.7%) outside the barrier islands in water depths of 3 to 45 ft (1 to 15 m). The remaining 28 mi^2 (25.5%) of the survey area is located on land (onshore and barrier islands), which is solely being used for deployment of the receivers. The planned start date of seismic data acquisition offshore of the barrier islands is July 1, 2012, depending on the presence of ice. Open water seismic operations can only start when the project area is ice free (i.e. < 10% ice coverage), which in this area normally occurs around mid-July (+/− 14 days). Limited layout of receiver cables might be possible on land and barrier islands before the ice has cleared. To limit potential impacts to the bowhead whale migration and the subsistence hunt, no airgun operations would take place in the area north of the barrier islands after August 25, 2012. Surf zone geophone retrieval may continue for a brief period after airgun operations are complete.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the seismic survey area include three cetacean species, beluga (*Delphinapterus leucas*), bowhead whales (*Balaena mysticetus*), and gray whales (*Eschrichtius robustus*), and three pinniped species, ringed (*Phoca hispida*), spotted (*P. largha*), and bearded seals (*Erignathus barbatus*).

Five additional cetacean species: Harbor porpoise (*Phocoena phocoena*), narwhal (*Monodon monoceros*), killer whale (*Orcinus orca*), humpback whale (*Megaptera novaeangliae*), and minke whale (*Balaenoptera acutorostrata*) could also occur in the project area. However, these cetacean species are rare or extralimital to the Beaufort Sea and less likely to be encountered in the Simpson Lagoon area. BP did not request take for narwhal as it is very unlikely that this species would be encountered during the BP's proposed seismic survey.

Ribbon seals (*Histriophoca fasciata*) occur mainly in the western part of the Beaufort Sea and are rare in the proposed action area in the Simpson Lagoon of the Beaufort Sea.

The bowhead whale is listed as ''endangered'' under the Endangered Species Act (ESA) and as depleted under the MMPA. Certain stocks or populations of gray and beluga whales and spotted seals are listed as endangered or proposed for listing under the ESA; however, none of those stocks or populations occur in the proposed activity area. Additionally, the ribbon seal is considered a ''species of concern'', meaning that NMFS has some concerns regarding status and threats of this species, but for which insufficient information is available to indicate a need to list the species under the ESA. Bearded and ringed seals are ''candidate species'' under the ESA, meaning they

are currently being considered for listing.

The Alaska stock of bearded seals, part of the Beringia distinct population segment (DPS), has been proposed by NMFS for listing as threatened under the ESA (75 FR 77496; December 10, 2011).

The Alaska stock of ringed seals is not currently listed as endangered, and is not classified as a strategic stock by NMFS. However, there is increasing concern about the future of the ringed seal due to receding ice conditions and potential habitat loss. NMFS conducted a status review for the ringed seal (Kelly *et al.* 2010a), and has proposed to list the Arctic stock of ringed seals as threatened under the ESA due to threats from global warming (75 FR 77476; December 10, 2011).

The final decisions for listing are expected to be made in summer 2012.

BP's application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2011 SAR is available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2011.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

Operating active acoustic sources such as airgun arrays, pinger systems, and vessel activities have the potential for adverse effects on marine mammals.

Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airgun pulses might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.* 1995). As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.* 1995):

(1) Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. These behavioral reactions are often shown as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these potential significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

For example, at the Guerreo Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray whales to abandon the area through most of the 1960s (Bryant *et al.* 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

Currently NMFS uses 160 dB re 1 μPa (rms) at received level for impulse noises (such as airgun pulses) as the threshold for the onset of marine mammal behavioral harassment.

In addition, behavioral disturbance is also expressed as the change in vocal activities of animals. For example, there is one recent summary report indicating that calling fin whales distributed in one part of the North Atlantic went silent for an extended period starting soon after the onset of a seismic survey in the area (Clark and Gagnon 2006). It is not clear from that preliminary paper whether the whales ceased calling because of masking, or whether this was a behavioral response not directly involving masking (i.e., important biological signals for marine mammals being ''masked'' by anthropogenic noise; see below). Also, bowhead whales in the Beaufort Sea may decrease their call rates in response to seismic operations, although movement out of the area might also have contributed to the lower call detection rate (Blackwell *et al.* 2009a; 2009b). Some of the changes in marine mammal vocal communication are thought to be used to compensate for acoustic masking resulting from increased anthropogenic noise (see below). For example, blue whales are found to increase call rates when exposed to seismic survey noise in the St. Lawrence Estuary (Di Iorio and Clark 2009). The North Atlantic right whales (*Eubalaena glacialis*) exposed to high shipping noise increase call frequency (Parks *et al.* 2007) and intensity (Parks *et al.* 2010), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *el al.* 2000). These behavioral responses could also have adverse effects on marine mammals.

Mysticete: Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to airgun pulses at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances (reviewed in Richardson *et al.* 1995; Gordon *et al.* 2004). However, studies done since the late 1990s of migrating humpback and migrating bowhead whales show reactions, including avoidance, that sometimes extend to greater distances than documented earlier. Therefore, it appears that behavioral disturbance can vary greatly depending on context, and not just received levels alone. Avoidance distances often exceed the distances at which boat-based observers can see whales, so observations from the source vessel can be biased. Observations over broader areas may be needed to determine the range of potential effects of some large-source seismic surveys where effects on cetaceans may extend to considerable distances (Richardson *et al.* 1999; Moore and Angliss 2006). Longer-range observations, when required, can sometimes be obtained via systematic aerial surveys or aircraft-based observations of behavior (e.g., Richardson *et al.* 1986, 1999; Miller *et al.* 1999, 2005; Yazvenko *et al.* 2007a, 2007b) or by use of observers on one or more support vessels operating in coordination with the seismic vessel (e.g., Smultea *et al.* 2004; Johnson *et al.* 2007). However, the presence of other vessels near the source vessel can, at least at times, reduce sightability of cetaceans from the source vessel (Beland *et al.* 2009), thus complicating interpretation of sighting data.

Some baleen whales show considerable tolerance of seismic

pulses. However, when the pulses are strong enough, avoidance or other behavioral changes become evident. Because the responses become less obvious with diminishing received sound level, it has been difficult to determine the maximum distance (or minimum received sound level) at which reactions to seismic activity become evident and, hence, how many whales are affected.

Studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1 μPa (rms) range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (McCauley *et al.* 1998, 1999, 2000). In many areas, seismic pulses diminish to these levels at distances ranging from 4–15 km from the source. A substantial proportion of the baleen whales within such distances may show avoidance or other strong disturbance reactions to the operating airgun array. Some extreme examples including migrating bowhead whales avoiding considerably larger distances (20–30 km) and lower received sound levels (120–130 dB re 1 μPa (rms)) when exposed to airguns from seismic surveys. Also, even in cases where there is no conspicuous avoidance or change in activity upon exposure to sound pulses from distant seismic operations, there are sometimes subtle changes in behavior (e.g., surfacing–respiration–dive cycles) that are only evident through detailed statistical analysis (e.g., Richardson *et al.* 1986; Gailey *et al.* 2007).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.* 1984; Richardson *et al.* 1995), and there has been a substantial increase in the population over recent decades (Allen and Angliss 2010). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a prior year (Johnson *et al.* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer despite seismic exploration in their summer and autumn range for many years (Richardson *et al.* 1987), and their numbers have increased notably (Allen and Angliss 2010). Bowheads also have been observed over periods of days or weeks in areas ensonified repeatedly by seismic pulses (Richardson *et al.* 1987; Harris *et al.* 2007). However, it is generally not known whether the same individual bowheads were involved in these repeated observations (within and between years) in strongly ensonified areas.

Odontocete: Little systematic information is available about reactions of toothed whales to airgun pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above have been reported for toothed whales. However, there are recent systematic data on sperm whales (e.g., Gordon *et al.* 2006; Madsen *et al.* 2006; Winsor and Mate 2006; Jochens *et al.* 2008; Miller *et al.* 2009). There is also an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone 2003; Smultea *et al.* 2004; Moulton and Miller 2005; Holst *et al.* 2006; Stone and Tasker 2006; Potter *et al.* 2007; Hauser *et al.* 2008; Holst and Smultea 2008; Weir 2008; Barkaszi *et al.* 2009; Richardson *et al.* 2009).

Dolphins and porpoises are often seen by observers on active seismic vessels, occasionally at close distances (e.g., bow riding). Marine mammal monitoring data during seismic surveys often show that animal detection rates drop during the firing of seismic airguns, indicating that animals may be avoiding the vicinity of the seismic area (Smultea *et al.* 2004; Holst *et al.* 2006; Hauser *et al.* 2008; Holst and Smultea 2008; Richardson *et al.* 2009). Also, belugas summering in the Canadian Beaufort Sea showed larger-scale avoidance, tending to avoid waters out to 10–20 km from operating seismic vessels. In contrast, recent studies show little evidence of conspicuous reactions by sperm whales to airgun pulses, contrary to earlier indications (e.g., Gordon *et al.* 2006; Stone and Tasker 2006; Winsor and Mate 2006; Jochens *et al.* 2008), except the lower buzz (echolocation signals) rates that were detected during exposure of airgun pulses (Miller *et al.* 2009).

There are almost no specific data on responses of beaked whales to seismic surveys, but it is likely that most if not all species show strong avoidance. There is increasing evidence that some beaked whales may strand after exposure to strong noise from tactical military mid-frequency sonars. Whether they ever do so in response to seismic survey noise is unknown. Northern bottlenose whales seem to continue to call when exposed to pulses from distant seismic vessels.

For delphinids, and possibly the Dall's porpoise, the available data suggest that a ≥170 dB re 1 μPa (rms) disturbance criterion (rather than ≥160 dB) would be appropriate. With a medium-to-large airgun array, received levels typically diminish to 170 dB within 1–4 km, whereas levels typically remain above 160 dB out to 4—15 km (e.g., Tolstoy *et al.* 2009). Reaction distances for delphinids are more consistent with the typical 170 dB re 1 μPa (rms) distances. Stone (2003) and Stone and Tasker (2006) reported that all small odontocetes (including killer whales) observed during seismic surveys in UK waters remained significantly further from the source during periods of shooting on surveys with large volume airgun arrays than during periods without airgun shooting.

Due to their relatively higher frequency hearing ranges when compared to mysticetes, odontocetes may have stronger responses to mid- and high-frequency sources such as sub-bottom profilers, side scan sonar, and echo sounders than mysticetes (Richardson *et al.* 1995; Southall *et al.* 2007).

Pinnipeds: Few studies of the reactions of pinnipeds to noise from open-water seismic exploration have been published (for review of the early literature, see Richardson *et al.* 1995). However, pinnipeds have been observed during a number of seismic monitoring studies. Monitoring in the Beaufort Sea during 1996–2002 provided a substantial amount of information on avoidance responses (or lack thereof) and associated behavior. Additional monitoring of that type has been done in the Beaufort and Chukchi Seas in 2006–2009. Pinnipeds exposed to seismic surveys have also been observed during seismic surveys along the U.S. west coast. Also, there are data on the reactions of pinnipeds to various other related types of impulsive sounds.

Early observations provided considerable evidence that pinnipeds are often quite tolerant of strong pulsed sounds. During seismic exploration off Nova Scotia, gray seals exposed to noise from airguns and linear explosive charges reportedly did not react strongly (J. Parsons in Greene *et al.* 1985). An airgun caused an initial startle reaction among South African fur seals but was ineffective in scaring them away from fishing gear. Pinnipeds in both water and air sometimes tolerate strong noise pulses from non-explosive and explosive scaring devices, especially if attracted to the area for feeding or reproduction (Mate and Harvey 1987;

Reeves *et al.* 1996). Thus, pinnipeds are expected to be rather tolerant of, or to habituate to, repeated underwater sounds from distant seismic sources, at least when the animals are strongly attracted to the area.

In summary, visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior. These studies show that many pinnipeds do not avoid the area within a few hundred meters of an operating airgun array. However, based on the studies with large sample size, or observations from a separate monitoring vessel, or radio telemetry, it is apparent that some phocid seals do show localized avoidance of operating airguns. The limited nature of this tendency for avoidance is a concern. It suggests that one cannot rely on pinnipeds to move away, or to move very far away, before received levels of sound from an approaching seismic survey vessel approach those that may cause hearing impairment.

(2) Masking

Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that experience severe (intensity and duration) acoustic masking could potentially suffer reduced fitness, which could lead to adverse effects on survival and reproduction.

Masking occurs when noise and signals (that animal utilizes) overlap at both spectral and temporal scales. For the airgun noise generated from the proposed marine seismic survey, these are low frequency (under 1 kHz) pulses with extremely short durations (in the scale of milliseconds). Lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. There is little concern regarding masking due to the brief duration of these pulses and relatively longer silence between airgun shots (9–12 seconds) near the noise source, however, at long distances (over tens of kilometers away) in deep water, due to multipath propagation and reverberation, the durations of airgun pulses can be ''stretched'' to seconds with long decays (Madsen *et al.* 2006; Clark and Gagnon 2006). Therefore it could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009a, 2009b) and affect their vocal behavior (e.g., Foote *et al.* 2004; Holt *et al.* 2009). Further, in areas of shallow water, multipath propagation of airgun pulses could be more profound, thus affecting communication signals from marine mammals even at close distances. Average ambient noise in areas where received seismic noises are heard can be elevated. At long distances, however, the intensity of the noise is greatly reduced. Nevertheless, partial informational and energetic masking of different degrees could affect signal receiving in some marine mammals within the ensonified areas. Additional research is needed to further address these effects.

Although masking effects of pulsed sounds on marine mammal calls and other natural sounds are expected to be limited, there are few specific studies on this. Some whales continue calling in the presence of seismic pulses and whale calls often can be heard between the seismic pulses (e.g., Richardson *et al.* 1986; McDonald *et al.* 1995; Greene *et al.* 1999a, 1999b; Nieukirk *et al.* 2004; Smultea *et al.* 2004; Holst *et al.* 2005a, 2005b, 2006; Dunn and Hernandez 2009).

Among the odontocetes, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.* 1994). However, more recent studies of sperm whales found that they continued calling in the presence of seismic pulses (Madsen *et al.* 2002; Tyack *et al.* 2003; Smultea *et al.* 2004; Holst *et al.* 2006; Jochens *et al.* 2008). Madsen *et al.* (2006) noted that airgun sounds would not be expected to mask sperm whale calls given the intermittent nature of airgun pulses. Dolphins and porpoises are also commonly heard calling while airguns are operating (Gordon *et al.* 2004; Smultea *et al.* 2004; Holst *et al.* 2005a, 2005b; Potter *et al.* 2007). Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocetes, given the intermittent nature of seismic pulses plus the fact that sounds important to them are predominantly at much higher frequencies than are the dominant components of airgun sounds.

Pinnipeds have best hearing sensitivity and/or produce most of their sounds at frequencies higher than the dominant components of airgun sound, but there is some overlap in the frequencies of the airgun pulses and the calls. However, the intermittent nature of airgun pulses presumably reduces the potential for masking.

Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior such as shifting call frequencies, and increasing call volume and vocalization rates, as discussed earlier (e.g., Miller *et al.* 2000; Parks *et al.* 2007; Di Iorio and Clark 2009; Parks *et al.* 2010); the biological significance of these modifications is still unknown.

(3) Hearing Impairment

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Marine mammals that experience TTS or PTS will have reduced sensitivity at the frequency band of the TS, which may affect their capability of communication, orientation, or prey detection. The degree of TS depends on the intensity of the received levels the animal is exposed to, and the frequency at which TS occurs depends on the frequency of the received noise. It has been shown that in most cases, TS occurs at the frequencies approximately one-octave above that of the received noise. Repeated noise exposure that leads to TTS could cause PTS. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound.

TTS

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. It is a temporary phenomenon, and (especially when mild) is not considered to represent physical damage or ''injury'' (Southall *et al.* 2007). Rather, the onset of TTS is an indicator that, if the animal is exposed to higher levels of that sound, physical damage is ultimately a possibility.

The magnitude of TTS depends on the level and duration of noise exposure, and to some degree on frequency, among other considerations (Kryter

1985; Richardson *et al.* 1995; Southall *et al.* 2007). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. In terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. Only a few data have been obtained on sound levels and durations necessary to elicit mild TTS in marine mammals (none in mysticetes), and none of the published data concern TTS elicited by exposure to multiple pulses of sound during operational seismic surveys (Southall *et al.* 2007).

For toothed whales, experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB re 1 μPa (p-p), resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin.

Finneran *et al.* (2005) further examined the effects of tone duration on TTS in bottlenose dolphins. Bottlenose dolphins were exposed to 3 kHz tones (non-impulsive) for periods of 1, 2, 4 or 8 seconds (s), with hearing tested at 4.5 kHz. For 1-s exposures, TTS occurred with SELs of 197 dB, and for exposures >1 s, SEL >195 dB resulted in TTS (SEL is equivalent to energy flux, in dB re 1 μPa^2-s). At an SEL of 195 dB, the mean TTS (4 min after exposure) was 2.8 dB. Finneran *et al.* (2005) suggested that an SEL of 195 dB is the likely threshold for the onset of TTS in dolphins and belugas exposed to tones of durations 1–8 s (i.e., TTS onset occurs at a near-constant SEL, independent of exposure duration). That implies that, at least for non-impulsive tones, a doubling of exposure time results in a 3 dB lower TTS threshold.

However, the assumption that, in marine mammals, the occurrence and magnitude of TTS is a function of cumulative acoustic energy (SEL) is probably an oversimplification. Kastak *et al.* (2005) reported preliminary evidence from pinnipeds that, for prolonged non-impulse noise, higher SELs were required to elicit a given TTS if exposure duration was short than if it was longer, i.e., the results were not fully consistent with an equal-energy model to predict TTS onset. Mooney *et al.* (2009a) showed this in a bottlenose dolphin exposed to octave-band non-impulse noise ranging from 4 to 8 kHz at SPLs of 130 to 178 dB re 1 μPa for periods of 1.88 to 30 minutes (min). Higher SELs were required to induce a given TTS if exposure duration was short than if it was longer. Exposure of the aforementioned bottlenose dolphin to a sequence of brief sonar signals showed that, with those brief (but non-impulse) sounds, the received energy (SEL) necessary to elicit TTS was higher than was the case with exposure to the more prolonged octave-band noise (Mooney *et al.* 2009b). Those authors concluded that, when using (non-impulse) acoustic signals of duration ~0.5 s, SEL must be at least 210–214 dB re 1 μPa^2-s to induce TTS in the bottlenose dolphin. The most recent studies conducted by Finneran *et al.* also support the notion that exposure duration has a more significant influence compared to SPL as the duration increases, and that TTS growth data are better represented as functions of SPL and duration rather than SEL alone (Finneran *et al.* 2010a, 2010b). In addition, Finneran *et al.* (2010b) conclude that when animals are exposed to intermittent noises, there is recovery of hearing during the quiet intervals between exposures through the accumulation of TTS across multiple exposures. Such findings suggest that when exposed to multiple seismic pulses, partial hearing recovery also occurs during the seismic pulse intervals.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are lower than those to which odontocetes are most sensitive, and natural ambient noise levels at those low frequencies tend to be higher (Urick 1983). As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales. However, no cases of TTS are expected given the small size of the airguns proposed to be used and the strong likelihood that baleen whales (especially migrating bowheads) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from prolonged exposures suggested that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.* 1999; 2005). However, more recent indications are that TTS onset in the most sensitive pinniped species studied (harbor seal, which is closely related to the ringed seal) may occur at a similar SEL as in odontocetes (Kastak *et al.* 2004).

Most cetaceans show some degree of avoidance of seismic vessels operating an airgun array (see above). It is unlikely that these cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. TTS would be more likely in any odontocetes that bow- or wake-ride or otherwise linger near the airguns. However, while bow- or wake-riding, odontocetes would be at the surface and thus not exposed to strong sound pulses given the pressure release and Lloyd Mirror effects at the surface. But if bow- or wake-riding animals were to dive intermittently near airguns, they would be exposed to strong sound pulses, possibly repeatedly.

If some cetaceans did incur mild or moderate TTS through exposure to airgun sounds in this manner, this would very likely be a temporary and reversible phenomenon. However, even a temporary reduction in hearing sensitivity could be deleterious in the event that, during that period of reduced sensitivity, a marine mammal needed its full hearing sensitivity to detect approaching predators, or for some other reason.

Some pinnipeds show avoidance reactions to airguns, but their avoidance reactions are generally not as strong or consistent as those of cetaceans. Pinnipeds occasionally seem to be attracted to operating seismic vessels. There are no specific data on TTS thresholds of pinnipeds exposed to single or multiple low-frequency pulses. However, given the indirect indications of a lower TTS threshold for the harbor seal than for odontocetes exposed to impulse sound (see above), it is possible that some pinnipeds close to a large airgun array could incur TTS.

NMFS currently typically includes mitigation requirements to ensure that cetaceans and pinnipeds are not exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa (rms). The 180/190 dB acoustic criteria were taken from recommendations by an expert panel of the High Energy Seismic Survey (HESS) Team that performed an assessment on noise impacts by seismic airguns to marine mammals in 1997, although the HESS Team recommended a 180-dB limit for pinnipeds in California (HESS

1999). The 180 and 190 dB re 1 μPa (rms) levels have not been considered to be the levels above which TTS might occur. Rather, they were the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As summarized above, data that are now available imply that TTS is unlikely to occur in various odontocetes (and probably mysticetes as well) unless they are exposed to a sequence of several airgun pulses stronger than 190 dB re 1 μPa (rms). On the other hand, for the harbor seal, harbor porpoise, and perhaps some other species, TTS may occur upon exposure to one or more airgun pulses whose received level equals the NMFS ''do not exceed'' value of 190 dB re 1 μPa (rms). That criterion corresponds to a single-pulse SEL of 175–180 dB re 1 μPa^2-s in typical conditions, whereas TTS is suspected to be possible in harbor seals and harbor porpoises with a cumulative SEL of ~171 and ~164 dB re 1 μPa^2-s, respectively.

It has been shown that most large whales and many smaller odontocetes (especially the harbor porpoise) show at least localized avoidance of ships and/or seismic operations. Even when avoidance is limited to the area within a few hundred meters of an airgun array, that should usually be sufficient to avoid TTS based on what is currently known about thresholds for TTS onset in cetaceans. In addition, ramping up airgun arrays, which is standard operational protocol for many seismic operators, may allow cetaceans near the airguns at the time of startup (if the sounds are aversive) to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array. Thus, most baleen whales likely will not be exposed to high levels of airgun sounds provided the ramp- up procedure is applied. Likewise, many odontocetes close to the trackline are likely to move away before the sounds from an approaching seismic vessel become sufficiently strong for there to be any potential for TTS or other hearing impairment. Hence, there is little potential for baleen whales or odontocetes that show avoidance of ships or airguns to be close enough to an airgun array to experience TTS. Nevertheless, even if marine mammals were to experience TTS, the magnitude of the TTS is expected to be mild and brief, only in a few decibels for minutes.

PTS

When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985). Physical damage to a mammal's hearing apparatus can occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times. (Rise time is the interval required for sound pressure to increase from the baseline pressure to peak pressure.)

There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the likelihood that some mammals close to an airgun array might incur at least mild TTS (see above), there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (e.g., Richardson *et al.* 1995; Gedamke *et al.* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals (Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis, and probably >6 dB higher (Southall *et al.* 2007). The low-to-moderate levels of TTS that have been induced in captive odontocetes and pinnipeds during controlled studies of TTS have been confirmed to be temporary, with no measurable residual PTS (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005; Nachtigall *et al.* 2003; 2004). However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter 1985). In terrestrial mammals, the received sound level from a single non-impulsive sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter 1994; Richardson *et al.* 1995; Southall *et al.* 2007). However, there is special concern about strong sounds whose pulses have very rapid rise times. In terrestrial mammals, there are situations when pulses with rapid rise times (e.g., from explosions) can result in PTS even though their peak levels are only a few dB higher than the level causing slight TTS. The rise time of airgun pulses is fast, but not as fast as that of an explosion.

Some factors that contribute to onset of PTS, at least in terrestrial mammals, are as follows:

- Exposure to a single very intense sound,
- Fast rise time from baseline to peak pressure,
- Repetitive exposure to intense sounds that individually cause TTS but not PTS, and
- Recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) reviewed the thresholds used to define TTS and PTS. Based on this review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that inducing mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, the animal probably would have to be exposed to a strong sound for an extended period, or to a strong sound with a rather rapid rise time.

More recently, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB, on an SEL basis, for there to be risk of PTS. Thus, for cetaceans exposed to a sequence of sound pulses, they estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of ~198 dB re 1 μPa^2-s. Additional assumptions had to be made to derive a corresponding estimate for pinnipeds, as the only available data on TTS-thresholds in pinnipeds pertained to nonimpulse sound (see above). Southall *et al.* (2007) estimated that the PTS threshold could be a cumulative SEL of ~186 dB re 1 μPa^2-s in the case of a harbor seal exposed to impulse sound. The PTS threshold for the California sea lion and northern elephant seal would probably be higher given the higher TTS thresholds in those species. Southall *et al.* (2007) also note that, regardless of the SEL, there is concern about the possibility of PTS if a cetacean or pinniped received one or more pulses with peak pressure exceeding 230 or 218 dB re 1 μPa, respectively. Thus, PTS might be expected upon exposure of cetaceans to either SEL ≥198 dB re 1 μPa^2-s or peak pressure ≥230 dB re 1 μPa. Corresponding proposed dual criteria for pinnipeds (at least harbor seals) are ≥186 dB SEL and ≥ 218 dB peak pressure (Southall *et al.* 2007).

These estimates are all first approximations, given the limited underlying data, assumptions, species differences, and evidence that the ''equal energy'' model may not be entirely correct.

Sound impulse duration, peak amplitude, rise time, number of pulses, and inter-pulse interval are the main factors thought to determine the onset and extent of PTS. Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

As described above for TTS, in estimating the amount of sound energy required to elicit the onset of TTS (and PTS), it is assumed that the auditory effect of a given cumulative SEL from a series of pulses is the same as if that amount of sound energy were received as a single strong sound. There are no data from marine mammals concerning the occurrence or magnitude of a potential partial recovery effect between pulses. In deriving the estimates of PTS (and TTS) thresholds quoted here, Southall *et al.* (2007) made the precautionary assumption that no recovery would occur between pulses.

It is unlikely that an odontocete would remain close enough to a large airgun array for sufficiently long to incur PTS. There is some concern about bowriding odontocetes, but for animals at or near the surface, auditory effects are reduced by Lloyd's mirror and surface release effects. The presence of the vessel between the airgun array and bow-riding odontocetes could also, in some but probably not all cases, reduce the levels received by bow-riding animals (e.g., Gabriele and Kipple 2009). The TTS (and thus PTS) thresholds of baleen whales are unknown but, as an interim measure, assumed to be no lower than those of odontocetes. Also, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. The TTS (and thus PTS) thresholds of some pinnipeds (e.g., harbor seal) as well as the harbor porpoise may be lower (Kastak *et al.* 2005; Southall *et al.* 2007; Lucke *et al.* 2009). If so, TTS and potentially PTS may extend to a somewhat greater distance for those animals. Again, Lloyd's mirror and surface release effects will ameliorate the effects for animals at or near the surface.

(4) Non-Auditory Physical Effects

Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to intense sounds. However, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns, and beaked whales do not occur in the proposed project area. In addition, marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes (including belugas), and some pinnipeds, are especially unlikely to incur non- auditory impairment or other physical effects.

Therefore, it is unlikely that such effects would occur during BPXA's proposed surveys given the brief duration of exposure and the planned monitoring and mitigation measures described later in this document.

Additional non-auditory effects include elevated levels of stress response (Wright *et al.* 2007; Wright and Highfill 2007). Although not many studies have been done on noise-induced stress in marine mammals, extrapolation of information regarding stress responses in other species seems applicable because the responses are highly consistent among all species in which they have been examined to date (Wright *et al.* 2007). Therefore, it is reasonable to conclude that noise acts as a stressor to marine mammals. Furthermore, given that marine mammals will likely respond in a manner consistent with other species studied, repeated and prolonged exposures to stressors (including or induced by noise) could potentially be problematic for marine mammals of all ages. Wright *et al.* (2007) state that a range of issues may arise from an extended stress response including, but not limited to, suppression of reproduction (physiologically and behaviorally), accelerated aging and sickness-like symptoms. However, as mentioned above, BPXA's proposed activity is not expected to result in these severe effects due to the nature of the potential sound exposure.

(5) Stranding and Mortality

Marine mammals close to underwater detonations can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.* 1993; Ketten 1995). Airgun pulses are less energetic and their peak amplitudes have slower rise times, while stranding and mortality events would include other energy sources (acoustical or shock wave) far beyond just seismic airguns. To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to airgun pulses, even in the case of large airgun arrays.

However, in numerous past IHA notices for seismic surveys, commenters have referenced two stranding events allegedly associated with seismic activities, one off Baja California and a second off Brazil. NMFS has addressed this concern several times, and, without new information, does not believe that this issue warrants further discussion. For information relevant to strandings of marine mammals, readers are encouraged to review NMFS' response to comments on this matter found in 69 FR 74906 (December 14, 2004), 71 FR 43112 (July 31, 2006), 71 FR 50027 (August 24, 2006), and 71 FR 49418 (August 23, 2006).

It should be noted that strandings related to sound exposure have not been recorded for marine mammal species in the Beaufort Sea. NMFS notes that in the Beaufort Sea, aerial surveys have been conducted by MMS and industry during periods of industrial activity (and by MMS during times with no activity). No strandings or marine mammals in distress have been observed during these surveys and none have been reported by North Slope Borough inhabitants. In addition, there are very few instances that seismic surveys in general have been linked to marine mammal strandings, other than those mentioned above. As a result, NMFS does not expect any marine mammals will incur serious injury or mortality in the Arctic Ocean or strand as a result of the proposed seismic survey.

Potential Effects of Pinger Signals

A pinger system (Sonardyne Acoustical Pingers) and acoustic releases/transponders would be used during seismic operations to position the receivers and locate and retrieve the batteries. Sounds transmitted by these pingers are characterized by very short pulses. The Sonardyne pinger has a source level ranging from ~188–193 dB re 1 μPa at 1 m in a frequency range of 19–36 kHz and the transponder has source levels ~192 dB re 1 μPa at 1 m in a frequency range of 7–15 kHz. Pulses are emitted on command from the operator aboard the source vessel.

The pinger produces sounds within the frequency range that could be detected by some seals (functional

underwater hearing estimated at 75 Hz to 75 kHz), baleen whales (hearing sensitivity from few tens of Hz to ~10 kHz), and beluga whales (peak sensitivity at ~10–15 kHz) (Southall *et al.* 2007). However, marine mammal communications will not be masked appreciably by the pinger signals because of the relatively low power output, low duty cycle, and brief period when an individual mammal is likely to be within the area where they could potentially be exposed.

Marine mammal behavioral reactions to pulsed sound sources such as airguns are discussed above, and responses to pinger sounds are likely similar if received at the same levels. However, the pulsed signals from the pinger are much weaker than those from the airgun and will propagate over shorter distances. Therefore, behavioral responses are not expected unless marine mammals are very close (within tens of meters) to the source. The maximum reaction that might be expected would be a startle reaction or other short-term response.

Source levels of the pinger are much lower than those of the airguns, which are discussed above. It is unlikely that the pinger produces pulse levels strong enough to cause temporary hearing impairment or (especially) physical injuries even in an animal that is (briefly) in a position near the source.

Vessel Sounds

In addition to the noise generated from seismic airguns, various types of vessels will be used in the operations, including source vessels, recorder/cable vessels, and various support vessels. Sounds from boats and vessels have been reported extensively (Greene and Moore 1995; Blackwell and Greene 2002; 2005; 2006). Numerous measurements of underwater vessel sound have been performed in support of recent industry activity in the Chukchi and Beaufort Seas. Results of these measurements have been reported in various 90-day and comprehensive reports since 2007 (e.g., Aerts *et al.* 2008; Hauser *et al.* 2008; Brueggeman 2009; Ireland *et al.* 2009; Hartin *et al.* 2011). For example, Garner and Hannay (2009) estimated sound pressure levels of 100 dB at distances ranging from approximately 1.5 to 2.3 mi (2.4 to 3.7 km) from various types of barges. MacDonald *et al.* (2008) estimated higher underwater SPLs from the seismic vessel *Gilavar* of 120 dB at approximately 13 mi (21 km) from the source, although the sound level was only 150 dB at 85 ft (26 m) from the vessel. Compared to airgun pulses, underwater sound from vessels is generally at relatively low frequencies.

The primary sources of sounds from all vessel classes are propeller cavitation, propeller singing, and propulsion or other machinery. Propeller cavitation is usually the dominant noise source for vessels (Ross 1976). Propeller cavitation and singing are produced outside the hull, whereas propulsion or other machinery noise originates inside the hull. There are additional sounds produced by vessel activity, such as pumps, generators, flow noise from water passing over the hull, and bubbles breaking in the wake.

Anticipated Effects on Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels produced by airguns and vessels operating in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.* 1981) and possibly avoid predators (Wilson and Dill 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.* 1993). In general, fish react more strongly to pulses of sound rather than non-pulse signals (such as noise from vessels) (Blaxter *et al.* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Investigations of fish behavior in relation to vessel noise (Olsen *et al.* 1983; Ona 1988; Ona and Godo 1990) have shown that fish react when the sound from the engines and propeller exceeds a certain level. Avoidance reactions have been observed in fish such as cod and herring when vessels approached close enough that received sound levels are 110 dB to 130 dB (Nakken 1992; Olsen 1979; Ona and Godo 1990; Ona and Toresen 1988). However, other researchers have found that fish such as polar cod, herring, and capeline are often attracted to vessels (apparently by the noise) and swim toward the vessel (Rostad *et al.* 2006). Typical sound source levels of vessel noise in the audible range for fish are 150 dB to 170 dB (Richardson *et al.* 1995).

Further, during the seismic survey only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the seismic activity ceases (McCauley *et al.* 2000a, 2000b; Santulli *et al.* 1999; Pearson *et al.* 1992). Thus, the proposed survey would have little, if any, impact on the abilities of marine mammals to feed in the area where seismic work is planned.

Some mysticetes, including bowhead whales, feed on concentrations of zooplankton. Some feeding bowhead whales may occur in the Alaskan Beaufort Sea in July and August, and others feed intermittently during their westward migration in September and October (Richardson and Thomson [eds.] 2002; Lowry *et al.* 2004). A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused concentrations of zooplankton to scatter. Pressure changes of sufficient magnitude to cause that type of reaction would probably occur only very close to the source. Impacts on zooplankton behavior are predicted to be negligible, and that would translate into negligible impacts on feeding mysticetes. Thus, the proposed activity is not expected to have any habitat-related effects on prey species that could cause significant or long-term consequences for individual marine mammals or their populations.

Potential Impacts on Availability of Affected Species or Stock for Taking for Subsistence Uses

Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives and represent between 60% and 80% of their total subsistence harvest. The species regularly harvested by subsistence hunters in and around the Beaufort Sea are bowhead and beluga whales, ringed, spotted, and bearded seals, and polar bears. The latter is not discussed in this section, as polar bears do not fall under the jurisdiction of NMFS. The importance of each of the subsistence species varies among the communities and is mainly based on availability and season.

The communities closest to the project area are, from west to east, the villages of Barrow, Nuiqsut, and Kaktovik. Barrow is located about 180 miles west from the survey area. It is the largest community on the Alaska's Beaufort Sea coast with a population of 4,351 in 2004 (DCED 2005). Important marine subsistence resources for Barrow include bowhead and beluga whales, ice seals, polar bears, and walrus. Nuiqsut is located near the mouth of the Colville River, about 35 miles southwest of the project area and had a population of 430 in 2004 (DCED 2005). The most important marine subsistence resource for Nuiqsut is the bowhead whale, and to a lesser extent beluga whales, polar bears and seals. Nuiqsut hunters use Cross Island as a base to hunt for bowhead whales during the fall migration and have historically hunted bowhead whales as far east as Flaxman Island. Kaktovik is located on Barter Island, about 150 miles east of the project area and had a population of 284 in 2004 (DCED 2005). Major marine subsistence resources include bowhead and beluga whales, seals, and polar bears. Approximately 50% of Kaktovik households participate in fall whaling (Fuller and George 1999).

(1) Bowhead Whales

The bowhead whale is a critical subsistence and cultural resource for the North Slope communities of Barrow, Nuiqsut and Kaktovik. Contemporary whaling in Kaktovik dates from 1964 and in Nuiqsut from 1973 (EDAW/AECOM 2007; Galginaitis and Koski 2002). The number of boats used or owned in 2011 by the subsistence whaling crew of the villages of Kaktovik, Nuiqsut, and Barrow was 8, 12, and 40, respectively. These numbers presumably change from year to year.

Bowhead harvesting in Barrow occurs both during the spring (April–May) and fall (September–October) when the whales migrate relatively close to shore (ADNR 2009). During spring bowheads migrate through open ice leads close to shore. The hunt takes place from the ice using umiaks (bearded seal skin boats). During the fall, whaling is shore-based and boats may travel up to 30 miles a day (EDAW/AECOM 2007). Although in Barrow historically most whales were taken during spring whaling, the efficiency of the spring harvest tends to be lower than the autumn harvest due to ice and weather conditions as well as struck whales escaping under the ice (Suydam *et al.* 2010). In the past few years the bowhead fall hunt has become increasingly important. Between 1993—2010, Barrow landed an average of 22 bowhead whales per year.

Nuiqsut and Kaktovik hunters harvest bowhead whales only during the fall. The bowhead spring migration in the Beaufort Sea occurs too far from shore for hunting because ice leads do not open up nearshore (ADNR 2009). In Nuiqsut, whaling takes place from early September through mid-to-late September as the whales migrate west (EDAW/AECOM 2007). Three to five whaling crews base themselves at Cross Island, a barrier island approximately 35 miles east of the Simpson Lagoon survey area. Nuiqsut whalers harvest an average of 3 bowheads each year.

Whaling from Kaktovik also occurs in the fall, primarily from late August through late September or early October (EDAW/AECOM 2007). Kaktovik whalers hunt from the Okpilak and Hulahula rivers east to Tapkaurak Point (ADNR 2009). Whaling activities are staged from the community rather than remote camps; most whaling takes place within 12 miles of the community (ADNR 2009). Kaktovik whalers harvest an average of 3 bowhead whales each year.

(2) Beluga Whales

The harvest of beluga whales is managed cooperatively through an agreement between NMFS and the Alaska Beluga Whale Committee (ABWC). From 2002–2006, 5–43 beluga whales were harvested annually from the Beaufort Sea stock (Allen and Angliss 2010), with a mean annual take of 25.4 animals. Few beluga whales are harvested by either Nuiqsut or Kaktovik.

(3) Ice Seals

Seals represent an important subsistence resource for the North Slope communities. Harvest of bearded seals usually takes place during the spring and summer open water season from Barrow (EDAW/AECOM 2007) with only a few animals taken by hunters from Kaktovik or Nuiqsut. Seals are also taken during the ice-covered season, with peak hunting occurring in February (ADNR 2009). In 2003, Barrow-based hunters harvested 776 bearded seals, 413 ringed seals and 12 spotted seals (ADNR 2009). Nuiqsut hunters harvest seals in an area from Cape Halkett to Foggy Island Bay. For the period 2000–2001, Nuiqsut hunters harvested one bearded seal and 25 ringed seals (ADNR 2009). Kaktovik hunters also hunt seals year-round. In 2002–2003, hunters harvested 8 bearded seals and 17 ringed seals.

Potential Impacts to Subsistence Uses

NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as:

* * * an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Seismic surveys have the potential to impact marine mammals hunted by Native Alaskans. In the case of cetaceans, the most common reaction to anthropogenic sounds (as noted previously in this document) is avoidance of the ensonified area. In the case of bowhead whales, this often means that the animals could divert from their normal migratory path by up several kilometers. Additionally, general vessel presence in the vicinity of traditional hunting areas could negatively impact a hunt.

In the case of subsistence hunts for bowhead whales in the Beaufort Sea, there could be an adverse impact on the hunt if the whales were deflected seaward (further from shore) in traditional hunting areas. The impact would be that whaling crews would have to travel greater distances to intercept westward migrating whales, thereby creating a safety hazard for whaling crews and/or limiting chances of successfully striking and landing bowheads.

The proposed seismic survey would take place between July and September. The project area is located approximately 35 miles northeast from Nuiqsut, 35 miles west from Cross Island, 150 miles west from Kaktovik and 180 miles east from Barrow. Potential impact from the planned activities is expected mainly from sounds generated by the vessel and during active airgun deployment. Due to the timing of the project and the distance from the surrounding communities, it is anticipated to have no effects on spring harvesting and little or no effects on the occasional summer harvest of beluga whale, subsistence seal hunts (ringed and spotted seals are primarily harvested in winter while bearded seals are hunted during July–September in the Beaufort Sea), or the fall bowhead hunt. The community of Nuiqsut may begin fall whaling activities in late August to early September from Cross Island (east of the survey area), and their efforts are typically focused on whales approaching Cross Island so that any harvest would occur before whales approached the survey area. As part of

the planned mitigation measures (see below), BP plans to complete those portions of the survey area outside of the barrier islands prior to August 25, 2012. All seismic activities after this date would take place inshore of the barrier islands, thus avoiding subsistence bowhead hunt in the area.

Finally, BP has signed a Conflict Avoidance Agreement (CAA) and will prepare a Plan of Cooperation under 50 CFR 216.104 Article 12 of the MMPA to address potential impacts on subsistent seal hunting activities. The CAA identifies what measures have been or will be taken to minimize adverse impacts of the planned activities on subsistence harvesting (see below for more details). BP will meet with the AEWC and communities' Whaling Captains' Associations as part of the CAA development, to establish avoidance guidelines and other mitigation measures to be followed where the proposed activities may have an impact on subsistence.

Proposed Mitigation

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the proposed BP open-water seismic survey in the Beaufort Sea, BP worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the marine seismic survey activities.

The proposed mitigation measures are divided into the following major groups: (1) Sound source measurements, (2) Establishing exclusion and disturbance zones, (3) Vessel and helicopter related mitigation measures, and (4) Mitigation measures for airgun operations. The primary purpose of these mitigation measures is to detect marine mammals within, or about to enter designated exclusion zones and to initiate immediate shutdown or power down of the airgun(s), therefore it's very unlikely potential injury or TTS to marine mammals would occur, and Level B behavioral of marine mammals would be reduced to the lowest level practicable.

(1) Sound Source Measurements

The acoustic monitoring program has two objectives: (1) To verify the modeled distances to the exclusion and disturbance zones from the 640 in^3 and 320 in^3 airgun arrays and to provide corrected distances to the PSOs; and (2) to measure vessel sounds (i.e., received levels referenced to 1 m from the sound source) of each representative vessel of the seismic fleet, to obtain information on the sounds produced by these vessels.

Verification and Establishment of Exclusion and Disturbance Zones

Acoustic measurements to calculate received sound levels as a function of distance from the airgun sound source will be conducted within 72 hours of initiation of the seismic survey. These measurements will be conducted according to a standard protocol for the 640 in^3 array, the 320 in^3 array and the 40 in^3 gun, both inside and outside the barrier islands. The results of these acoustic measurements will be used to re-define, if needed, the distances to received levels of 190, 180, 160 and 120 dB. The distances of the received levels as a function of the different sound sources (varying discharge volumes) will be used to guide power-down and ramp-up procedures. A preliminary report describing the methodology and results of the verification for at least the 190 dB and 180 dB (rms) exclusion zones will be submitted to NMFS within 14 days of completion of the measurements.

Measurements of Vessel Sounds

BP intends to measure vessel sounds of each representative vessel. The exact scope of the source level measurements (back-calculated as received levels at 1 m from the source) will follow a pre-defined protocol to eliminate the complex interplay of factors that underlie such measurements, such as bathymetry, vessel activity, location, season, etc. Where possible and practical the monitoring protocol will be developed in alignment with other existing vessel source level measurements.

(2) Establishing Exclusion and Disturbance Zones

Under current NMFS guidelines, the ''exclusion zone'' for marine mammal exposure to impulse sources is customarily defined as the area within which received sound levels are ≥180 dB re 1 μPa (rms) for cetaceans and ≥190 dB re 1 μPa (rms) for pinnipeds. These safety criteria are based on an assumption that SPL received at levels lower than these will not injure these animals or impair their hearing abilities, but that at higher levels might have some such effects. Disturbance or behavioral effects to marine mammals from underwater sound may occur after exposure to sound at distances greater than the exclusion zones (Richarcdson *et al.* 1995).

An acoustic propagation model, i.e., JASCO's Marine Operations Noise Model (MONM), was used to estimate the distances to received sound levels of 190, 180, 170, 160, and 120 dB re 1μPa (rms) for pulsed sounds from the 640 in^3 and 320 in^3 airgun arrays. Modeling methodology and results are described in detail in the appendix of the BP's IHA application (Warner and Hipsey 2011). Table 2 summarizes the distances from the source to specific received sound levels based on MONM modeling.

TABLE 2—ESTIMATED DISTANCES TO SPECIFIED RECEIVED SPL (RMS) FROM AIRGUN ARRAYS WITH A TOTAL DISCHARGE VOLUME OF 640 IN^3, 320 IN^3, AND 40 IN^3

Received levels (dB re 1 μPa rms)	Distance in meters (inside barrier islands)			Distance in meters (outside barrier islands)	
	640 in^3	320 in^3	40 in^3	640 in^3	40 in^3
190	310	160	16	120	<50
180	750	480	59	950	<50
170	1,200	930	300	2,500	120
160	1,800	1,500	700	5,500	810
120	6,400	5,700	3,700	44,000	16,000

Note: Values are based on 2 m tow depth for the 640 in^3 and 40 in^3 array, and a 1 m tow depth for the 320 in^3 array.

The distances to received sound levels of 160 dB re 1 μPa (rms) of the 640 in³ airgun array were used to calculate the numbers of marine mammals potentially harassed by the activities. The distances to received levels of 180 dB and 190 dB re 1 μPa (rms) are mainly relevant as exclusion radii to avoid level A harassment of marine mammals through implementation of shut down and power down measures (see details below).

(3) Vessel and Helicopter Related Mitigation Measures

This proposed mitigation measures apply to all vessels that are part of the Simpson Lagoon seismic survey, including crew transfer vessels.

- Vessel operators shall avoid concentrations or groups of whales and vessels shall not be operated in a way that separates members of a group. In proximity of feeding whales or aggregations, vessel speed shall be less than 10 knots.
- When within 900 feet (300 m) of whales vessel operators shall take every effort and precaution to avoid harassment of these animals by:
  - Reducing speed and steering around (groups of) whales if circumstances allow, but never cutting off a whale's travel path;
  - Avoiding multiple changes in direction and speed.
- Vessel operators shall check the waters immediately adjacent to a vessel to ensure that no marine mammals will be injured when the vessel's propellers (or screws) are engaged.
- To minimize collision risk with marine mammals, vessels shall not be operated at speeds that would make collisions with whales likely. When weather conditions require, such as when visibility drops, vessels shall adjust speed accordingly to avoid the likelihood of injury to whales.
- Sightings of dead marine mammals would be reported immediately to the BP representative. BP is responsible for ensuring reporting of the sightings according to the guidelines provided by NMFS.
- In the event that any aircraft (such as helicopters) are used to support the planned survey, the mitigation measures below would apply:
  - Under no circumstances, other than an emergency, shall aircraft be operated at an altitude lower than 1,000 feet above sea level (ASL) when within 0.3 mile (0.5 km) of groups of whales.
  - Helicopters shall not hover or circle above or within 0.3 mile (0.5 km) of groups of whales.

(4) Mitigation Measures for Airgun Operations

The primary role for airgun mitigation during seismic survey is to monitor marine mammals near the seismic source vessel during all daylight airgun operations and during any nighttime start-up of the airguns. During the seismic survey PSOs will monitor the pre- established exclusion zones for the presence of marine mammals. When marine mammals are observed within, or about to enter, designated safety zones, PSOs have the authority to call for immediate power down (or shutdown) of airgun operations as required by the situation. A summary of the procedures associated with each mitigation measure is provided below.

Ramp Up Procedure

Ramp up procedures for an airgun array involve a step-wise increase in the number of operating airguns until the required discharge volume is achieved. The purpose of a ramp up (sometimes also referred to as soft start) is to provide marine mammals in the vicinity of the activity the opportunity to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

The rate of ramp up shall be no more than 6 dB of source level per 5 min period. A common procedure is to double the number of operating airguns at 5-min intervals, starting with the smallest gun in the array. BP states that it intends to double the number of airguns operating at 5 minute intervals during ramp up. For the 640 cu in airgun array of the Simpson Lagoon seismic survey this is estimated to take 20 minutes, and for the 320 in³ array 15 minutes. During ramp up, the safety zone for the full airgun array will be observed. The ramp up procedures will be applied as follows:

- A ramp up, following a cold start, can be applied if the exclusion zone has been free of marine mammals for a consecutive 30-minute period. The entire exclusion zone must have been visible during these 30 minutes. If the entire exclusion zone is not visible, then ramp up from a cold start cannot begin.
- Ramp up procedures from a cold start will be delayed if a marine mammal is sighted within the exclusion zone during the 30-minute period prior to the ramp up. The delay will last until the marine mammal(s) has been observed to leave the exclusion zone or until the animal(s) is not sighted for at least 15 or 30 minutes. The 15 minutes applies to small toothed whales and pinnipeds, while a 30 minute observation period applies to baleen whales and large toothed whales.
- A ramp up, following a shutdown, can be applied if the marine mammal(s) for which the shutdown occurred has been observed to leave the exclusion zone or until the animal(s) is not sighted for at least 15 minutes (small toothed whales and pinnipeds) or 30 minutes (baleen whales and large toothed whales). This assumes there was a continuous observation effort prior to the shutdown and the entire exclusion zone is visible.
- If, for any reason, electrical power to the airgun array has been discontinued for a period of 10 minutes or more, ramp-up procedures need to be implemented. Only if the PSO watch has been suspended, a 30-minute clearance of the exclusion zone is required prior to commencing ramp-up. Discontinuation of airgun activity for less than 10 minutes does not require a ramp-up.
- The seismic operator and PSOs will maintain records of the times when ramp-ups start and when the airgun arrays reach full power.

Power-Down Procedures

A power down is the immediate reduction in the number of operating airguns such that the radii of the 190 dB and 180 dB (rms) zones are decreased to the extent that an observed marine mammal is not in the applicable safety zone of the full array. During a power down, one airgun (or some other number of airguns less than the full airgun array) continues firing. The continued operation of one airgun is intended to (a) alert marine mammals to the presence of airgun activity, and (b) retain the option of initiating a ramp up to full operations under poor visibility conditions.

- The airgun array shall be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable exclusion zone of the full array, but is outside the applicable exclusion zone of the single mitigation airgun.
- If a marine mammal is already within the exclusion zone when first detected, the airguns will be powered down immediately.
- Following a power-down, ramp up to the full airgun array will not resume until the marine mammal has cleared the exclusion zone. The animal will be considered to have cleared the exclusion zone if it is visually observed to have left the exclusion zone of the full array, or has not been seen within the zone for 15 minutes (pinnipeds or

small toothed whales) or 30 minutes (baleen whales or large toothed whales).

Shutdown Procedures

• The operating airgun(s) will be shutdown completely if a marine mammal approaches or enters the 190 or 180 dB (rms) exclusion zone of the smallest airgun.

• Airgun activity will not resume until the marine mammal has cleared the exclusion zone of the full array. The animal will be considered to have cleared the exclusion zone as described above under ramp up procedures.

Poor Visibility Conditions

BP plans to conduct 24-hour operations. PSOs will not be on duty during ongoing seismic operations during darkness, given the very limited effectiveness of visual observation at night (there will be no periods of darkness in the survey area until mid-August). The proposed provisions associated with operations at night or in periods of poor visibility include the following:

• If during foggy conditions, heavy snow or rain, or darkness (which may be encountered starting in late August), the full 180 dB exclusion zone is not visible, the airguns cannot commence a ramp-up procedure from a full shut-down.

• If one or more airguns have been operational before nightfall or before the onset of poor visibility conditions, they can remain operational throughout the night or poor visibility conditions. In this case ramp-up procedures can be initiated, even though the exclusion zone may not be visible, on the assumption that marine mammals will be alerted by the sounds from the single airgun and have moved away.

In addition, NMFS proposes the following additional protective mitigation and monitoring during the periods of darkness or low visibility. Specifically, NMFS does not recommend keeping one airgun (the so called ''mitigation gun'' in past IHAs) firing for long periods of time with no seismic operation ongoing during darkness or other periods of poor visibility on the previous assumption that marine mammals will be alerted by the sounds from the single airgun so that a cold start with pre-survey monitoring could be avoided, since there is no scientific evidence that such technique works (Tyack 2009). On the contrary, keeping an airgun firing unnecessarily for long periods of time would only introduce more noise into the water. Therefore, for seismic surveys that would start during night time and low visibility, NMFS proposes to require that PSOs use vessel lights, night vision devices (NVDs), and/or forward looking infrared (FLIR) to observe as much as possible for 30 minutes before ramping up the airgun array. PSOs will be called up to observe at nighttime during the 30-min periods prior to ramp-ups as well as during ramp-ups.

Mitigation Measures for Subsistence Activities

(1) Subsistence Mitigation Measures

To limit potential impacts to the bowhead whale migration and the subsistence hunt, BP would not conduct airgun operations in the area north of the barrier islands after 25 August.

(2) Plan of Cooperation (POC) and Conflict Avoidance Agreement (CAA)

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes.

BP has signed a Conflict Avoidance Agreement (CAA) with the Alaska Eskimo Whaling Commission (AEWC) and communities' Whaling Captains' Association for the proposed 2012 Simpson Lagoon OBV seismic survey. The main purpose of the CAA is to provide (1) equipment and procedures for communications between subsistence participants and industry participants; (2) avoidance guidelines and other mitigation measures to be followed by the industry participants working in or transiting the vicinity of active subsistence hunters, in areas where subsistence hunters anticipate hunting, or in areas that are in sufficient proximity to areas expected to be used for subsistence hunting that the planned activities could potentially adversely affect the subsistence bowhead whale hunt through effects on bowhead whales; and (3) measures to be taken in the event of an emergency occurring during the term of the CAA.

In the CAA, BP agrees to employ a Marine Mammal Observer/Inupiat Communitor (MMO/IC) on board each primary sound source vessel owned or operated by BP in the Beaufort Sea, and that native residents of the eleven villages represented by the AEWC shall be given preference in hiring for MMO/IC positions.

The CAA states that all vessels (operated by BP) shall report to the appropriate Communication Center (Com-Center) at least once every six hours commencing with a call at approximately 06:00 hours. The appropriate Com-Center shall be notified if there is any significant change in plans, such as an unannounced start-up of operations or significant deviations from announced course, and such Com-Center shall notify all whalers of such changes.

The CAA further states that each Com-Center shall have an Inupiat operator (''Com- Center operator'') on duty 24 hours per day from August 15, or one week before the start of the fall bowhead whale hunt in each respective village, until the end of the bowhead whale subsistence hunt.

The CAA also states that following the end of the fall 2012 bowhead whale subsistence hunt and prior to the 2013 pre-season introduction meetings, the industry participant that establishes the Deadhorse and Kaktovik Com Center will offer to the AEWC Chairman to host a joint meeting with all whaling captains of the villages of Nuiqsut, Kaktovik, and Barrow, the Marien Mammal Observer/Inupiat Communicators stationed on the industry participants' vessels in the Beaufort Sea, and with the Chairman and Exective Director of the AEWC, at a mutually agreed upon time and place on North Slope of Alaska, to review the results of the 2012 Beaufort Sea open water season.

In addition, BP is developing a ''Plan of Cooperation'' (POC) for the proposed 2012 seismic survey in the Simpson Lagoon of the Alaskan Beaufort Sea in consultation with representatives of communities along the Beaufort Sea coast at Barrow, Nuiqsut, and Kaktovik, on issues related to subsistence seal hunt. Mitigation measures similar to those listed in the CAA will be identified in the POC, and a final draft of the POC will be delivered to NMFS and other regulatory agencies.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

• The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; and

• The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

(1) Proposed Monitoring Measures

The monitoring plan proposed by BP can be found in its IHA application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period. A summary of the primary components of the plan follows.

There will be two vessel-based monitoring programs during the Simpson Lagoon OBC seismic survey. One program involves the presence of protected species observers (PSOs) on the seismic source vessels during the entire seismic survey period. The other vessel-based program involves two PSOs on a monitoring vessel outside the barrier islands after 25 August.

Visual Monitoring From Source Vessels

Two PSOs will be present on each seismic source vessel. Of these two PSOs, one will be on watch at all times during daylight hours to monitor the 190 and 180 dB exclusion zones for the presence of marine mammals during airgun operations. During the fall bowhead whale migration season the 160 dB disturbance zone will also be monitored for the presence of groups of 12 or more baleen whales. The 120 dB disturbance zone for bowhead cow/calf pairs will be monitored from another vessel (see section ''Visual Monitoring Outside the Barrier Islands''). The main objectives of the vessel-based marine mammal monitoring program from the source vessels are as follows:

- To implement mitigation measures during seismic operations (e.g. course alteration, airgun power-down, shut-down and ramp-up);
- To record all marine mammal data needed to estimate the number of marine mammals potentially affected, which must be reported to NMFS within 90 days after the survey;
- To compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and
- To obtain data on the behavior and movement patterns of marine mammals observed and compare those at times with and without seismic activity.

Marine Mammal Observer Protocol

BP intends to work with experienced PSOs that have had previous experience working on seismic survey vessels, which will be especially important for the lead PSO on the source vessels. At least one Alaska Native resident, who is knowledgeable about Arctic marine mammals and the subsistence hunt, is expected to be included as one of the team members aboard the vessels. Before the start of the seismic survey the crew of the seismic source vessels will be briefed on the function of the PSOs, their monitoring protocol, and mitigation measures to be implemented. They will also be aware of the monitoring objectives of the dedicated monitoring vessel, and how their observations can affect the operations.

On all source vessels, at least one observer will monitor for marine mammals at any time during daylight hours (there will be no periods of total darkness until mid-August). PSOs will be on duty in shifts of a maximum of 4 hours at a time, although the exact shift schedule will be established by the lead PSO in consultation with the other PSOs.

The three source vessels will offer suitable platforms for PSOs. Observations will be made from locations where PSOs have the best view around the vessel. During daytime, the PSO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7 × 50 Fujinon) and with the naked eye. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation, using other vessels in the area as targets. Laser range finding binoculars are generally not useful in measuring distances to animals directly.

Communication Procedures

When marine mammals in the water are detected within or about to enter the designated safety zones, the airgun(s) power-down or shut-down procedures will be implemented immediately. To assure prompt implementation of power-downs and shut- downs, multiple channels of communication between the PSOs and the airgun technicians will be established. During the power-down and shut-down, the PSO(s) will continue to maintain watch to determine when the animal(s) are outside the safety radius. Airgun operations can be resumed with a ramp-up procedure (depending on the extent of the power down) if the observers have visually confirmed that the animal(s) moved outside the exclusion zone, or if the animal(s) were not observed within the safety zone for 15 minutes (pinnipeds and small toothed whales) or for 30 minutes (for baleen whales and large toothed whales). Direct communication with the airgun operator will be maintained throughout these procedures.

Data Recording

All marine mammal observations and any airgun power-down, shut-down and ramp- up will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database after each day. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Visual Monitoring Outside the Barrier Islands

The main purpose of the PSOs on the monitoring vessel that will operate outside the barrier islands is to monitor the 120 dB disturbance zone during daylight hours for the presence of four or more bowhead cow/calf pairs. The predicted distances to received levels of 120 dB are 6.4 km for the 640 in^3 array and 5.7 km for the 320 in^3 array. The distance to the 160 dB disturbance zone is small enough (1.8 km for the 640 in^3 and 1.5 km for the 320 in^3 array) to be covered by the PSOs on the source vessels. Of the two PSOs on the monitoring vessel, one will be on watch at all times during daylight hours to monitor the disturbance zones and to communicate any sightings of four bowhead cow/calf pairs to the PSOs on the source vessels. The shift schedule and observer protocol will be similar to that of the PSOs on the source vessels.

Channels of communication between the lead PSOs on the source vessels and the dedicated monitoring vessel will also be established. If four or more bowhead cow/calf pairs are observed within or entering the 120 dB disturbance zone the lead PSO on monitoring vessel will immediately contact the lead PSO on the source vessel, who will ensure prompt implementation of airgun power downs or shutdowns. The lead PSO of the monitoring vessel will continue monitoring the 120 dB zone and notify the PSO on the source vessel when the cow/calf pairs have left the safety zone or when they haven't been observed within the safety zone for 30 minutes. Under these conditions ramp-up can be initiated.

These vessel based surveys outside the barrier islands will be conducted up to 3 days per week, weather depending. Anticipated start date is August 25, 2012, and these surveys will be continuing until the end of the data acquisition period. During this period data acquisition will take place only inside the barrier islands. The vessel will follow transect lines within the 120 dB zone that are designed in such a way that the area ensonified by 120 dB or more will be covered. The exact start and end point will depend on the area to be covered by the source vessels during that particular day.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed ''where the proposed activity may affect the availability of a species or stock for taking for subsistence uses'' (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state, ''Upon receipt of a complete monitoring plan, and at its discretion, [NMFS] will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan'' (50 CFR 216.108(d)).

NMFS convened an independent peer review panel to review BP's mitigation and monitoring plan in its IHA application for taking marine mammals incidental to the proposed OBC seismic survey in the Simpson Lagoon of the Alaskan Beaufort Sea, during 2012. The panel met on January 5 and 6, 2012, and provided their final report to NMFS on February 29, 2012. The full panel report can be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

NMFS provided the panel with BP's monitoring and mitigation plan and asked the panel to address the following questions and issues for BP's plan:

- Will the applicant's stated objectives effectively further the understanding of the impacts of their activities on marine mammals and otherwise accomplish the goals stated above? If not, how should the objectives be modified to better accomplish the goals above?
- Can the applicant achieve the stated objectives based on the methods described in the plan?
- Are there technical modifications to the proposed monitoring techniques and methodologies proposed by the applicant that should be considered to better accomplish their stated objectives?
- Are there techniques not proposed by the applicant (i.e., additional monitoring techniques or methodologies) that should be considered for inclusion in the applicant's monitoring program to better accomplish their stated objectives? And
- What is the best way for an applicant to present their data and results (formatting, metrics, graphics, etc.) in the required reports that are to be submitted to NMFS (i.e., 90-day report and comprehensive report)?

The peer review panel report contains recommendations that the panel members felt were applicable to the BP's monitoring plans. Specifically the panel commented on issues related to: (1) Vessel-based marine mammal observers (MMOs), (2) MMO training, (3) Data recording, (4) Data analysis, and (5) Acoustical monitoring.

NMFS has reviewed the report and evaluated all recommendations made by the panel. NMFS has determined that there are several measures that BP can incorporate into its 2012 OBC seismic survey. Additionally, there are other recommendations that NMFS has determined would also result in better data collection, and could potentially be implemented by oil and gas industry applicants, but which likely could not be implemented for the 2012 open water season due to technical issues (see below). While it may not be possible to implement those changes this year, NMFS believes that they are worthwhile and appropriate suggestions that may require a bit more time to implement, and BP should consider incorporating them into future monitoring plans should BP decide to apply for IHAs in the future.

The following subsections lay out measures that NMFS recommends for implementation as part of the 2012 OBC seismic survey by BP and those that are recommended for future programs.

Recommendations for Inclusion in the 2012 Monitoring Plan

The peer review panel's report contains several recommendations regarding vessel- based marine mammal observers, marine mammal monitor (MMO) training, data recording, data analysis and presentation of data in reports, and acoustic monitoring, which NMFS agrees that BP should incorporate:

(1) Vessel-Based Marine Mammal Observers

- Utilize crew members to assist the MMOs. Crew members should not be used as primary MMOs because they have other duties and generally do not have the same level of expertise, experience, or training as MMOs, but they could be stationed on the fantail of the vessel to observe the near field, especially the area around the airgun array and implement a rampdown or shutdown if a marine mammal enters the safety zone (or exclusion zone).
- If crew members are to be used as MMOs, they should go through some basic training consistent with the functions they will be asked to perform. The best approach would be for crew members and MMOs to go through the same training together.
- As BP plans to have a marine mammal survey vessel outside the barrier islands after 25 August, the panel recommends BP use MMOs on the vessel to monitor for the presence and behavior of marine mammals in the offshore area projected to be exposed to seismic sounds.

(2) MMO Training

- BP could improve its MMO training by implementing panel recommendations from previous years (on other seismic survey programs). These recommendations include:
  - Observers should be trained using visual aids (e.g., videos, photos), to help them identify the species that they are likely to encounter in the conditions under which the animals will likely be seen.
  - Observer teams should include Alaska Natives, and all observers should be trained together. Whenever possible, new observers should be paired with experienced observers to avoid situations where lack of experience impairs the quality of observations.
  - Observers should understand the importance of classifying marine mammals as ''unknown'' or ''unidentified'' if they cannot identify the animals to species with confidence. In those cases, they should note any information that might aid in the

identification of the marine mammal sighted. For example, for an unidentified mysticete whale, the observers should record whether the animal had a dorsal fin.

○ Observers should use the best possible positions for observing (e.g., outside and as high on the vessel as possible), taking into account weather and other working conditions.

• BP should train its MMOs to follow a scanning schedule that consistently distributes scanning effort according to the purpose and need for observations. For example, the schedule might call for 60 percent of scanning effort to be directed toward the near field and 40 percent at the far field. All MMOs should follow the same schedule to ensure consistency in their scanning efforts.

• MMOs also need training in documenting the behaviors of marine mammals. MMOs should simply record the primary behavioral state (i.e., traveling, socializing, feeding, resting, approaching or moving away from vessels) and relative location of the observed marine mammals.

(3) Data Recording

• MMOs should record observations of marine mammals hauled out on barrier islands. Because of the location of BP's proposed survey, most (if not all) of the marine mammals observed in the lagoon will be pinnipeds. It is feasible that the surveys may alter the hauling out patterns of pinnipeds, so observations of them should be recorded.

• BP should work with its observers to develop a means for recording data that does not reduce observation time significantly. Possible options include the use of a voice recorder during observations followed by later transcriptions, or well-designed software programs that minimize the time required to enter data. Other techniques also may be suitable.

(4) Data Analysis and Presentation of Data in Reports

• Estimation of potential takes or exposures should be improved for times with low visibility (such as during fog or darkness) through interpolation or possibly using a probability approach. For instance, for periods of fog or darkness one could use marine mammal observations obtained during a specified period of time before or fter the time when visibility was restricted. Those data could be used to interpolate possible takes during periods of restricted visibility.

• Simpson Lagoon is relatively shallow, and marine mammal distribution likely will be closely linked to water depth. To account for this confounding factor, depth should be continuously recorded by the vessel and for each marine mammal sighting. Water depth should be accounted for in the analysis of take estimates.

• BP should be very clear in their report about what periods are considered ''non-seismic'' for analyses.

• BP should examine data from BWASP and other such programs to assess possible impacts from their seismic survey.

• The panel states that it believes the best ways to present data and results are described in peer-review reports from previous years. These recommendations include:

○ To better assess impacts to marine mammals, data analysis should be separated into periods when a seismic airgun array (or a single mitigation airgun) is operating and when it is not. Final and comprehensive reports to NMFS should summarize and plot:

▪ Data for periods when a seismic array is active and when it is not; and

▪ The respective predicted received sound conditions over fairly large areas (tens of km) around operations.

○ To help evaluate the effectiveness of MMOs and more effectively estimate take, reports should include sightability curves (detection functions) for distance-based analyses.

○ To better understand the potential effects of oil and gas activities on marine mammals and to facilitate integration among companies and other researchers, the following data should be obtained and provided electronically in the 90-day report:

▪ The location and time of each aerial or vessel-based sighting or acoustic detection;

▪ Position of the sighting or acoustic detection relative to ongoing operations (i.e., distance from sightings to seismic operation, drilling ship, support ship, etc.), if known;

▪ The nature of activities at the time (e.g., seismic on/off);

▪ Any identifiable marine mammal behavioral response (sighting data should be collected in a manner that will not detract from the MMO's ability to detect marine mammals); and

▪ Adjustments made to operating procedures.

○ BP should improve take estimates and statistical inference into effects of the activities by incorporating the following measures:

▪ Reported results from all hypothesis tests should include estimates of the associated statistical power.

▪ Estimate and report uncertainty in all take estimates. Uncertainty could be expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, etc.; the exact approach would be selected based on the sampling method and data available.

(5) Acoustical Monitoring

• BP should also use the offshore vessel to monitor (periodically) the propagation of airgun sounds from within the lagoon into offshore areas during its marine mammal survey using a dipping hydrophone.

• To help verify the propagation model results, the panel also recommends additional acoustic monitoring with bottom mounted recorders. Recorders should be deployed throughout the seismic survey. One suggestion is to deploy instruments including: one at the cut, or break, between Leavitt and Spy islands at about the 5 m isobath; one north of the center of Leavitt Island at the 10 m isobath; and one off the east end of Pingok Island at the 10 m isobath.

Recommendations To Be Considered for Future Monitoring Plans

In addition, the panelists recommended that (1) BP continue to develop and test observational aids to assist with visibility during night, poor light conditions, inclement weather, etc.; and (2) BP conduct additional acoustic monitoring with bottom mounted recorders to monitor for calling marine mammals. It may be possible to evaluate calling rates relative to seismic operations or received levels of seismic sounds. Additionally, Shell will have several acoustic arrays in the general area. Those arrays will provide a basis for determining locations of calling marine mammals. NMFS should encourage BP to request data from Shell to help examine impacts of the seismic survey on the distribution of calling bowheads and other marine mammals.

After discussion with BP, NMFS decided not to implement these two recommendations for BP's 2012 OBC seismic survey because most of BP's survey would occur during the time when there will be very short low-light hours. As for the second recommendation, NMFS realized that given the complexity in marine mammal passive acoustic localization, BP will not have the time to implement this recommendation for its 2012 survey.

(2) Reporting Measures

Sound Source Verification Reports

A report on the preliminary results of the sound source verification measurements, including the measured

190, 180, 160, and 120 dB (rms) radii of the airgun sources, would be submitted within 14 days after collection of those measurements at the start of the field season. This report will specify the distances of the exclusion zones that were adopted for the survey.

Technical Reports

The results of BP's 2012 vessel-based monitoring, including estimates of ''take'' by harassment, would be presented in the ''90-day'' and Final Technical reports, if the IHA is issued and the proposed OBC seismic survey is conducted. The Technical Reports should be submitted to NMFS within 90 days after the end of the seismic survey. The Technical Reports will include:

(a) Summaries of monitoring effort (e.g., total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(b) Analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare);

(c) Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(d) To better assess impacts to marine mammals, data analysis should be separated into periods when a seismic airgun array (or a single mitigation airgun) is operating and when it is not. Final and comprehensive reports to NMFS should summarize and plot:

- Data for periods when a seismic array is active and when it is not; and
- The respective predicted received sound conditions over fairly large areas (tens of km) around operations;

(e) Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability), such as:

- Initial sighting distances versus airgun activity state;
- Closest point of approach versus airgun activity state;
- Observed behaviors and types of movements versus airgun activity state;
- Numbers of sightings/individuals seen versus airgun activity state;
- Distribution around the survey vessel versus airgun activity state; and
- Estimates of take by harassment;

(f) Reported results from all hypothesis tests should include estimates of the associated statistical power when practicable;

(g) Estimate and report uncertainty in all take estimates. Uncertainty could be expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, etc.; the exact approach would be selected based on the sampling method and data available;

(h) The report should clearly compare authorized takes to the level of actual estimated takes; and

Notification of Injured or Dead Marine Mammals

In addition, NMFS would require BP to notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of marine survey operations. BP shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured or dead marine mammal is found by BP that is not in the vicinity of the proposed open-water marine survey program, BP would report the same information as listed above as soon as operationally feasible to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the proposed open water marine survey program. Anticipated impacts to marine mammals are associated with noise propagation from the survey airgun(s) used in the shallow hazards survey.

The full suite of potential impacts to marine mammals was described in detail in the ''Potential Effects of the Specified Activity on Marine Mammals'' section found earlier in this document. The potential effects of sound from the proposed open water marine survey programs might include one or more of the following: Masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.* 1995). As discussed earlier in this document, the most common impact will likely be from behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of the animal. For reasons discussed previously in this document, hearing impairment (TTS and PTS) are highly unlikely to occur based on the proposed mitigation and monitoring measures that would preclude marine mammals being exposed to noise levels high enough to cause hearing impairment.

For impulse sounds, such as those produced by airgun(s) used in the seismic survey, NMFS uses the 160 dB (rms) re 1 μPa isopleth to indicate the onset of Level B harassment. BP provided calculations for the 160- and 120-dB isopleths produced by these activities and then used those isopleths to estimate takes by harassment. NMFS used the calculations to make the necessary MMPA preliminary findings. BP provided a full description of the methodology used to estimate takes by harassment in its IHA application (see **ADDRESSES**), which is also provided in the following sections.

BP has requested an authorization to take 11 marine mammal species by Level B harassment. These 11 marine mammal species are: beluga whale (*Delphinapterus leucas*), killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), bearded seal (*Erignathus barbatus*), ringed seal (*Phoca hispida*), spotted seal (*P. largha*), and ribbon seal (*Histriophoca fasciata*). BP did not request take of narwhal because the occurrence of this species is extremely rare in the proposed action area, and it is very unlikely to be encountered during the BP's proposed seismic surveys.

Basis for Estimating ''Take by Harassment''

As stated previously, it is current NMFS practice to estimate take by Level A harassment for received levels above 180 dB re 1μPa (rms) for cetaceans and 190 dB re 1μPa (rms) for pinnipeds, and take by Level B harassment for all marine mammals under NMFS jurisdiction by impulse sounds at a received level above 160 dB re 1μPa (rms) and by non- impulse sounds at a received level above 120 dB re 1μPa (rms). However, not all animals are equally affected by the same received noise levels and, as described earlier, in most cases marine mammals are not

likely to be taken by Level A harassment (injury) when exposed to received levels higher than 180 dB for a brief period of time.

For behavioral harassment, marine mammals will likely not show strong reactions (and in some cases any reaction) until sounds are much stronger than 160 or 120 dB (for impulse and continuous sounds, respectively). Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* (2007)). Tables 7, 9, and 11 in Southall *et al.* (2007) outline the numbers of low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds in water, respectively, reported as having behavioral responses to multi-pulses in 10-dB received level increments. These tables illustrate that the more severe reactions did not occur until sounds were much higher than 160 dB re 1μPa (rms).

As described earlier in the document, two main source vessels and a mini source vessel would be used to conduct the OBC seismic surveys in the Simpson Lagoon. Each of the main source vessels would be equipped with two subarrays containing eight 40 in^3 airguns, with a total volume displacement of 640 in^3. The mini source vessel would be equipped with one subarray containing eight 40 in^3 airguns, with a total displacement volume of 320 in^3. Modeling results show that the 160 dB isopleths for the 640 in^3, 320 in^3, and 40 in^3 airgun arrays inside the barrier islands are approximately 1,800 m, 1,500 m, and 700 m from the source, respectively; the 160 dB isopleths for the 640 in^3 and 40 in^3 airgun arrays outside the barrier islands are approximately 5,500 m and 810 m from the source, respectively (Please see above for detailed description of the exclusion and disturbance zones).

The radii associated with received sound levels of 160 dB re 1 μPa (rms) or higher are used to calculate the number of potential marine mammal ''exposures'' to airgun sounds. The potential number of each species that might be exposed to received pulsed sound levels of ≥160 dB re 1 μPa (rms) is calculated by multiplying the expected species density with the anticipated area to be ensonified to that level during airgun operations. Bowhead and beluga whales are migrating through the area, so every encounter likely involves a new individual. Although seal species are also known to cover large distances, they are expected to linger longer within a certain area, and so one individual might be exposed multiple times.

The area expected to be ensonified was determined by entering the seismic survey lines into a MapInfo Geographic Information System (GIS). GIS was then used to identify the relevant areas by ''drawing'' the applicable 160-dB buffer of the 640 in^3 array around each seismic source line and calculating the total area within the buffers. This was done for the survey area outside the barrier islands and inside the barrier islands separately. The area ensonified with pulsed sound levels of ≥160 dB re 1 μPa (rms) from airgun operations outside the barrier islands is estimated as 197.5 mi^2 (512 km^2) and from airgun operations inside the barrier islands 105 mi^2 (272 km^2).

Summer density (see below) estimates of marine mammals will be applied to all (100%) survey effort outside the barrier islands and to 60% survey effort inside the barrier islands. Fall densities are not applied to the outside barrier islands survey effort, since no survey effort is planned after August 25. Fall densities are applied to 100% survey effort inside the barrier islands activity, because some of the source lines will be rerun in order to image the full fold area adequately.

Marine Mammal Density Estimates

Because most cetacean species show a distinct seasonal distribution, density estimates for the central Beaufort Sea have been derived for the summer period (covering July and August) and the fall period (covering September and October). Animal densities encountered in the Beaufort Sea during both of these time periods will further depend on the presence of ice. However, if ice cover within or close to the seismic survey area is more than approximately 10%, seismic survey activities may not start or be halted. Cetacean and pinniped densities related to ice conditions are therefore not included in BP's IHA application. Pinniped species in the Beaufort Sea do not show a distinct seasonal distribution during the period July-early October and as such density estimates derived for seal species are used for both the summer and fall periods.

In addition to seasonal variation in densities, spatial differentiation is an important factor for marine mammal densities, both in latitudinal and longitudinal gradient. Taking into account the size and location of the proposed seismic survey area and the associated area of influence, only the nearshore zone (defined as the area between the shoreline and the 50 m [164 ft] bathymetry line) of the Beaufort Sea was considered to be relevant for the calculation of densities.

Density estimates are based on best available scientific data. In cases where the best available data were collected in regions, habitats, or seasons that differ from the proposed survey activities, information from monitoring results collected in similar habitats, regions or seasons was used. Some sources from which densities were used include correction factors to account for perception and availability bias in the reported densities. Perception bias is associated with diminishing probability of sighting with increasing lateral distance from the trackline, where an animal is present at the surface but could be missed. Availability bias refers to the fact that the animal might be present but is not available at the surface. The uncorrected number of marine mammals observed is therefore always lower than the actual numbers present. Unfortunately, for most marine mammals not enough information is available to calculate these two correction factors. The density estimates provided in the BP's IHA request are therefore based on uncorrected data, unless mentioned otherwise.

Because the available density data is not always representative for the area of interest, and correction factors were not always known, there is some uncertainty in the data and assumptions used in the density calculations. To provide allowance for these uncertainties, maximum density estimates have been provided in addition to average density estimates. The marine mammal densities presented are believed to be close to, and in most cases higher than, the densities that are expected to be encountered during the proposed survey.

(1) Cetacean Densities

Beluga Whale: Summer beluga density estimates for the Alaskan Beaufort Sea are derived from aerial survey data over the period 1982–1986 as analyzed by Moore *et al.* (2000b). During the summer season, beluga whales were observed mostly in continental slope habitat (water depths of 201–2,000 m [660–6562 ft]) and infrequently in inner shelf habitat (< 50 m [164 ft]). Most applicable to the proposed OBC seismic survey are the data collected in water depths of less than 164 ft. Along 7,447 mi (11,985 km) of on-transect effort in July–August there were a total of nine beluga sightings (Moore *et al.* 2000). No correction was applied to this data for the purpose of this IHA request for two reasons: (1) All nine sightings were

observed offshore of the 164 ft (50 m) bathymetry line and the proposed survey, including the contour of the 160 dB sound level, occurs in shallower water depths, and (2) the majority of beluga sightings occurred farther to the east and there were no sightings at the longitude of Simpson Lagoon Bay. A density of 0.0008 whales/km² was used as the average summer density for beluga whales.

Fall densities for beluga whales were calculated using data derived from Bowhead Whale Aerial Survey Project (BWASP) aerial surveys collected in 2006–2008 (Clarke *et al.* 2011). Generally, beluga whales selected water on the outer shelf and slope with moderate to heavy ice during the westward migration, however, ice cover in the period 2006–2008 was relatively low compared to historical years and beluga whales were often observed in ice free waters. Based on aerial survey data (Moore *et al.* 2000, Clarke *et al.* 2011) few beluga whales are expected to be encountered in the central part of the Beaufort Sea, especially shoreward of the barrier islands.

The fall beluga whale density was calculated by using the total transect effort and number of belugas observed during fall of 2006, 2007, and 2008 (Clarke *et al.* 2011). A value of 2.841 to correct for animals missed, and a value of 0.58 to correct for animals not available at the surface from Harwood *et al.* (1996) were applied to derive corrected density estimates. Transect effort in the fall of 2006 was 12,393 km during which a total of 525 belugas observed. A corrected density of 0.1038 whales/km² was derived from this data. In fall 2007, a total of 117 belugas were sighted along 6,294 km of transect effort, from which a corrected density of 0.0455 whales/km² was calculated. The density for 2008 was the lowest with 15 belugas along 10,856 km of transect effort (corrected density of 0.0034 whales/km²). The average value over these three years was 0.0545 whales/km². This was calculated by dividing the total number of belugas sighted with the total 2006–2008 transect effort and applying the correction factors. The 2006 fall density was used as the maximum value. Because most sightings were observed offshore of the 50 m bathymetry line and the proposed survey takes place in water depths of less than 15 m (of which a majority inside the barrier islands), the densities used for the purpose of this IHA request were assumed to be 25% of the average density provided here.

Bowhead Whale: Bowheads in the eastern Alaskan and Canadian Beaufort Sea occur in offshore habitats during the summer. Starting late August-early September whales are leaving their feeding grounds and migrate westward in shallower habitats during years with moderate and light ice-cover and in deeper waters in years with heavy ice-cover. During the summer period (July–August) relatively few bowhead whales are expected to be present in the nearshore zone of the central Beaufort Sea. Bowhead sightings become more common there when whales start their westward migration in August, with peak sighting rates occurring in September.

The bowhead whale summer density estimates were derived from 2008 aerial survey data in Camden Bay (Christie *et al.* 2010) and the 2010 aerial survey in Harrison Bay (Brandon *et al.* 2011) conducted as part of a marine mammal monitoring program for seismic and shallow hazard surveys. Because these data sets cover the summer season (July–August) it was considered to be the most representative information available. The 2008 Camden Bay survey area covered water depths between 20–200 m. The average density over the period July 6–August 18 was estimated to be 0.009 whales/km², and included correction factors from Thomas *et al.* (2002). This density was based on data collected on the three days that bowhead whales were sighted (July 7, 9, and 12), during periods without operational airguns. The 2010 Harrison Bay aerial survey covered the area just offshore of the barrier islands to 100 m water depth. The average density over the period July 16–August 13 was 0.004 whales/km², including correction factors from Thomas *et al.* (2002). This density was based on data collected before seismic operations started during which one bowhead was observed on August 3. For the purpose of this IHA request, the average summer density was derived from these two values (0.0065 whales/km²).

The bowhead whale fall density estimates used in this IHA request are derived from the BWASP aerial surveys, which contain the best available and most current information of bowhead whale distribution and abundance in the Beaufort Sea. These surveys started in 1979 and have been repeated annually, resulting in a large multi-year dataset. Clarke and Ferguson (2010) present an update of this aerial survey effort, summarizing data from the period 2000–2009, and comparing those with results from data prior to 2000. Since the Simpson Lagoon OBC seismic project takes place around 148° longitude in waters of less than 50 ft (15 m), densities of bowhead whales provided by Clarke and Ferguson (2010) for the eastern Beaufort Sea (defined as east of 154° longitude) in the 0–20 m depth zone were considered to be most representative of the proposed survey area. Clarke and Ferguson (2010) reported 96 animals during 9,933 km of on transect aerial survey effort in September and 42 animals during 6,143 km of on transect effort in October. Correction factors from Thomas *et al.* (2002) were applied to these numbers; this is a value of 2 to correct for animals available at the surface but not detected and a value of 0.07 for animals present but not available at the surface. This resulted in a density of 0.1381 whales/km² for September and 0.0977 whales/km² for October. The combined September-October value (0.1226 whales/km²) is used as the average density and the September value as the maximum density.

Other Cetacean Species: No densities have been estimated for gray whales and for cetacean species that are rare or extralimital to the Beaufort Sea (humpback whale, minke whale, killer whale, harbor porpoise, narwhal), because sightings of this animals have been very infrequent. Gray whales may be encountered in small numbers throughout the summer and fall, especially in the nearshore areas. Small numbers of harbor porpoises may be encountered as well. During an aerial survey offshore of Oliktok Point in 2008, just west of the proposed survey area, two harbor porpoises were sighted offshore of the barrier islands, one on August 25 and the other on September 10 (Hauser *et al.* 2008). The first confirmed sighting of a humpback whale with calf was documented on August 1, 2007, about 54 mile (87 km) east of Point Barrow (Hashagen *et al.* 2009), so an occasional sighting could occur. Therefore, for the purpose of this IHA request, BP requested that ''takes'' be authorized to cover chance encountering of these animals during the proposed seismic survey.

(2) Pinniped Densities

Pinnipeds in the polar regions are mostly associated with sea ice and most census methods count pinnipeds when they are hauled out on the ice. To account for the proportion of animals present but not hauled out (availability bias) or seals present on the ice but missed (detection bias), a correction factor should be applied to the ''raw'' counts. This correction factor is dependent on the behavior of each species. To estimate what proportion of ringed seals were generally visible resting on the sea ice, radio tags were placed on seals during spring 1999–2003 (Kelly *et al.* 2006). The probability

that seals were visible, derived from the satellite data, was applied to seal abundance data from past aerial surveys and indicated that the proportion of seals visible varied from less than 0.40 to more than 0.75 between survey years. The environmental factors that are important in explaining the availability of seals to be counted were found to be time of day, date, wind speed, air temperature, and days from snow melt (Kelly *et al.* 2006). Besides the uncertainty in the correction factor, using counts of basking seals from spring surveys to predict seal abundance in the open-water period is further complicated by the fact that seal movements differ substantially between these two seasons (Kelly *et al.* 2010b). Data from nine ringed seals that were tracked from one subnivean period (early winter through mid-May or early June) to the next showed that ringed seals covered large distances during the open water foraging period (Kelly *et al.* 2010b). Ringed seals tagged in 2011 close to Barrow also show long distance travel during the open water season.

To estimate densities for ringed, bearded and spotted seals, data were used from three surveys conducted as part of shallow water OBC seismic surveys in the Beaufort Sea (Harris *et al.* 2001, Aerts *et al.* 2008, Hauser *et al.* 2008). Habitat and survey specifics are very similar to the proposed survey, therefore these data were considered to be the more representative than basking seal densities from spring aerial survey data (e.g., Moulton *et al.* 2002, Frost *et al.* 2002, 2004).

No distinction is made in density of pinnipeds between summer and autumn season. Also, no correction factors have been applied to the seal densities reported here. Instead, a multiplier was applied to the estimated densities to account for variability in seal abundance.

Ringed seals are the most common seal species in the Beaufort Sea, followed by the bearded seal. Spotted seals also occur, specifically in the nearshore zone, but are not as frequently observed as the other two species. During the 1996 OBC survey, 92% of all seal species identified were ringed seals, 7% bearded seals and 1% spotted seals (Harris *et al.* 2001). This 1996 survey occurred in two habitats, one about 19 mile east of Prudhoe Bay near the McClure Islands, mainly inshore of the barrier islands in water depths of 10 to 26 ft and the other 6 to 30 miles northwest of Prudhoe Bay, about 0 to 8 mile offshore of the barrier islands in water depths of 10 to 56 ft (Harris *et al.* 2001). Because it is often difficult to identify seals to species, a large proportion of seal sightings were unidentified in all three surveys. The total seal sighting rate was therefore used to calculate densities for each species, using the ratio of 92%, 7%, and 1% for ringed, bearded and spotted seals as mentioned above.

During the 1996 OBC survey (Harris *et al.* 2001) the sighting rate for all seals during periods when airguns were not operating was 0.63 seals/hour. The sighting rate during non- seismic periods was 0.046 seals/hour for the survey in Foggy Island Bay, just east of Prudhoe Bay (Aerts *et al.* 2008). The OBC survey that took place at Oliktok Point, adjacent to the proposed survey in Simpson Lagoon, recorded 0.0671 seals/hour when airguns were not operating (Hauser *et al.* 2008). The survey effort in kilometers or miles is only reported for the survey at Oliktok Point.

The total source line miles that will be travelled during the proposed OBC seismic survey is approximately 4,000 miles (6,440 km). The average vessel speed during the survey will be ~3 knots (or 3.4 miles/hour), calculated based on a 40 ft distance traveled during the 8-second shot interval. Applying the average vessel speed of 3.4 miles/hour, it will take about 1176 hours to complete data acquisition along these source lines, which is equivalent to about 49 days. The total number of seals expected to be observed in the area is 741 (based on 0.63 seals/hour), 54 (based on 0.046 seals/hour), and 79 (based on 0.067 seals/hour). The average of these three values is 291 seals, and the maximum 741 seals.

Ringed Seal: The average density for ringed seals is expected to be 0.0420 seals/km², based on a ratio of 92% and a total of 6,440 km [(291 × 0.92)/6,440)]. To account for variability in seal abundance the average density was multiplied by a factor 4.

Bearded Seal: The average density for bearded seals is expected to be 0.0031 seals/km², based on a ratio of 7% and a total of 6,440 km [(291 × 0.07)/6,440)]. To account for variability in seal abundance the average density was multiplied by a factor 4.

Spotted Seal: The average density for ringed seals is expected to be 0.0005 seals/km², based on a ratio of 1% and a total of 6,440 km [(291 × 0.01)/6,440)]. To account for variability in seal abundance the average density was multiplied by 4.

Table 3 lists a summary of marine mammal densities used for calculating the estimated takes.

TABLE 3—EXPECTED DENSITIES OF MARINE MAMMALS IN THE SIMPSON LAGOON SURVEY AREA

Species	Summer densities (#/km²)	Autumn densities (#/km²)
Bowhead whale	0.0065	0.1226
Beluga whale	0.0008	0.0136
Ringed seal	0.1680	0.1680
Bearded seal	0.0124	0.0124
Spotted seal	0.0020	0.0020

Potential Number of Takes by Harassment

Numbers of marine mammals that might be present and potentially taken are summarized in Table 4 based on available data about mammal distribution and densities at different locations and times of the year as described above.

Some of the animals estimated to be exposed, particularly migrating bowhead whales, might show avoidance reactions before being exposed to ≥160 dB re 1 μPa (rms). Thus, these calculations actually estimate the number of individuals potentially exposed to ≥160 dB (rms) that would occur if there were no avoidance of the area ensonified to that level.

For beluga whales and spotted seals that may form groups, additional takes were requested on top of the density-based take calculation in the event a large group is encountered during the survey. For marine mammal species that are extralimital and for which no density estimates are available in the vicinity of the proposed project area (such as gray, humpback, minke, and killer whales, harbor porpoise, and ribbon seal), a small number of takes have been requested in case they are encountered (Table 4).

TABLE 4—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS TAKEN BY LEVEL B HARASSMENT (EXPOSED TO ≥160 dB RE 1 μPA (RMS)) DURING BP'S PROPOSED SEISMIC PROGRAM IN THE BEAUFORT SEAS, JULY–OCTOBER 2012

Species	Outside barrier islands	Inside barrier islands		Total estimated takes
	Summer	Summer	Autumn	
Bowhead whale	3	1	33	37
Beluga whale	0	0	4	*50
Gray whale				3
Humpback whale				2
Minke whale				2
Killer whale				3
Harbor porpoise				3
Ringed seal	60	19	32	111
Bearded seal	9	3	5	17
Spotted seal	1	0	1	*20
Ribbon seal				3

* Additional takes were requested in the event that a large group of beluga whales is encountered.

Estimated Take Conclusions

Cetaceans—Effects on cetaceans are generally expected to be restricted to avoidance of an area around the seismic survey and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''.

Using the 160 dB criterion, the average estimates of the numbers of individual cetaceans exposed to sounds ≥160 dB (rms) re 1 μPa represent varying proportions of the populations of each species in the Beaufort Sea and adjacent waters. For species listed as ''Endangered'' under the ESA, the estimates include approximately 37 bowheads. This number is approximately 0.24% of the Bering-Chukchi-Beaufort population of over 15,232 assuming 3.4% annual population growth from the estimate of over 10,545 animals (Zeh and Punt 2005). For other cetaceans that might occur in the vicinity of the Simpson Lagoon survey area, they also represent a very small proportion of their respective populations. The average estimates of the number of belugas (with additional takes to count for chance encounter of a large group) that might be exposed to ≥160 dB re 1 μPa is 50, which represents 0.13% of the Beaufort Sea population (or 1.35% of the Eastern Chukchi Sea population, or a mix between these two populations) of the beluga whales. In addition, the average estimates of gray, humpback, minke, and killer whales, and harbor porpoise that might be exposed to ≥160 dB re 1 μPa are 3, 2, 2, 3,and 3. These numbers represent 0.02%, 0.21%, 0.20%, 0.96%, and 0.0062% of these species of their respective populations in the proposed action area.

Seals—A few seal species are likely to be encountered in the study area, but ringed seal is by far the most abundant in this area. The average estimates of the numbers of individuals exposed to sounds at received levels ≥160 dB (rms) re 1 μPa during the proposed shallow hazards survey are as follows: ringed seals (111), bearded seals (17), spotted seals (20, with additional takes to count for chance encounter of a group), and ribbon seals (2). These numbers represent 0.05%, 0.01%, 0.03%, and 0.0033% of Alaska stocks of ringed, bearded, spotted, and ribbon seals, respectively.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of BP's proposed 2012 OBC seismic survey in the Simpson Lagoon of the Alaskan Beaufort Sea, and none are proposed to be authorized. In addition, these surveys would use relatively small 640 in^3 airgun arrays, which have much less acoustic power outputs compared to conventional airgun arrays with displacement volume in the range of thousands cubic inches. Additionally, the survey areas are in shallow waters, with approximately 42% of the survey area located inside the barrier islands (depth: 0–9 ft, or 0–3 m) and 33% located outside the barrier islands (depth: 3–45 ft, or 1–15 m), where horizontal sound propagation of low frequency airgun pulses is severely limited. For the seismic survey inside the barrier islands, the islands provide a natural barrier that would effectively reduce sound propagation out to the open ocean, if not completely eliminate its propagation. The modeled isopleths at 160 dB within the barrier islands is expected to be approximately 1.8 km, and 5.5 km outside barrier islands, from an airgun array of 640 in^3 (see discussion earlier). Additionally, animals in the area are not expected to incur hearing impairment (i.e., TTS or PTS) or non-auditory physiological effects. Takes will be limited to Level B behavioral harassment. Although it is possible that some individuals of marine mammals may be exposed to sounds from the proposed seismic survey activities more than once, the expanse of these multi-exposures are expected to be less extensive since both the animals and the survey vessels will be moving constantly in and out of the survey areas.

Most of the bowhead whales encountered during the summer will likely show overt disturbance (avoidance) only if they receive airgun sounds with levels ≥ 160 dB re 1 μPa. Odontocete reactions to seismic energy pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, probably in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. However, at least when in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 6–12 mi (10–20 km) of seismic vessels during aerial surveys (Miller *et al.* 2005). Belugas will likely occur in small numbers in the

Beaufort Sea during the survey period and few will likely be affected by the survey activity. In addition, due to the constant moving of the survey vessel, the duration of the noise exposure by cetaceans to seismic impulse would be brief. For the same reason, it is unlikely that any individual animal would be exposed to high received levels multiple times.

Taking into account the mitigation measures that are planned, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''. The many reported cases of apparent tolerance by cetaceans of seismic exploration, vessel traffic, and some other human activities show that co-existence is possible. Mitigation measures such as controlled vessel speed, dedicated marine mammal observers, non-pursuit, and shut downs or power downs when marine mammals are seen within defined ranges will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Of the eleven marine mammal species likely to occur in the proposed marine survey area, only the bowhead and humpback whales are listed as endangered under the ESA. These species are also designated as ''depleted'' under the MMPA. Despite these designations, the Bering-Chukchi-Beaufort stock of bowheads has been increasing at a rate of 3.4 percent annually for nearly a decade (Allen and Angliss 2010). Additionally, during the 2001 census, 121 calves were counted, which was the highest yet recorded. The calf count provides corroborating evidence for a healthy and increasing population (Allen and Angliss 2010). The occurrence of humpback whales in the proposed marine survey areas is considered very rare. There is no critical habitat designated in the U.S. Arctic for the bowhead, fin, and humpback whale. The Alaska stock of bearded seals, part of the Beringia distinct population segment (DPS), and the Arctic stock of ringed seals, have been proposed by NMFS for listing as threatened under the ESA (bearded seals: 75 FR 77496; December 10, 2011; ringed seal: 75 FR 77476; December 10, 2011). None of the other species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

Potential impacts to marine mammal habitat were discussed previously in this document (see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect rates of recruitment or survival of marine mammals in the area. Based on the vast size of the Arctic Ocean where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere.

The estimated takes proposed to be authorized represent 0.13% of the Beaufort Sea population of approximately 39,258 beluga whales (or 1.35% of the Eastern Chukchi Sea population of approximately 3,710 beluga whales, or a mix of each population; Allen and Angliss 2010), 1.59% of Aleutian Island and Bering Sea stock of approximately 314 killer whales, 0.004% of Bering Sea stock of approximately 48,215 harbor porpoises, 0.02% of the Eastern North Pacific stock of approximately 19,126 gray whales, 0.24% of the Bering- Chukchi-Beaufort population of 15,232 bowhead whales assuming 3.4 percent annual population growth from the estimate of 10,545 animals (Zeh and Punt, 2005), 0.21% of the Western North Pacific stock of approximately 938 humpback whales, and 0.20% of the Alaska stock of approximately 1,003 minke whales. The take estimates presented for bearded, ringed, spotted, and ribbon seals represent 0.01, 0.05, 0.03, and 0.0033% of U.S. Arctic stocks of each species, respectively. These estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment if each animal is taken only once. In addition, the mitigation and monitoring measures (described previously in this document) proposed for inclusion in the IHA (if issued) are expected to reduce even further any potential disturbance to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that BP's proposed 2012 OBC seismic survey in the Simpson Lagoon of the Alaskan Beaufort Sea may result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine surveys will have a negligible impact on the affected species or stocks.

Unmitigable Adverse Impact Analysis and Preliminary Determination

NMFS has preliminarily determined that BP's proposed 2012 OBC seismic survey in the Beaufort Sea will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses. This preliminary determination is supported by information contained in this document and BP's CAA and draft POC. BP has adopted a spatial and temporal strategy for its Simpson Lagoon operations that should minimize impacts to subsistence hunters. Specifically, the BP's proposed Simpson Lagoon OBC seismic survey would occur between July and October open water season, and would terminate its operations outside the barrier islands after August 25 before the fall bowhead whale hunt. Due to the timing of the project and the distance from the surrounding communities (approximately 35 miles northeast from Nuiqsut, 35 miles west from Cross Island, 150 miles west from Kaktovik and 180 miles east from Barrow), it is anticipated to have no effects on spring harvesting and little or no effects on the occasional summer harvest of beluga whale, subsistence seal hunts (ringed and spotted seals are primarily harvested in winter while bearded seals are hunted during July–September in the Beaufort Sea), or the fall bowhead hunt.

In addition, based on the measures described in BP's Draft POC and CAA, the proposed mitigation and monitoring measures (described earlier in this document), and the project design itself, NMFS has determined preliminarily that there will not be an unmitigable adverse impact on subsistence uses from BP's OBC seismic survey in the Simpson Lagoon of the Beaufort Sea.

Proposed Incidental Harassment Authorization

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

(1) This Authorization is valid from July 1, 2012, through October 30, 2012.

(2) This Authorization is valid only for activities associated with open-water OBC seismic surveys and related activities in the Beaufort Sea. The specific areas where BP's surveys will be conducted are within the Simpson Lagoon Area, Beaufort Sea, Alaska, as shown in Figure 1.2 of BP's IHA application.

(3)(a) The species authorized for incidental harassment takings, Level B harassment only, are: Beluga whales

(*Delphinapterus leucas*); harbor porpoises (*Phocoena phocoena*); killer whales (*Orcinus orca*); bowhead whales (*Balaena mysticetus*); gray whales (*Eschrichtius robustus*); humpback whales (*Megaptera novaeangliae*); minke whales (*Balaenoptera acutorostrata*); bearded seals (*Erignathus barbatus*); spotted seals (*Phoca largha*); ringed seals (*P. hispida*); and ribbon seals (*P. fasciata*).

(3)(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

(i) 640 in^3 airgun arrays for each of the two main source vessels;

(ii) 320 in^3 airgun array for one mini source vessels; and

(ii) Vessel activities related to the OBC seismic surveys.

(3)(c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the Alaska Regional Administrator (907–586–7221) or his designee in Anchorage (907–271–3023), National Marine Fisheries Service (NMFS) and the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, or his designee (301–427–8418).

(4) The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of collecting seismic data (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

(5) Prohibitions

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 1 (attached). The taking by Level A harassment, injury or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required source vessel protected species observers (PSOs), required by condition 7(a)(i), are not onboard in conformance with condition 7(a)(i) of this Authorization.

(6) Mitigation

(a) Seismic Operation Mitigation:

(i) Whenever a marine mammal is detected outside the exclusion zone radius and based on its position and motion relative to the ship track is likely to enter the exclusion radius, calculate and implement an alternative ship speed or track or de-energize the airgun array, as described in condition 6(b)(iv) below.

(ii) Exclusion Zones:

(A) Establish and monitor with trained PSOs a preliminary exclusion zone for cetaceans surrounding the airgun array on the source vessel where the received level would be 180 dB re 1 μPa rms. For purposes of the field verification test, described in condition 7(b), this radius is estimated to be 750 m (2,460 ft) from the seismic source for the 640 in3 airgun arrays, 480 m (1,574 ft) for the 320 in3 airgun array, and 59 m (194 ft) for a single 40 in3 airgun for surveys conducted inside barrier islands; and 950 m (3,116 ft) for 640 in^3 airgun arrays and less than 50 m (164 ft) for a single 40 in3 airgun for surveys conducted outside barrier islands.

(B) Establish and monitor with trained PSOs a preliminary exclusion zone for pinnipeds surrounding the airgun array on the source vessel where the received level would be 190 dB re 1 μPa rms. For purposes of the field verification test described in condition 7(b), this radius is estimated to be 310 m (1,017 ft) from the seismic source for the 640 in^3 airgun arrays, 160 m (525 ft) for the 320 in^3 airgun array, and 16 m (53 ft) for the single 40 in^3 airgun for surveys conducted inside barrier islands; and 120 m (394 ft) for 640 in^3 airgun arrays and less than 50 m (164 ft) for a single 40 in^3 airgun for surveys conducted outside barrier islands.

(C) A 120-dB vessel monitoring zone for four or more bowhead cow/calf pairs will be established and monitored after August 25, 2012, from a monitoring vessel outside the barrier islands during all daytime seismic surveys, as described in 7(a)(iv) below. For purposes of the field verification test described in condition 7(b), this radius is estimated to be 6,400 m (20,992 ft) from the seismic source for the 640 in^3 airgun arrays, 5,700 m (18,700 ft) for the 320 in^3 airgun array, and 3,700 m (12,140 ft) for the single 40 in^3 airgun for surveys conducted inside barrier islands.

(D) Immediately upon completion of data analysis of the field verification measurements required under condition 7(b) below, the new 180-dB and 190-dB marine mammal exclusion zones shall be established based on the sound source verification.

(iii) Ramp-up:

(A) A ramp up, following a cold start, can be applied if the exclusion zone has been free of marine mammals for a consecutive 30-minute period. The entire exclusion zone must have been visible during these 30 minutes. If the entire exclusion zone is not visible, then ramp up from a cold start cannot begin.

(B) Ramp up procedures from a cold start shall be delayed if a marine mammal is sighted within the exclusion zone during the 30-minute period prior to the ramp up. The delay shall last until the marine mammal(s) has been observed to leave the exclusion zone or until the animal(s) is not sighted for at least 15 or 30 minutes. The 15 minutes applies to small toothed whales and pinnipeds, while a 30 minute observation period applies to baleen whales and large toothed whales.

(C) A ramp up, following a shutdown, can be applied if the marine mammal(s) for which the shutdown occurred has been observed to leave the exclusion zone or until the animal(s) is not sighted for at least 15 minutes (small toothed whales and pinnipeds) or 30 minutes (baleen whales and large toothed whales).

(D) If, for any reason, electrical power to the airgun array has been discontinued for a period of 10 minutes or more, ramp-up procedures shall be implemented. Only if the PSO watch has been suspended, a 30-minute clearance of the exclusion zone is required prior to commencing ramp-up. Discontinuation of airgun activity for less than 10 minutes does not require a ramp-up.

(E) The seismic operator and PSOs shall maintain records of the times when ramp-ups start and when the airgun arrays reach full power.

(iv) Power-down/Shutdown:

(A) The airgun array shall be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable exclusion zone of the full array, but is outside the applicable exclusion zone of the single mitigation airgun.

(B) If a marine mammal is already within the exclusion zone when first detected, the airguns shall be powered down immediately.

(C) Following a power-down, ramp up to the full airgun array shall not resume until the marine mammal has cleared the exclusion zone. The animal will be considered to have cleared the exclusion zone if it is visually observed to have left the exclusion zone of the full array, or has not been seen within the zone for 15 minutes (pinnipeds or small toothed whales) or 30 minutes (baleen whales or large toothed whales).

(D) If a marine mammal is sighted within or about to enter the 190 or 180 dB (rms) applicable exclusion zone of the single mitigation airgun, the airgun array shall be shutdown.

(E) Whenever more than four or more bowhead cow/calf pairs are observed

within or entering the 120 dB disturbance zone the lead PSO on the monitoring vessel will immediately contact the lead PSO on the source vessel, who will ensure prompt implementation of airgun power downs or shut-downs.

(F) Airgun activity shall not resume until the marine mammal has cleared the exclusion zone of the full array. The animal will be considered to have cleared the exclusion zone as described above under ramp up procedures.

(iv) Poor Visibility Conditions:

(A) If during foggy conditions, heavy snow or rain, or darkness, the full 180 dB exclusion zone is not visible, the airguns cannot commence a ramp-up procedure from a full shut-down.

(B) If one or more airguns have been operational before nightfall or before the onset of poor visibility conditions, they can remain operational throughout the night or poor visibility conditions. In this case ramp-up procedures can be initiated, even though the exclusion zone may not be visible, on the assumption that marine mammals will be alerted by the sounds from the single airgun and have moved away.

(C) When seismic survey is not underway, BP shall not keep an airgun (the so called ''mitigation gun'' in past IHAs) firing for long periods of time during darkness or other periods of poor visibility on the assumption that marine mammals will be alerted by the sounds from the single airgun so that a cold start with pre survey monitoring could be avoided.

(b) Vessel and Helicopter Movement Mitigation:

(i) Avoid concentrations or groups of whales by all vessels under the direction of BP. Operators of support vessels should, at all times, conduct their activities at the maximum distance possible from such concentrations of whales.

(ii) Transit and cable laying vessels shall be operated at speeds necessary to ensure no physical contact with whales occurs. If any barge or transit vessel approaches within 1.6 km (1 mi) of observed bowhead whales, except when providing emergency assistance to whalers or in other emergency situations, the vessel operator will take reasonable precautions to avoid potential interaction with the bowhead whales by taking one or more of the following actions, as appropriate:

(A) Reducing vessel speed to less than 5 knots within 300 yards (900 feet or 274 m) of the whale(s);

(B) Steering around the whale(s) if possible;

(C) Operating the vessel(s) in such a way as to avoid separating members of a group of whales from other members of the group;

(D) Operating the vessel(s) to avoid causing a whale to make multiple changes in direction; and

(E) Checking the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged.

(iii) When weather conditions require, such as when visibility drops, adjust vessel speed accordingly to avoid the likelihood of injury to whales.

(iv) In the event that any aircraft (such as helicopters) are used to support the planned survey, the mitigation measures below would apply:

(A) Under no circumstances, other than an emergency, shall aircraft be operated at an altitude lower than 1,000 feet above sea level (ASL) when within 0.3 mile (0.5 km) of groups of whales.

(B) Helicopters shall not hover or circle above or within 0.3 mile (0.5 km) of groups of whales.

(c) Mitigation Measures for Subsistence Activities:

(i) No seismic surveys with airgun operations shall be conducted in the area north of the barrier islands after 25 August, 2012.

(ii) Fully implement the following measures, consistent with the 2012 Conflict Avoidance Agreement (CAA) and Plan of Cooperation (COP), in order to avoid having an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses:

(A) For the purposes of reducing or eliminating conflicts between subsistence whaling activities and BP's survey program, the holder of this Authorization will participate with other operators in the Communication and Call Centers (Com-Center) Program. The Com-Centers will be operated 24 hours/day during the 2012 fall subsistence bowhead whale hunt.

(B) BP shall routinely call the Com-Center according to the established protocol in the CAA while in the Beaufort Sea.

(C) The appropriate Com-Center shall be notified if there is any significant change in plans, such as an unannounced start-up of operations or significant deviations from announced course.

(D) Upon notification by a Com-Center operator of an at-sea emergency, the holder of this Authorization shall provide such assistance as necessary to prevent the loss of life, if conditions allow the holder of this Authorization to safely do so.

(E) Post-season Review: Following the end of the fall 2012 bowhead whale subsistence hunt and prior to the 2013 pre-season introduction meetings, BP shall offer to the Alaska Eskimo Whaling Commission (AEWC) Chairman to host a joint meeting with all whaling captains of the Villages of Nuiqsut, Kaktovik, and Barrow, the Marine Mammal Observer/Inupiat Communicators stations on BP's vessels in the Beaufort Sea, and with the Chairman and Executive Director of the AEWC, at a mutually agreed upon time and place on the North Slope of Alaska, to review the results of the 2012 Beaufort Sea open-water season, unless it is agreed by all designated individuals or their representatives that such a meeting is not necessary.

(7) Monitoring:

(a) Vessel Monitoring:

(i) The holder of this Authorization must designate biologically-trained, on-site individuals (PSOs) to be onboard the source vessel and monitoring vessels outside the barrier islands, who are approved in advance by NMFS, to conduct the visual monitoring programs required under this Authorization and to record the effects of seismic surveys and the resulting noise on marine mammals.

(A) PSO teams shall consist of Inupiat observers and experienced field biologists. An experienced field crew leader will supervise the PSO team onboard the survey vessel. New observers shall be paired with experienced observers to avoid situations where lack of experience impairs the quality of observations.

(B) Crew leaders and most other biologists serving as observers in 2012 will be individuals with experience as observers during recent seismic or shallow hazards monitoring projects in Alaska, the Canadian Beaufort, or other offshore areas in recent years.

(C) PSOs shall complete a two or three-day training session on marine mammal monitoring, to be conducted shortly before the anticipated start of the 2012 open-water season. The training session(s) will be conducted by qualified marine mammalogists with extensive crew-leader experience during previous vessel-based monitoring programs. A marine mammal observers' handbook, adapted for the specifics of the planned survey program, will be reviewed as part of the training.

(D) If there are Alaska Native PSOs, the PSO training that is conducted prior to the start of the survey activities shall be conducted with both Alaska Native PSOs and biologist PSOs being trained at the same time in the same room. There shall not be separate training courses for the different PSOs.

(E) Crew members should not be used as primary PSOs because they have

other duties and generally do not have the same level of expertise, experience, or training as PSOs, but they could be stationed on the fantail of the vessel to observe the near field, especially the area around the airgun array and implement a rampdown or shutdown if a marine mammal enters the safety zone (or exclusion zone).

(F) If crew members are to be used as PSOs, they shall go through some basic training consistent with the functions they will be asked to perform. The best approach would be for crew members and PSOs to go through the same training together.

(G) PSOs shall be trained using visual aids (e.g., videos, photos), to help them identify the species that they are likely to encounter in the conditions under which the animals will likely be seen.

(H) BP shall train its PSOs to follow a scanning schedule that consistently distributes scanning effort according to the purpose and need for observations. For example, the schedule might call for 60% of scanning effort to be directed toward the near field and 40% at the far field. All PSOs should follow the same schedule to ensure consistency in their scanning efforts.

(I) PSOs shall be trained in documenting the behaviors of marine mammals. PSOs should simply record the primary behavioral state (i.e., traveling, socializing, feeding, resting, approaching or moving away from vessels) and relative location of the observed marine mammals.

(ii) To the extent possible, PSOs should be on duty for four (4) consecutive hours or less, although more than one four-hour shift per day is acceptable.

(iii) Monitoring is to be conducted by the PSOs onboard the active seismic vessel, to (A) ensure that no marine mammals enter the appropriate exclusion zone whenever the seismic acoustic sources are on, and (B) to record marine mammal activity as described in condition 7(a)(vii) below. Two PSOs will be present on each seismic source vessel. At least one PSO shall monitor for marine mammals at any time during daylight hours.

(iv) Monitoring vessel based surveys outside the barrier islands will be conducted up to 3 days per week, weather depending, after August 25, 2012, and continue until the end of the data acquisition period. One PSO will be present on the monitoring vessel. The monitoring effort will be aided by the skipper of the monitoring vessel.

(v) At all times, the crew must be instructed to keep watch for marine mammals. If any are sighted, the bridge watch-stander must immediately notify the PSO(s) on-watch. If a marine mammal is within or closely approaching its designated exclusion zone, the seismic acoustic sources must be immediately powered down or shut down (in accordance with condition 6(a)(iv) above).

(vi) Observations by the PSOs on marine mammal presence and activity will begin a minimum of 30 minutes prior to the estimated time that the seismic source is to be turned on and/or ramped up.

(vii) All marine mammal observations and any airgun power-down, shut-down and ramp-up will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database after each day. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

(viii) Monitoring shall consist of recording: (A) The species, group size, age/size/sex categories (if determinable), the general behavioral activity, heading (if consistent), bearing and distance from seismic vessel, sighting cue, behavioral pace, and apparent reaction of all marine mammals seen near the seismic vessel and/or its airgun array (e.g., none, avoidance, approach, paralleling, etc); (B) the time, location, heading, speed, and activity of the vessel (shooting or not), along with sea state, visibility, cloud cover and sun glare at (I) any time a marine mammal is sighted (including pinnipeds hauled out on barrier islands), (II) at the start and end of each watch, and (III) during a watch (whenever there is a change in one or more variable); (C) the identification of all vessels that are visible within 5 km of the seismic vessel whenever a marine mammal is sighted, and the time observed, bearing, distance, heading, speed and activity of the other vessel(s); (D) any identifiable marine mammal behavioral response (sighting data should be collected in a manner that will not detract from the PSO's ability to detect marine mammals); (E) any adjustments made to operating procedures; and (F) visibility during observation periods so that total estimates of take can be corrected accordingly.

(ix) BP shall work with its observers to develop a means for recording data that does not reduce observation time significantly.

(x) PSOs shall use the best possible positions for observing (e.g., outside and as high on the vessel as possible), taking into account weather and other working conditions. PSOs shall carefully document visibility during observation periods so that total estimates of take can be corrected accordingly.

(xi) PSOs shall scan systematically with the unaided eye and 7 x 50 reticle binoculars, supplemented with 20 x 60 image-stabilized Zeiss Binoculars or Fujinon 25 x 150 ''Big-eye'' binoculars and night-vision equipment (''Generation 3'') when needed.

(xii) PSOs shall attempt to maximize the time spent looking at the water and guarding the exclusion radii. They shall avoid the tendency to spend too much time evaluating animal behavior or entering data on forms, both of which detract from their primary purpose of monitoring the exclusion zone.

(xiii) Night-vision equipment (Generation 3 binocular image intensifiers, or equivalent units) shall be available for use during low light hours.

(xiv) PSOs shall understand the importance of classifying marine mammals as ''unknown'' or ''unidentified'' if they cannot identify the animals to species with confidence. In those cases, they shall note any information that might aid in the identification of the marine mammal sighted. For example, for an unidentified mysticete whale, the observers should record whether the animal had a dorsal fin.

(xv) Additional details about unidentified marine mammal sightings, such as ''blow only'', mysticete with (or without) a dorsal fin, ''seal splash'', etc., shall be recorded.

(xvi) PSOs on monitoring vessels outside barrier islands shall also monitor for the presence and behavior of marine mammals in the offshore area projected to be exposed to seismic sounds.

(b) Sound Source Verification: Using a hydrophone system, the holder of this Authorization is required to conduct sound source verification tests for seismic airgun array(s) and vessels that are involved in the OBC seismic surveys.

(i) Sound source verification shall consist of distances where broadside and endfire directions at which broadband received levels reach 190, 180, 170, 160, and 120 dB re 1 μPa (rms) for the airgun array(s). The configurations of airgun arrays shall include at least the full array and the operation of a single source that will be used during power downs.

(ii) The test results shall be reported to NMFS within 5 days of completing the test.

(c) Acoustic Monitoring:

(i) BP shall use the offshore monitoring vessel to monitor (periodically) the propagation of airgun sounds from within the lagoon into offshore areas during its marine mammal survey using a dipping hydrophone.

(ii) BP shall use additional acoustic monitoring with bottom mounted recorders to verify noise propagation model results. Recorders shall be deployed throughout the entire duration of the seismic survey.

(8) Data Analysis and Presentation in Reports:

(a) Estimation of potential takes or exposures shall be improved for times with low visibility (such as during fog or darkness) through interpolation or possibly using a probability approach. Those data could be used to interpolate possible takes during periods of restricted visibility.

(b) Water depth should be continuously recorded by the vessel and for each marine mammal sighting. Water depth should be accounted for in the analysis of take estimates.

(c) BP shall be very clear in their report about what periods are considered ''non-seismic'' for analyses.

(d) BP shall examine data from Bowhead Whale Aerial Survey Program and other such programs to assess possible impacts from their seismic survey.

(e) To better assess impacts to marine mammals, data analysis shall be separated into periods when a seismic airgun array (or a single mitigation airgun) is operating and when it is not. Final and comprehensive reports to NMFS should summarize and plot:

(i) Data for periods when a seismic array is active and when it is not; and

(ii) The respective predicted received sound conditions over fairly large areas (tens of km) around operations.

(f) To help evaluate the effectiveness of PSOs and more effectively estimate take, if appropriate data are available, BP shall perform analysis of sightability curves (detection functions) for distance-based analyses.

(g) To better understand the potential effects of oil and gas activities on marine mammals and to facilitate integration among companies and other researchers, the following data should be obtained and provided electronically in the 90-day report:

(i) The location and time of each aerial or vessel-based sighting or acoustic detection;

(ii) Position of the sighting or acoustic detection relative to ongoing operations (i.e., distance from sightings to seismic operation, drilling ship, support ship, etc.), if known;

(iii) The nature of activities at the time (e.g., seismic on/off);

(iv) Any identifiable marine mammal behavioral response (sighting data should be collected in a manner that will not detract from the PSO's ability to detect marine mammals); and

(v) Adjustments made to operating procedures.

(h) BP should improve take estimates and statistical inference into effects of the activities by incorporating the following measures:

(i) Reported results from all hypothesis tests should include estimates of the associated statistical power when practicable.

(ii) Estimate and report uncertainty in all take estimates. Uncertainty could be expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, etc.; the exact approach would be selected based on the sampling method and data available.

(9) Reporting:

(a) *Sound Source Verification Report:* A report on the preliminary results of the sound source verification measurements, including the measured 190, 180, 160, and 120 dB (rms) radii of the airgun sources, shall be submitted within 14 days after collection of those measurements at the start of the field season. This report will specify the distances of the exclusion zones that were adopted for the survey.

(b) *Seismic Vessel Monitoring Program:* A draft report will be submitted to the Director, Office of Protected Resources, NMFS, within 90 days after the end of BP's 2012 open water OBC seismic surveys in the Beaufort Seas. The report will describe in detail:

(i) Summaries of monitoring effort (e.g., total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(ii) Analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare);

(iii) Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(iv) To better assess impacts to marine mammals, data analysis should be separated into periods when a seismic airgun array (or a single airgun) is operating and when it is not. Final and comprehensive reports to NMFS should summarize and plot: (A) Data for periods when a seismic array is active and when it is not; and (B) The respective predicted received sound conditions over fairly large areas (tens of km) around operations.

(v) Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability), such as: (A) Initial sighting distances versus airgun activity state; (B) closest point of approach versus airgun activity state; (C) observed behaviors and types of movements versus airgun activity state; (D) numbers of sightings/individuals seen versus airgun activity state; (E) distribution around the survey vessel versus airgun activity state; and (F) estimates of take by harassment.

(vi) Reported results from all hypothesis tests should include estimates of the associated statistical power when practicable.

(vii) Estimate and report uncertainty in all take estimates. Uncertainty could be expressed by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, etc.; the exact approach would be selected based on the sampling method and data available.

(viii) The report should clearly compare authorized takes to the level of actual estimated takes.

(c) The draft report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. The draft report will be considered the final report for this activity under this Authorization if NMFS has not provided comments and recommendations within 90 days of receipt of the draft report.

(10) (a) In the unanticipated event that survey operations clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), BP shall immediately cease survey operations and immediately report the incident to the Supervisor of Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and the Alaska Regional Stranding Coordinators (*Aleria.Jensen@noaa.gov* and *Barbara.Mahoney@noaa.gov*). The

report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) The name and type of vessel involved;

(iii) The vessel's speed during and leading up to the incident;

(iv) Description of the incident;

(v) Status of all sound source use in the 24 hours preceding the incident;

(vi) Water depth;

(vii) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(viii) Description of marine mammal observations in the 24 hours preceding the incident;

(ix) Species identification or description of the animal(s) involved;

(x) The fate of the animal(s); and

(xi) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with BP to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. BP may not resume their activities until notified by NMFS via letter, email, or telephone.

(b) In the event that BP discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), BP will immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and the NMFS Alaska Stranding Hotline (1–877–925–7773) and/or by email to the Alaska Regional Stranding Coordinators (*Aleria.Jensen@noaa.gov* and *Barabara.Mahoney@noaa.gov*). The report must include the same information identified in Condition 10(a) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with BP to determine whether modifications in the activities are appropriate.

(c) In the event that BP discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 3 of this Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), BP shall report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and the NMFS Alaska Stranding Hotline (1–877–925–7773) and/or by email to the Alaska Regional Stranding Coordinators (*Aleria.Jensen@noaa.gov* and *Barbara.Mahoney@noaa.gov*), within 24 hours of the discovery. BP shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. BP can continue its operations under such a case.

(11) Activities related to the monitoring described in this Authorization do not require a separate scientific research permit issued under section 104 of the Marine Mammal Protection Act.

(12) The Conflict Avoidance Agreement and the Plan of Cooperation outlining the steps that will be taken to cooperate and communicate with the native communities to ensure the availability of marine mammals for subsistence uses, must be implemented.

(13) This Authorization may be modified, suspended, or withdrawn if the holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

(14) A copy of this Authorization and the Incidental Take Statement must be in the possession of each seismic vessel operator taking marine mammals under the authority of this Incidental Harassment Authorization.

(15) BP is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion.

Endangered Species Act (ESA)

The bowhead whale and humpback whale are the only marine mammal species currently listed as endangered under the ESA that could occur during BP's proposed OBC seismic survey during the Arctic open-water season. The Beringia DPS of the Alaska stock of bearded seals and the Arctic stock of ringed seals are proposed for listing as threatened under the ESA. Final decisions concerning the listing of these species are expected to be made in summer 2012.

NMFS' Permits and Conservation Division has initiated consultation with NMFS' Protected Resources Division under section 7 of the ESA on the issuance of an IHA to BP under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

NMFS is currently preparing an Environmental Assessment, pursuant to NEPA, to determine whether or not this proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of the IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to BP's 2012 OBC seismic survey in the Simpson Lagoon of the Alaskan Beaufort Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: April 25, 2012.

Helen Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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FEDERAL REGISTER PAGES AND DATE, MAY

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CFR PARTS AFFECTED DURING MAY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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H.R. 473/P.L. 112–103
Help to Access Land for the Education of Scouts (Apr. 2, 2012; 126 Stat. 284)

H.R. 886/P.L. 112–104
United States Marshals Service 225th Anniversary Commemorative Coin Act (Apr. 2, 2012; 126 Stat. 286)

Last List April 2, 2012

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
May 1	May 16	May 22	May 31	Jun 5	Jun 15	Jul 2	Jul 30
May 2	May 17	May 23	Jun 1	Jun 6	Jun 18	Jul 2	Jul 31
May 3	May 18	May 24	Jun 4	Jun 7	Jun 18	Jul 2	Aug 1
May 4	May 21	May 25	Jun 4	Jun 8	Jun 18	Jul 3	Aug 2
May 7	May 22	May 29	Jun 6	Jun 11	Jun 21	Jul 6	Aug 6
May 8	May 23	May 29	Jun 7	Jun 12	Jun 22	Jul 9	Aug 6
May 9	May 24	May 30	Jun 8	Jun 13	Jun 25	Jul 9	Aug 7
May 10	May 25	May 31	Jun 11	Jun 14	Jun 25	Jul 9	Aug 8
May 11	May 29	Jun 1	Jun 11	Jun 15	Jun 25	Jul 10	Aug 9
May 14	May 29	Jun 4	Jun 13	Jun 18	Jun 28	Jul 13	Aug 13
May 15	May 30	Jun 5	Jun 14	Jun 19	Jun 29	Jul 16	Aug 13
May 16	May 31	Jun 6	Jun 15	Jun 20	Jul 2	Jul 16	Aug 14
May 17	Jun 1	Jun 7	Jun 18	Jun 21	Jul 2	Jul 16	Aug 15
May 18	Jun 4	Jun 8	Jun 18	Jun 22	Jul 2	Jul 17	Aug 16
May 21	Jun 5	Jun 11	Jun 20	Jun 25	Jul 5	Jul 20	Aug 20
May 22	Jun 6	Jun 12	Jun 21	Jun 26	Jul 6	Jul 23	Aug 20
May 23	Jun 7	Jun 13	Jun 22	Jun 27	Jul 9	Jul 23	Aug 21
May 24	Jun 8	Jun 14	Jun 25	Jun 28	Jul 9	Jul 23	Aug 22
May 25	Jun 11	Jun 15	Jun 25	Jun 29	Jul 9	Jul 24	Aug 23
May 29	Jun 13	Jun 19	Jun 28	Jul 3	Jul 13	Jul 30	Aug 27
May 30	Jun 14	Jun 20	Jun 29	Jul 5	Jul 16	Jul 30	Aug 28
May 31	Jun 15	Jun 21	Jul 2	Jul 5	Jul 16	Jul 30	Aug 29