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FEDERAL REGISTER

Vol. 77 Wednesday,
No. 90 May 9, 2012

Pages 27113–27356

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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WHEN: Tuesday, May 15, 2012
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Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AJ04

[NRC–2011–0213]

Export and Import of Nuclear Equipment and Material; Export of International Atomic Energy Agency Safeguards Samples

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations pertaining to the export and import of nuclear materials and equipment. This rulemaking is necessary to reflect the nuclear non-proliferation policy of the Executive Branch regarding U.S. Government obligations to the International Atomic Energy Agency (IAEA). Also, this final rule makes certain editorial revisions, and corrects typographical errors.

DATES: The final rule is effective June 8, 2012.

ADDRESSES: Please refer to Docket ID NRC–2011–0213 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rulemaking, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0213.
- *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: Brooke G. Smith, Senior International Policy Analyst, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2347, email: *Brooke.Smith@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

One purpose of this final rule is to conform the NRC's export and import regulations in Title 10 of the Code of Federal Regulations (10 CFR) part 110, ''Export and Import of Nuclear Equipment and Material,'' to current nuclear non-proliferation policies of the Executive Branch. The NRC is amending § 110.11 to facilitate implementation of the *Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America* (Additional Protocol) to expand the exemption from the requirements for a license to include exports of source and byproduct material in IAEA safeguards samples. This final rule also makes certain editorial revisions, and corrects typographical errors.

The NRC staff has determined that these changes are consistent with current U.S. policy, and will pose no unreasonable risk to the public health and safety or to the common defense and security of the United States.

Because this rule involves a foreign affairs function of the United States, the notice and comment provisions of the Administrative Procedure Act do not apply (5 U.S.C. 553(a)(1)). In addition, solicitation of public comments would delay the U.S. conformance with its international obligations, and would be contrary to the public interest (5 U.S.C. 553(b)). The final rule is effective June 8, 2012.

Section by Section Analysis

Section 110.11, Export of IAEA safeguards samples. The NRC is amending § 110.11 to facilitate implementation of the Additional Protocol and the *Agreement between the United States and the International Atomic Energy Agency for the Application of Safeguards in the United States* to expand the exemption to include exports of source and byproduct material in IAEA safeguards samples. For source material, samples may not exceed 5 kilograms per facility per year and for byproduct material, quantities may not exceed the values listed in § 30.71 per shipment.

Section 110.22, General license for the export of source material. This rule corrects an internal reference error in paragraph (b) so that the reference is to paragraph (e) of the section instead of to paragraph (f).

Section 110.27, General license for import. This rule amends § 110.27(a) to make clear the intent of the 2010 rule change to this section (75 FR 44072; July 28, 2010). If the byproduct, source, or special nuclear material is exempt from NRC or Agreement State licensing requirements, then that material is exempt from requiring an import license.

Section 110.54, Reporting requirements. This section is amended to clarify that the reports required in paragraph (c) should be addressed to the Deputy Director, Office of International Programs, in accordance with § 110.4.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal Agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This final rule does not constitute the establishment of a standard for which the use of a voluntary consensus standard would be applicable.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described

in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the rule.

Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB) under approval number 3150–0036.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

This rulemaking is necessary to reflect the nuclear non-proliferation policy of the Executive Branch including U.S. Government reporting obligations to the IAEA. This final rule is expected to have no changes in the information collection burden or cost to the public.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule affects only companies exporting nuclear equipment and material to and from the United States and they do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act (5 U.S.C. 601(3)), or the Size Standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR chapter I.

Congressional Review Act

Under 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 OMB.

Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 1. Revise the authority citation for part 110 to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 223, 234 (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841; Solar, Wind, Waste, and Geothermal Power Act of 1990 sec. 5 (42 U.S.C. 2243); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, 119 Stat. 594.

Sections 110.1(b)(2) and 110.1(b)(3) also issued under 22 U.S.C. 2403. Section 110.11 also issued under Atomic Energy Act secs. 54(c), 57(d), 122 (42 U.S.C. 2074, 2152). Section 110.50(b)(3) also issued under Atomic Energy Act sec. 123 (42 U.S.C. 2153). Section 110.51 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 110.52 also issued under Atomic Energy Act sec. 186, (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under Intelligence Authorization Act sec. 903 (42 U.S.C. 2151 *et seq.*).

■ 2. Revise § 110.11 to read as follows:

§ 110.11 Export of IAEA safeguards samples.

(a) A person is exempt from the requirements for a license to export special nuclear, source, and byproduct material set forth in sections 53, 54d, 64, 81 and 82 of the Atomic Energy Act and from the regulations in this part to the extent that the person exports special nuclear, source, or byproduct material in IAEA safeguards samples. The samples must be exported in accordance with § 75.8 of this chapter, or a comparable U.S. Department of Energy order, and:

(1) For special nuclear material, be in quantities not exceeding a combined total of 100 grams of contained plutonium, uranium-233, and uranium-235 per facility per year;

(2) For source material, be in quantities not exceeding 5 kilograms per facility per year; and

(3) For byproduct material, be in quantities not exceeding the values in § 30.71 of this chapter per shipment.

(b) This exemption does not relieve any person from complying with parts 71 or 73 of this chapter or any Commission order under section 201(a) of the Energy Reorganization Act of 1974 (42 U.S.C. 5841(a)).

■ 3. In § 110.22, revise paragraph (b) to read as follows:

§ 110.22 General license for the export of source material.

* * * * *

(b) Except as provided in paragraph (e) of this section, a general license is issued to any person to export uranium or thorium, other than uranium-230, uranium-232, thorium-227, or thorium-228, in individual shipments of 10 kilograms or less to any country not listed in § 110.28 or § 110.29, not to exceed 1,000 kilograms per calendar year to any one country or 500 kilograms per calendar year to any one country when the uranium or thorium is Canadian-obligated.

* * * * *

■ 4. In § 110.27, revise paragraph (a) to read as follows:

§ 110.27 General license for import.

(a) Except as provided in paragraphs (b) and (c) of this section, a general license is issued to any person to import byproduct, source, or special nuclear material if the U.S. consignee is authorized to receive and possess the material under the relevant NRC or Agreement State regulations.

* * * * *

■ 5. In § 110.54, revise the introductory text of paragraph (c) to read as follows:

§ 110.54 Reporting requirements.

* * * * *

(c) Persons making exports under the general license established by § 110.26(a) shall submit by February 1 of each year one copy of a report of all components shipped during the previous calendar year. This report shall be submitted to the Deputy Director,

Office of International Programs at the address provided in § 110.4. This report must include:

* * * * *

Dated at Rockville, Maryland, this 13th day of April, 2012.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2012–11163 Filed 5–8–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[USCG–2012–0286]

Newport to Bermuda Regatta, Narragansett Bay, Newport, RI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Special Local Regulation for the biennial Newport to Bermuda Regatta, Narragansett Bay, Rhode Island, from 10 a.m. to 3:30 p.m. on Friday, June 15, 2012. During the enforcement period, no person or vessel may enter or remain in the regulated area except for participants in the event, supporting personnel, vessels registered with the event organizer, and personnel or vessels authorized by the Coast Guard on-scene patrol commander.

DATES: The regulations in 33 CFR 100.119 will be enforced from 10 a.m. to 3:30 p.m. on June 15, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Edward LeBlanc, Chief, Waterways Management Division, Sector Southeastern New England, (401) 435–2351.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the biennial Newport/Bermuda Regatta, Narragansett Bay, Newport, RI, from 10 a.m. to 3:30 p.m. on Friday, June 15, 2012. A portion of the navigable waters of the East Passage, Narragansett Bay, Newport, RI or its approaches will be closed during the effective period to all vessel traffic, except local, state or Coast Guard patrol craft. The full text of this regulation is found in 33 CFR 100.119. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts.

Dated: April 20, 2012.

Verne B. Gifford Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Southeastern New England.

[FR Doc. 2012–11137 Filed 5–8–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0371]

Drawbridge Operation Regulations; Raritan River, Perth Amboy, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the New Jersey Transit Rail Operations (NJTRO) Bridge, across the Raritan River, mile 0.5, at Perth Amboy, New Jersey. Under this temporary deviation the draw may remain in the closed position for four days to facilitate mechanical maintenance. Vessels that can pass under the draw without an opening may do so at all times. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 9 a.m. on July 11, 2012 through 5 p.m. on July 21, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0371 and are available online at *www.regulations.gov*. 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 Mr. Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165 *joe.m.arca@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 NJTRO Bridge, across the Raritan River, mile 0.5, at Perth Amboy, New Jersey, has a vertical clearance in the closed position of 8 feet at mean high water and 13 feet at mean low water. The existing regulations are listed at 33 CFR 117.747.

The owner of the bridge, NJTRO, requested a temporary deviation to facilitate scheduled mechanical maintenance at the bridge. In order to perform the bridge maintenance the bridge must remain in the closed position.

The waterway users are mostly commercial with some recreational users. The Coast Guard contacted all known commercial waterway users regarding this scheduled maintenance and no objections were received.

Under this temporary deviation the NJTRO Bridge across the Raritan River, mile 0.5, at Perth Amboy, New Jersey, need not open for the passage of vessel traffic between 9 a.m. on July 11, 2012 through 5 p.m. on July 14, 2012. In the event inclement weather prevents the bridge maintenance from being performed on the above dates then the alternate date may be used beginning at 9 a.m. on July 18, 2012 and continuing through 5 p.m. on July 21, 2012.

Vessels that can pass under the draw without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge 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 30, 2012.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2012–11195 Filed 5–8–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0372]

Drawbridge Operation Regulation; Bayou Boeuf, Amelia, LA

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 Burlington Northern Santa Fe (BNSF) Railway Company swing span bridge across Bayou Boeuf, mile 10.2, at Amelia, St. Mary Parish, Louisiana. The deviation is necessary to perform scheduled repairs necessitated by a bridge allision. This

deviation allows the bridge to remain in the closed-to-navigation position for sixteen consecutive hours.

DATES: This deviation is effective from 6 a.m. through 10 p.m. on Thursday, May 24, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0372 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0372 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 David Frank, Bridge Branch Office, Coast Guard; telephone 504–671–2128, email *David.M.Frank@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 BNSF Railway Company has requested a temporary deviation from the operating schedule of the swing span railroad bridge across Bayou Boeuf, mile 10.2, at Amelia, St. Mary Parish, Louisiana. The bridge provides no vertical clearance in the closed-to-navigation position.

In accordance with 33 CFR 117.5, the bridge currently opens on signal for the passage of vessels. This deviation allows the vertical lift span of the bridge to remain in the closed-to-navigation position from 6 a.m. through 10 p.m. on Thursday, May 24, 2012.

The closure is necessary in order to change out a shaft and reducer gear damaged during a bridge allision earlier this year. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation at the site of the bridge consists mainly of tows with barges and some recreational pleasure craft. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. An alternate route is available by using the GIWW, Morgan City to Port Allen Alternate Route.

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 30, 2012.

David M. Frank,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2012–11198 Filed 5–8–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0255]

RIN 1625–AA00

Safety Zone, Naval Helicopter Association Reunion Helicopter Demonstration, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Elizabeth River in the vicinity of Norfolk, VA to support the Naval Helicopter Association Reunion Helicopter Demonstration. This action is necessary to provide for the safety of life on navigable waters during the Naval Helicopter Association Reunion Helicopter Demonstration. This action is intended to restrict vessel traffic movement on the Elizabeth River to protect mariners from the hazards associated with air show events.

DATES: This rule is effective from 5:30 p.m. until 6:30 p.m. on May 16, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0255 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0255 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 temporary rule, call or email LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive the application for this event in sufficient time to allow for publication of an NPRM, and it would be impracticable to publish an NPRM since immediate action is needed to provide for the safety of life and property on navigable waters.

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**. Publishing an NPRM would be impracticable since immediate action is needed to ensure the safety of the event participants, spectator craft, and other vessels transiting the event area.

Background and Purpose

Coast Guard Sector Hampton Roads has been notified that on May 16, 2012, The United States Navy will host an air show event above the Elizabeth River between the Half Moone cruise ship terminal and abeam of the USS Battleship Wisconsin. In recent years, there have been unfortunate instances of aircraft crashes during performances at air shows. Typical of aircraft crashes, there is also a wide area of scattered debris that damages property and could cause significant injury or death. Due to the need to protect mariners and the public transiting the Elizabeth River immediately below the air show from hazards associated with the air show, the Coast Guard believes it is necessary to establish a temporary safety zone bound by the following coordinates: 36°, 50′, 54″ N/076°, 17′, 48″ W; 36°, 50′, 48″ N/076°, 18′, 12″ W; 36°, 50′, 36″ N/076°, 18′, 6″ W; 36°, 50′, 42″ N/076°, 17′, 48″ W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Elizabeth River bound by the following coordinates: 36°, 50′, 54″ N/076°, 17′, 48″ W; 36°, 50′, 48″ N/076°, 18′, 12″ W; 36°, 50′, 36″ N/076°, 18′, 6″ W; 36°, 50′, 42″ N/076°, 17′, 48″ W (NAD 1983), in the vicinity of the Half Moone cruise ship terminal and abeam of the USS Battleship Wisconsin in Norfolk, VA.

This safety zone provides for public safety during the Naval Helicopter Association Reunion Helicopter Demonstration and will be enforced from 5:30 p.m. until 6:30 p.m. on May 16, 2012. Access to the safety zone will be restricted during the specified dates and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

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 regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; (iii) mariners may transit the waters in and around this safety zone at the discretion of the Captain of the Port or designated representative; and (iv), the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor on the Elizabeth River in the vicinity of Norfolk, VA from 5:30 p.m. until 6:30 p.m. on May 16, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration and limited size. (ii) Before the enforcement period of May 16, 2012, maritime advisories will be issued allowing mariners to 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 offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

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 affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed the 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 will be 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, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 subpart C 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.T05–0255, to read as follows:

§ 165.T05–0255 Safety Zone, Naval Helicopter Association Reunion Helicopter Demonstration, Elizabeth River, Norfolk, VA.

(a) *Regulated Area.* The following area is a safety zone: Specified waters of the Elizabeth River bound by the following coordinates: 36°, 50′, 54″ N / 076°, 17′, 48″ W; 36°, 50′, 48″ N / 076°, 18′, 12″ W; 36°, 50′, 36″ N / 076°, 18′, 6″ W; 36°, 50′, 42″ N / 076°, 17′, 48″ W (NAD 1983), in the vicinity of Norfolk, VA.

(b) *Definition:* For purposes of enforcement of this section, Captain of the Port Representative means any U. S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

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

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

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

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

(3) The Captain of the Port, Hampton Roads, Virginia can be contacted at telephone number (757) 638–6637.

(4) U.S. Coast Guard vessels enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement period:* This rule will be enforced from 5:30 p.m. until 6:30 p.m. on May 16, 2012.

Dated: April 11, 2012.

Mark S. Ogle,

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

[FR Doc. 2012–11139 Filed 5–8–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0114]

RIN 1625–AA00

Safety Zone; Rocketts Red Glare Fireworks, Ancarrows Landing Park, James River, Richmond, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 420-foot radius safety zone on the navigable waters of James River in Richmond, VA in support of the Rocketts Red Glare Fireworks event. This action is necessary to provide for the safety of life on navigable waters during the Rocketts Red Glare Fireworks show. This action is intended to restrict vessel traffic movement to protect mariners and spectators from the hazards associated with aerial fireworks displays.

DATES: This rule will be effective from 8 p.m. until 10 p.m. on May 27, 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–2012–0114 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0114 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LCDR Hector L. Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@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 March 7, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Rocketts Red Glare Fireworks, Ancarrows Landing Park, James River, Richmond, VA in the **Federal Register** (76 FR 13525). We

received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment during the fireworks event; 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 involved in the event, and enhancing public and maritime safety.

Background and Purpose

On May 27, 2012, the City of Richmond, Virginia will sponsor a fireworks display on the shoreline of the navigable waters of the James River centered on position 37°31′13.1″ N/ 077°25′07.84″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted on all navigable waters of the James River within 420 feet of the fireworks launch site.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing a safety zone on specified waters on the James River, Richmond, Virginia.

Regulatory Analyses

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

Regulatory Planning and Review

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

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

Small Entities

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

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

The rule will affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the James River from 8 p.m. to 10 p.m. on May 27, 2012.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule 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 will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian

tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions 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 safety zone around a fireworks display and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0114 to read as follows:

§ 165.T05–0114 Safety Zone; Rocketts Red Glare Fireworks, James River, Richmond, VA.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, all navigable waters of the James River in Richmond, VA within 420 feet of position 37°31′13.1″ N/077°25′07.84″ W (NAD 1983).

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

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

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

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

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

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

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

(d) *Enforcement Period:* This regulation will be enforced from 8 p.m. until 10 p.m. on May 27, 2012.

Dated: April 25, 2012.

Mark S. Ogle,

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

[FR Doc. 2012–11191 Filed 5–8–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0095]

RIN 1625–AA00

Safety Zone; Virginia Beach Oceanfront Air Show, Atlantic Ocean, Virginia Beach, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish a temporary safety zone on the Atlantic Ocean in the vicinity of Virginia Beach, VA to support the Virginia Beach Oceanfront Air Show. This action is necessary to provide for the safety of life on navigable waters during the Virginia Beach Air Show. This action is intended to restrict vessel traffic movement on the Atlantic Ocean to protect mariners from the hazards associated with air show events.

DATES: This rule is effective from 11 a.m. on May 31, 2012, until 5 p.m. on June 3, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0095 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0095 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 temporary

rule, call or email LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@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 March 7, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Virginia Beach Oceanfront Air Show, Atlantic Ocean, Virginia Beach, VA in the **Federal Register** (76 FR 13519). 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 during the fireworks event; 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 involved in the event, and enhancing public and maritime safety.

Background and Purpose

On May 31, 2012 through June 3, 2012, the United States Navy will host an air show event over the Atlantic Ocean in Virginia Beach, VA. In recent years, there have been unfortunate instances of jets and planes crashing during performances at air shows. Along with a jet or plane crash, there is typically a wide area of scattered debris that also damages property and could cause significant injury or death to mariners observing the air shows. Due to the need to protect mariners and the public transiting the Atlantic Ocean immediately below the air show from hazards associated with the air show, the Coast Guard is establishing a temporary safety zone bound by the following coordinates: 36°-51′-48″ N/075°-58′-36″ W, 36°-51′-54″ N/075°-58′-06″ W, 36°-49′-54″ N/075°-57′-30″ W, 36°-49-48″ N/075°-58′-06″ W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

Discussion of Comments and Changes

The Coast Guard did receive one comment in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. The commenter suggested that the Coast Guard add a chart to the regulation to provide a visual of the safety zone. A chart of the area can be obtained by contacting LCDR Hector Cintron, and thus we do not believe it is necessary to publish the chart in the **Federal Register**. Accordingly, the Coast Guard is finalizing without change this rule establishing a temporary safety zone on specified waters on the Atlantic Ocean, Virginia Beach, Virginia.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Atlantic Ocean in the vicinity of Virginia Beach, Virginia bounded by the following coordinates: 36°-51′-48″ N/075°-58′-36″ W, 36°-51′-54″ N/075°-58′-06″ W, 36°-49′-54″ N/075°-57′-30″ W, 36°-49-48″ N/075°-58′-06″ W (NAD 1983). This temporary safety zone is in the interest of public safety during the Virginia Beach Oceanfront Air show and will be enforced from 11 a.m. until 5 p.m. on May 31, 2012, from 11 a.m. until 5 p.m. on June 1, 2012, 11 a.m. until 5 p.m. on June 2, 2012, and from 11 a.m. until 5 p.m. on June 3, 2012. Access to the safety zone will be restricted during the specified dates and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the temporary safety zone.

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 regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; (iii) mariners may transit the waters in and around this safety zone at the discretion of the Captain of the Port or designated representative; and (iv), the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor on the Atlantic Ocean in the vicinity of Virginia Beach, VA from 11 a.m. until 5 p.m. on May 31, 2012, from 11 a.m. until 5 p.m. on June 1, 2012, 11 a.m. until 5 p.m. on June 2, 2012, and from 11 a.m. until 5 p.m. on June 3, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The temporary safety zone will only be in place for a limited duration and limited size. (ii) Before the enforcement period of May 31, 2012 to June 3, 2012, maritime advisories will be issued allowing mariners to 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 offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

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 affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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 will be 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, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 subpart C 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.T05–0095, to read as follows:

§ 165.T05–0095 Safety Zone; Virginia Beach Oceanfront Air Show, Atlantic Ocean, Virginia Beach, VA

(a) *Regulated Area.* The following area is a safety zone: Specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, of the Atlantic Ocean in the vicinity of Virginia Beach, VA bound by the following coordinates: 36°-51′-48″ N/075°-58′-36″ W, 36°-51′-54″ N/075°-58′-06″ W, 36°-49′-54″ N/075°-57′-30″ W, 36°-49-48″ N/075°-58′-06″ W (NAD 1983).

(b) *Definition:* For purposes of enforcement of this section, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

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

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

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

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

(3) Any person or vessel seeking to transit through the safety zone may

request prior permission of the Captain of the Port, Hampton Roads, Virginia who can be contacted at telephone number (757) 638–6637.

(4) U.S. Coast Guard vessels enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement period:* This regulation will be enforced from 11 a.m. until 5 p.m. on May 31, 2012, from 11 a.m. until 5 p.m. on June 1, 2012, 11 a.m. until 5 p.m. on June 2, 2012, and from 11 a.m. until 5 p.m. on June 3, 2012.

Dated: April 25, 2012.

Mark S. Ogle,

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

[FR Doc. 2012–11196 Filed 5–8–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0076]

RIN 1625–AA00

Safety Zone; Baltimore Air Show, Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone during the ''Baltimore Air Show'', which consists of aerial practices, performance demonstrations and air shows, to be held over certain waters of the Patapsco River adjacent to the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland from June 14, 2012 through June 17, 2012. This rule is necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in portions of the Patapsco River during the event.

DATES: This rule is effective from June 14, 2012 through June 17, 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–2012–0076 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0076 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email 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; Baltimore Air Show, Patapsco River, Baltimore, MD'' in the **Federal Register** (77 FR 13522). We received one comment on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The U.S. Navy History & Heritage Command, Office of Commemorations, is planning to conduct the ''Baltimore Air Show'' on June 15, 2012, June 16, 2012, and June 17, 2012. The public event will consist of military and civilian aircraft performing low-flying, high-speed precision maneuvers and aerial stunts over specified waters of the Patapsco River and navigable channels in Baltimore Harbor. In addition to the air show dates, military and civilian aircraft performing in the air show will conduct practice and demonstration maneuvers and stunts over specified waters of the Patapsco River and navigable channels in Baltimore Harbor on June 14, 2012. A large spectator fleet is anticipated for the event, as part of the War of 1812 Bicentennial Commemoration activities. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard will temporarily restrict vessel traffic on specified waters of the Patapsco River in the vicinity of the practices, demonstrations and air shows. To address safety concerns during the event, the Captain of the Port, Baltimore is establishing a safety zone upon certain waters of the Patapsco River. This zone addresses safety concerns immediately outside the aerobatic show box, including the required patrols of law enforcement and safety vessels, establishment of emergency egress routes, and sponsor-designated spectator areas.

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. Dan Leaman of Spirit and Seadog Cruises, stated that the proposed Baltimore Air Show ''air box'' will prevent their dining cruises and sightseeing tours from operating in the outer portions of Baltimore Harbor.

We disagree. The Baltimore Air Show ''air box'' follows the safety requirements established by the Federal Aviation Administration. The proposed safety zone is tailored to impose a minimum adverse affect on port operations and waterway users in the Patapsco River at Baltimore, Maryland during the event. Further, discussions with interested parties will continue prior to the planned event, and authorization to transit the area of the safety zone may be obtained from the Captain of the Port Baltimore or his designated representative.

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. 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 amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary section, § 165.T05–0076 to read as follows:

§ 165.T05–0076 Safety Zone; Baltimore Air Show, Patapsco River, Baltimore, MD.

(a) *Regulated areas.* The following locations are a regulated area:

(1) All waters of the Patapsco River, within an area bounded by a line connecting position latitude 39°16′00″ N, longitude 076°36′30″ W; thence to latitude 39°16′00″ N, longitude 076°33′00″ W; thence to latitude 39°14′30″ N, longitude 076°33′00″ W; thence to latitude 39°14′30″ N, longitude 076°36′30″ W; thence to the point of origin, located adjacent to the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland.

(2) Within the regulated area described in paragraph (a)(1) of this section, an aerobatic show box is located on all waters of the Patapsco River, within an area bounded by a line connecting position latitude 39°15′44″ N, longitude 076°35′55″ W; to latitude 39°15′19″ N, longitude 076°33′25″ W; thence to latitude 39°14′49″ N, longitude 076°33′35″ W; thence to latitude 39°15′15″ N, longitude 076°36′04″ W; thence to point of origin. All coordinates reference Datum NAD 1983.

(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.

(c) *Regulations:* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0076.

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

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. 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) The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Enforcement periods:* This section will be enforced from 10 a.m. until 6 p.m. on June 14, 2012, from 10 a.m. until 6 p.m. on June 15, 2012, from 10 a.m. until 6 p.m. on June 16, 2012, and from 10 a.m. until 6 p.m. on June 17, 2012.

Dated: April 24, 2012.

Brian W. Roche,

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

[FR Doc. 2012–11193 Filed 5–8–12; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Periodicals—Recognition of Distribution of Periodicals via Electronic Copies

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service will revise the Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®) 707.6 to permit limited reporting of electronic copies of Periodicals publications to satisfy the circulation standards for Periodicals qualification. Standards require that at least 50% of the circulated copies be distributed to those who subscribe to a general publication or request a Requester publication.

DATES: *Effective Date:* May 9, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Thomas 202–268–8069.

SUPPLEMENTARY INFORMATION: On, February 3, 2012, the Postal Service published a **Federal Register** proposed rule *Periodicals—Recognition of Distribution of Periodicals via Electronic Copies* (77 FR 5470–5471) revising DMM 707.6 by adding optional reporting of electronic copies of Periodicals publications as a legitimate form of distribution. Recent advances in technology allow distribution of Periodicals publications through various electronic media channels. According to the standards that govern the Periodicals class, all paid circulation for publications authorized in the General category, and all requested circulation for publications authorized in the Requester category, may be counted toward the publication's eligibility for Periodicals prices.

Efforts to identify the conditions that allow electronic copies of Periodicals to be counted with other distribution outside the mails have been ongoing. During that time, the transition from traditional printed copies of Periodicals to electronic copies of the same publications has grown. Many factors contributed to this migration, including the proliferation of electronic reading devices and the subscriber's desire to read news immediately upon publication.

Comments

We received 28 comments. One included a survey conducted by the National Newspaper Association requesting feedback from publishers of small circulation publications. 27 individuals and all who responded to the survey approved this modification and recommended immediate adoption. One commenter expressed concern stating that this change does not clearly state the conditions of continuing eligibility. Additional language has been added to our proposed standards to clarify eligibility requirements.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

700 Special Standards

* * * * *

707 Periodicals

* * * * *

6.0 Qualification Categories

6.1 General Publications

* * * * *

6.1.2 Circulation Standards

General publications must meet these circulation standards:

* * * * *

[Revise the first sentence in f as follows:]

f. At least 50% of a publication's distribution must be to persons who have paid above a nominal price. (For explanation of how electronic copies may be included, see 6.5.) * * *

* * * * *

6.4 Requester Publications

* * * * *

6.4.2 Circulation Standards

Requester publications must meet these circulation standards:

* * * * *

[Revise item b as follows:]

b. Subscription copies of the publications that are paid for or promised to be paid for, including those at or below a nominal price, may be included in the determination of whether the 50% request requirement is met. (For explanation of how electronic copies may be included, see 6.5.)

* * * * *

[Renumber current 6.5 through 6.6 as new 6.6 through 6.7 and add new 6.5 as follows:]

6.5 Electronic Copies

Copies of Periodicals publications distributed through email or by accessing a password protected Web site may be counted toward an approved or pending general or requester publication's eligibility for Periodicals prices. The following conditions additionally apply:

a. Electronic copies that may be counted toward a publication's eligibility for Periodicals prices:

1. Must be paid at a price above nominal rate for publications approved in the General category; or

2. Must be requested in writing or by electronic correspondence for publications approved in the Requester category.

b. Electronic copies of a Periodicals publication for which access is offered free in conjunction with printed copies of the same issues may not be counted when determining total circulation for the publication.

c. At least 40% of the total circulation of each issue must consist of printed copies distributed to paying subscribers or requesters, as applicable. Up to 10% of the distributed copies used to qualify or remain eligible for Periodicals prices may be copies that are paid or requested to be sent electronically.

d. If less than 60% of a Periodicals publication's total circulation consists of printed copies distributed to paying subscribers or requesters, as applicable, annual Postal eligibility audits must be conducted by a certified audit bureau.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy and Legislative Advice.

[FR Doc. 2012–11107 Filed 5–8–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0526; FRL–9340–2]

α-(p-Nonylphenol)-ω-hydroxypoly(oxyethylene) Sulfate and Phosphate Esters; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters and α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts when used as inert ingredients at levels not to exceed 7% in pesticide formulations applied to growing crops, raw agricultural commodities after harvest and animals. The Joint Inerts Task Force, (JITF) Cluster Support Team Number (CST) 9 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters and α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts.

DATES: This regulation is effective May 9, 2012. Objections and requests for hearings must be received on or before July 9, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0526. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; email address: *leifer.kerry@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. How can I get electronic access to other related information?

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0526 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 9, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0526, 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.

II. Background

In the **Federal Register** of August 26, 2011 (76 FR 53372) (FRL–8884–9), EPA issued a notice pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 1E7860) by Joint Inerts Task Force, Cluster Support Team 9, c/o CropLife America, 1156 15th St. NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910 and 40 CFR 180.930 be amended by establishing an exemption from the requirement of a tolerance for residues of α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters and α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts when used as inert ingredients at levels not to exceed 7% in pesticide formulations applied to growing crops and raw agricultural commodities after harvest and to animals. That notice referenced a summary of the petition prepared by JITF, CST 9, the petitioner, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Previously, in the **Federal Register** of May 17, 2010 (75 FR 27434) (FRL–8826–3), EPA established a time-limited tolerance exemption for α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters and α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts (herein referred to in this document as nonylphenol ethoxylate phosphate and sulfate derivatives or NPEPSDs) with an expiration date of May 17, 2012. The 2-year time limitation was established for two purposes:

1. To provide time for the development and submission of confirmatory toxicity data to address equivocal results in the available genotoxicity studies conducted on NPEPSDs (as described in Unit IV of the May 17, 2010 final rule); and
2. To provide additional time, should the initial testing not confirm EPA's conclusion regarding the lack of a cancer concern, for registrants to attain EPA approval of registration amendments for reformulation of their pesticide products to remove NPEPSDs and to replace existing products with reformulated products.

In establishing the time-limited tolerance exemption for NPEPSDs, EPA stated that if the submitted data confirmed its conclusion regarding a lack of cancer concern, the Agency intended to remove the expiration date from the tolerance exemption prior to expiration of the exemption.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the

legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for NPEPSDs including exposure resulting from the exemption established by this action.

In the **Federal Register** of May 17, 2010, EPA issued a final rule establishing an exemption from the requirement of a tolerance for residues of NPEPSDs when used as an inert ingredient at levels not to exceed 7% in pesticide formulations applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910 with an expiration date of May 17, 2012. EPA has determined that establishing an exemption from the requirement of a tolerance for residues of NPEPSDs when used as an inert ingredient at levels not to exceed 7% in pesticide formulations applied to growing crops and raw agricultural commodities after harvest will not significantly change the risk assessments the Agency relied on to support the May 17, 2010, tolerance action, as explained in this unit.

As part of the Agency's conduct of the risk assessment in support of the May 17, 2010, tolerance action, it was determined that there were no acute, chronic, short- or intermediate term aggregate risks of concern. With regards to aggregate cancer risk, the assessment concluded that based on a weight of the evidence consideration of the available data, the Agency believed that cancer risks would be negligible. However, due to the equivocal findings in the mutagenicity data base, the Agency asked for confirmatory data. Specifically, EPA recommended that supporters of the NPEPSD tolerance exemption perform the following studies for confirmatory purposes:

A new Ames assay (OCSPP Harmonized Guideline 870.5100—Bacterial reverse mutation test) and a mouse lymphoma assay (OCSPP Harmonized Guideline 870.5300—*in vitro* Mammalian cell gene mutation test).

A bone marrow assay (OCSPP Harmonized Guideline 870.5395—Mammalian erythrocyte micronucleus test).

Since *in vivo* mutagenicity studies such as the bone marrow assay are generally regarded as more definitive than *in vitro* studies, and a negative result in the bone marrow test may outweigh whatever results are found in the Ames test and mouse lymphoma assay, supporters of the NPEPSD tolerance exemption were given the option of conducting the mammalian erythrocyte micronucleus test in lieu of the two *in vitro* mutagenicity studies. If those data did not confirm EPA's cancer conclusion, then EPA would need 2-year cancer bioassays in the mouse and rat (OCSPP Harmonized Guideline 870.4200—Carcinogenicity (mouse) and OCSPP Harmonized Guideline 870.4300—Combined Chronic Toxicity/Carcinogenicity (rat)) to make a safety finding in support of the tolerance exemption.

In response to the May 17, 2010, final rule, the JITF, CST 9 conducted an *in vivo* Mouse Bone Marrow Erythrocyte Micronucleus Test Following Oral Administration (OCSPP Harmonized Test Guideline 870.5395) of two representative test compounds, poly(oxy-1,2-ethanediyl)-α-(*p*-nonylphenyl)-ω-hydroxy-, branched, phosphates (CAS Reg. No. 68412–53–3) and poly(oxy-1,2-ethanediyl)-α-sulfo-ω-(nonylphenoxy), sodium salt (CAS Reg. No. 9014–90–8). These data were submitted to the Agency on November 12, 2010 (MRID 48293401 and 48293402).

The data were evaluated by EPA and it was determined that the test substances did not induce numerical or structural chromosomal damage, providing further confirmation that NPEPSDs are not of concern for aggregate cancer risk. Further details of this evaluation can be found at *http://www.regulations.gov* in the document ''Nonylphenol Ethoxylates and Their Phosphate and Sulfate Derivatives (JITF CST 9 Inert Ingredients)-Review of Confirmatory Mutagencity Toxicity Data'' in docket ID number EPA–HQ–OPP–2011–0526.

Refer to the May 17, 2010, **Federal Register** document, available at *http://www.regulations.gov,* for a detailed discussion of the aggregate risk assessment and determination of safety.

Therefore, based on this information and the findings in the final rule published in the **Federal Register** of May 17, 2010, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to NPEPSD residues.

V. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

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

EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for NPEPSDs.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters and α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts when used as an inert ingredient at levels not to exceed 7% in pesticide formulations applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910 and in pesticide formulations applied to animals under 40 CFR 180.930.

VII. Statutory and Executive Order Reviews

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

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 26, 2012.

G. Jeffery Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.910 is amended by revising the following entries in the table of inert ingredients to read as follows:

§ 180.910 Inert ingredients used pre and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * *	* *	*
α-(p-Nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 or 30 moles (CAS Reg. Nos. 51811–79–1, 59139–23–0, 67922–57–0, 68412–53–3, 68553–97–9, 68954–84–7, 99821–14–4, 152143–22–1, 51609–41–7, 37340–60–6, 106151–63–7, 68584–47–4, 52503–15–8, 68458–49–1).	Not to exceed 7% of pesticide formulation.	Surfactants, related adjuvants of surfactants.
* * * *	* *	*
α-(p-Nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts the nonyl group is propylene trimer isomer and the poly(oxyethylene) content averages 4 moles (CAS Reg. Nos. 9014–90–8, 9051–57–4, 9081–17–8, 68649–55–8, 68891–33–8.	Not to exceed 7% of pesticide formulation.	Surfactants, related adjuvants of surfactants.

Inert ingredients	Limits	Uses
* * * * *	*	*

■ 3. Section 180.930 is amended by revising the following entries in the table of inert ingredients to read as follows:

§ 180.930 Inert ingredients applied to animas; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *	*	*
α-(p-Nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4–14 or 30 moles (CAS Reg. Nos. 51811–79–1, 59139–23–0, 67922–57–0, 68412–53–3, 68553–97–9, 68954–84–7, 99821–14–4, 152143–22–1, 51609–41–7, 37340–60–6, 106151–63–7, 68584–47–4, 52503–15–8, 68458–49–1).	Not to exceed 7% of pesticide formulation.	Surfactants, related adjuvants of surfactants.
α-(p-Nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts the nonyl group is propylene trimer isomer and the poly(oxyethylene) content averages 4 moles (CAS Reg. Nos. 9014–90–8, 9051–57–4, 9081–17–8, 68649–55–8, 68891–33–8.	Not to exceed 7% of pesticide formulation.	Surfactants, related adjuvants of surfactants.
* * * * *	*	*

[FR Doc. 2012–10933 Filed 5–8–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0261; FRL–9339–6]

Ametoctradin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of ametoctradin in or on multiple commodities which are identified and discussed later in this document. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 9, 2012. Objections and requests for hearings must be received on or before July 9, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0261. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaunta Hill, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8961; email address: *hill.shaunta@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 those engaged in the following activities:

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must

identify docket ID number EPA–HQ–OPP–2010–0261 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 9, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0261, 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.

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of May 19, 2010 (75 FR 28009) (FRL–8823–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7695) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide ametoctradin, including its metabolites and degradates, in or on brassica, head and stem, subgroup 5A at 12 parts per million (ppm); brassica, leafy greens, subgroup 5B at 50 ppm; grape at 5.0 ppm; grape, raisin at 8 ppm; hop, dried cones at 9 ppm; onion, bulb, subgroup 3–07A at 1.2 ppm; onion, green, subgroup 3–07B at 16 ppm; vegetable, cucurbit, group 9 at 4.5 ppm; vegetable, fruiting, group 8–10 at 2 ppm; vegetable, leafy, except brassica, group 4, at 70 ppm, and vegetable, tuberous and corm, subgroup 1C at 0.05 ppm. That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has proposed different tolerance levels under a cooperative global review process. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for ametoctradin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with ametoctradin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In toxicity testing with ametoctradin, no single dose or repeated dose study performed by any route of exposure produced a significant toxic effect up to or within 75–80% of the limit dose (1000 mg/kg/day). This includes the studies performed with the ametoctradin metabolites. There was also no evidence of carcinogenicity or mutagenicity and therefore ametoctradin is considered ''Not Likely to Be Carcinogenic to Humans''.

Specific information on the studies received and the nature of the adverse effects caused by ametoctradin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''BAS 650 F (Ametoctradin): Human Health Risk Assessment for the Proposed New Fungicide Active Ingredient,'' at p. 10 in docket ID number EPA–HQ–OPP–2010–0261.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.* Based on the available data, there were no adverse acute or chronic effects identified as to any population groups (including infants and children).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary

exposure to ametoctradin, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from ametoctradin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for ametoctradin; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* No chronic dietary exposure assessment was conducted because no chronic effect of concern was identified in the available data.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that ametoctradin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

2. *Dietary exposure from drinking water.* Exposure to ametoctradin via drinking water from the proposed uses is expected to be minimal based on its short half life in soil. Ametoctradin degradates (F01, F02, F03, F04) are likely to contribute much greater drinking water exposure because they are more persistent and more mobile than the parent. However, no adverse effects were observed in the submitted toxicological studies for ametoctradin regardless of the route of exposure. Thus, no drinking water exposure assessments are needed.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Ametoctradin is not registered for homeowner uses; however, some of the proposed uses could be used by commercial applicators in areas that residential postapplication exposure could occur (i.e., ornamentals on golf courses or in residential landscapes). No adverse effects were observed in the submitted toxicological studies for ametoctradin regardless of the route of exposure. Thus, no residential handler or postapplication exposure assessments are needed.

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

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

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Based on the complete database, there were no adverse effects noted in the developmental toxicity or reproductive toxicity studies.

3. *Conclusion.* Based on review of the available ametoctradin toxicological studies, no toxicological points of departure where selected for ametoctradin and thus, an additional safety factor to protect children is not needed. That decision is based on the following findings:

i. The toxicity database for ametoctradin is complete.

ii. There is no indication that ametoctradin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that ametoctradin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no concerns identified with regard to exposure to ametoctradin and thus there are no uncertainties identified in the exposure databases.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, ametoctradin is not expected to pose an acute risk.

2. *Chronic risk.* No adverse effect resulting from a chronic exposure was identified and no chronic endpoint was selected. Therefore, ametoctradin is not expected to pose a chronic risk.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no short-term adverse effect was identified, ametoctradin is not expected to pose a short-term risk.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no intermediate-term adverse effect was identified, ametoctradin is not expected to pose a intermediate-term risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, ametoctradin is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to ametoctradin residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology using liquid chromatography tandem mass spectrometry (LC/MS/MS) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for ametoctradin.

C. Revisions to Petitioned-for Tolerances

Ametoctradin is a candidate for global registration in the USA, Australia, and Canada and import tolerance establishment in the European Union (EU) for varying uses. Under a cooperative joint review process, harmonized MRLs were proposed by the Agency, the Pesticide Management Regulatory Agency of Canada (PMRA), and the EU.

Although much effort was made to harmonize with the EU proposed import-MRLs, there remained a few crops (celery, broccoli, cucumber and hops) where the proposed global registration recommended MRLs differed. This is primarily because EU's practice for setting MRLs is to lower the MRL as much as possible hence they try to assign MRLs to selected individual crops within a crop group as opposed to assigning a crop group MRL which is normally higher than all the estimated MRLs for individual crops. This approach is impractical for North American Free Trade Agreement (NAFTA) regions as there are other crops within a crop group petitioned for registration.

The Organization for Economic Co-operation and Development's (OECD) MRL calculation procedures used to estimate the proposed MRLs. The MRLs were derived using the average of individual residue data points from each field trial conducted at maximum applications rates and the lowest PHI, and assuming the presence of adjuvants (as indicated on the proposed labels). In estimating MRLs for crop groups, the highest estimated MRL for individual representative crops were selected.

For some crops, field trials were conducted at concentrated and diluted solutions. In these cases, MRLs were chosen using only the residue data for applications with concentrated solution if the concentrated solution residue data showed significant differences from the whole residue dataset (concentrated and diluted solution applications).

V. Conclusion

Therefore, tolerances are established for residues of ametoctradin, including its metabolites and degradates, in or on brassica, head and stem, subgroup 5A at 9.0 ppm; brassica, leafy greens, subgroup 5B at 50 ppm; grape at 4.0 ppm; grape, raisin at 8.0 ppm; hop, dried cones at 10 ppm; onion, bulb, subgroup 3–07A at 1.5 ppm; onion, green, subgroup 3–07B at 20 ppm; spinach at 50 ppm; vegetable, cucurbit, group 9 at 3.0 ppm; vegetable, fruiting, group 8–10 at 1.5 ppm; vegetable, leafy, except brassica, group 4, except spinach at 40 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.05 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: April 27, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.663 to read as follows:

§ 180.663 Ametoctradin; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide ametoctradin, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only ametoctradin (5-ethyl-6-octyl[1,2,4]triazolo[1,5-a]pyrimidin-7-amine).

Commodity	Parts per million
Brassica, head and stem, subgroup 5A	9.0
Brassica, leafy greens, subgroup 5B	50
Grape	4.0
Grape, raisin	8.0
Hop, dried cones	10.0
Onion, bulb, subgroup 3–07A	1.5
Onion, green, subgroup 3–07B	20.0
Spinach	50.0
Vegetable, cucurbit, group 9	3.0
Vegetable, fruiting, group 8–10	1.5
Vegetable, leafy, except Brassica, group 4, except spinach	40.0
Vegetable, tuberous and corm, subgroup 1C	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2012–10950 Filed 5–8–12; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 77, No. 90
Wednesday, May 9, 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

Food Safety and Inspection Service

9 CFR Part 417

[Docket No. FSIS–2009–0019]

HACCP Systems Validation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is issuing this document to propose to clarify its requirements for validation by an official establishment of its Hazard Analysis Critical Control Point (HACCP) system, that is, validation of both the critical control points (CCPs) in the HACCP plan and any interventions or processes used to support decisions in the hazard analysis. Validation of a HACCP system involves two separate elements: The scientific or technical support for the judgments made in designing the HACCP system, and evidence derived from the execution of the HACCP plan to demonstrate that it is, in fact, achieving the critical operational parameters documented in the scientific or technical support.

The Agency is also announcing the availability of, and requesting comments on, a revised draft guidance document prepared to assist establishments in appropriately validating their HACCP systems. The Agency received and analyzed comments on the initial draft of this guidance, which the Agency posted on its Web site in March 2010. FSIS is soliciting comments on this revised guidance and will hold a public meeting to discuss the revised guidance before it issues final guidance for HACCP systems validation.

DATES: Comments on this document and the revised guidance document, ''Compliance Guidance: HACCP Systems Validation,'' must be received by July 9, 2012.

ADDRESSES: FSIS invites interested persons to submit comments on this document and the related guidance. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov*. Follow the on-line instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, OPPD, RIMD, Docket Unit, Patriots Plaza 3, 1400 Independence Avenue SW., Mail Stop 3782, 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2009–0019. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov*.

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William K. Shaw, Jr., Ph.D., Office of Policy and Program Development, FSIS, USDA, 1400 Independence Ave. SW., Patriots Plaza 3, Mailstop 3782, 8–142, Washington, DC 20250. Telephone: (301) 504–0852 Fax: (202) 245–4792. *Email: william.shaw@fsis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

FSIS implements the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers by preventing the distribution in commerce of meat or poultry products that are unwholesome, adulterated, or misbranded. To reduce the risk of foodborne illness from meat or poultry products, FSIS issued regulations on July 25, 1996, that require that federally inspected establishments adopt HACCP systems (61 FR 38806). These regulations require that federally inspected establishments adopt measures to prevent or control the occurrence of food safety hazards at each stage of the production process where such hazards are reasonably likely to occur.

The HACCP regulations in 9 CFR part 417 require that each establishment conduct a hazard analysis to determine the food safety hazards reasonably likely to occur in its production process and to identify the preventive measures the establishment can apply to control those hazards in the production of particular products (9 CFR 417.2(a)). Whenever a hazard analysis reveals one or more food safety hazards reasonably likely to occur in the production process, the HACCP regulations require that the establishment develop and implement a written HACCP plan, for each product, that includes specified measures to prevent, eliminate, or reduce to an acceptable level the effects of each hazard so identified (9 CFR 417.2(b)(1) and 9 CFR 417.2(c)). The regulations in 9 CFR 417.2(c) require, among other things, that the HACCP plan include CCPs at which such measures can be applied.

The HACCP regulations in 9 CFR part 417 also require that establishments validate the HACCP plan's adequacy to control the food safety hazards identified by the hazard analysis (9 CFR 417.4(a)). The regulations in 9 CFR 417.4(a)(1) prescribe requirements for the initial validation of an establishment's HACCP plan and require establishments to ''conduct activities designed to determine that the HACCP plan is functioning as intended.'' During this initial validation period, establishments are to ''repeatedly test the adequacy of the CCPs, critical limits, monitoring and recordkeeping procedures, and corrective actions'' prescribed in their HACCP plans (9 CFR 417.4(a)(1)). The regulations state that ''[v]alidation also encompasses reviews of the records themselves, routinely generated by the HACCP system, in the context of other validation activities'' (9 CFR 417.4(a)(1)).

After an establishment has validated its HACCP plan, the regulations require that it conduct ongoing verification activities and reassess the HACCP plan at least annually or whenever a change occurs that could affect its hazard analysis or HACCP plan (9 CFR 417.4(a)(2) and 9 CFR 417(a)(3)).

The regulations in 9 CFR 417.5 require that establishments maintain

certain records that document their HACCP plans. In addition to records associated with the HACCP plan itself, these records must include the written hazard analysis prescribed in 9 CFR 417.2(a), including supporting documentation (9 CFR 417.5(a)(1)).

HACCP System Validation

Initial validation period. Validation is the process of demonstrating that a HACCP system, if operating as designed, can adequately control identified hazards to produce a safe product. As discussed above, the regulations in 9 CFR 417.4(a)(1) provide for an initial validation period during which meat and poultry product establishments are to conduct activities to validate their HACCP systems. Official meat and poultry product establishments that were in operation when FSIS issued its HACCP regulations in part 417 were required to conduct this initial validation when they became subject to part 417.

Since FSIS issued its HACCP regulations, meat and poultry product establishments have been required to conduct a hazard analysis and develop and validate a HACCP plan in accordance with 9 CFR 417.2 and 9 CFR 417.4 as a condition for receiving Federal inspection (9 CFR 304.3(b) and 9 CFR 381.22(b)). The regulations provide for the issuance of a conditional grant of inspection for a period not to exceed 90 days during which time the establishments are to complete their initial HACCP plan validation.

In addition, if an establishment decides to produce a new product for distribution in commerce, it is required to conduct a hazard analysis and develop a HACCP plan applicable to that product before introducing it into commerce (9 CFR 304.3(c) and 381.2(c)). The establishment is required to complete the initial validation of the new HACCP plan in accordance with 9 CFR 417.4 during a period not to exceed 90 days after the date the new product is produced for distribution in commerce.

HACCP system records reviews. The regulations in 9 CFR 417.4(a) identify certain activities that an establishment is required to complete to validate its HACCP plans. These regulations state, among other things, that validation is to encompass ''reviews of the records, routinely generated by the HACCP system, in the context of the validation.'' The ''HACCP system'' is defined as ''[t]he HACCP plan in operation, including the HACCP plan itself'' (9 CFR 417.1). Thus, HACCP plan validation under 9 CFR 417.4(a)(1) requires that an establishment conduct reviews of both the records required in the HACCP plan, as well as required records generated by the HACCP plan in operation.

The operation of a HACCP plan involves all activities performed by the establishment to prevent or control food safety hazards identified in the hazard analysis. An establishment may perform these activities as part of its HACCP plan or as part of a program that contains interventions or controls that could affect the hazard analysis but that may or may not be referenced in the HACCP plan. For example, an establishment may conduct activities to address an identified hazard as part of a prerequisite program or as part of a program to comply with specifications of a business customer. Because the results obtained under these programs could affect decisions made in the hazard analysis, an establishment is required to maintain records associated with these programs as supporting documentation for its hazard analysis (9 CFR 417.5(a)).

The written hazard analysis and supporting documentation are among the records required under 9 CFR 417.5 to document the HACCP plan and, as such, are also among the records ''routinely generated by the HACCP system'' subject to review for validation under 9 CFR 417.4(a)(1). Thus, if an establishment's supporting documentation for its hazard analysis includes records associated with a prerequisite program that provides for an intervention or process designed to prevent a hazard from being likely to occur, the records required for validation under 9 CFR 417.4(a)(1) would need to cover all documents associated with the prerequisite program. An establishment must assess whether these records demonstrate that the intervention or control provided for in the program can achieve results that support decisions in the hazard analysis that a hazard is not reasonably likely to occur because of the operation of the program.

Elements of validation. Validation under 9 CFR 417.4(a)(1) requires that establishments assemble two types of data: (1) The scientific or technical support for the judgments made in designing the HACCP system, and (2) evidence derived from the HACCP plan in operation to demonstrate that the establishment is able to implement the critical operational parameters necessary to achieve the results documented in the scientific or technical support.

Establishing and documenting the scientific or technical basis for the HACCP system requires that the establishment gather scientific or technical documentation demonstrating that the measures adopted in its HACCP system are effective in controlling identified food safety hazards. Scientific or technical support for a HACCP system may consist of Agency guidance documents, documented expert advice from processing authorities, an article from a peer-reviewed journal, a documented scientific study, documented results from a pathogen modeling program, or analogous information. To be effective, the scientific documentation should identify: (1) The hazard that the measures are intended to address; (2) the expected level of hazard reduction or prevention that the measures will achieve; (3) the critical operational parameters, such as time, temperature, humidity, and pH, that must be met for the measures to be effective; (4) the processing steps necessary to achieve the specified level of hazard reduction or prevention; and (5) how the processing steps can be monitored.

For example, for scientific support of its HACCP system, an establishment that processes beef carcasses may use a published journal article that describes the use of a lactic acid spray system as an antimicrobial intervention. To meet the first element of validation, the journal article should identify *E.coli* O157:H7 and other pathogens as the hazard that the lactic acid intervention is intended to address and should specify the level of pathogen reduction that the intervention is capable of achieving. The article should identify the critical operational parameters needed for the intervention to be effective, such as the design of the spray cabinet, the concentration of the lactic acid, the pressure at which the spray is delivered, the temperature of the acid at the point of delivery, and the temperature of the carcass when the acid is applied.

Once an establishment has satisfactorily documented the scientific or technical support for its HACCP system, the regulations require that it ''repeatedly test the adequacy'' of the various components of its HACCP plan in controlling identified hazards (9 CFR 417.4(a)(1)). This element of the validation process requires that the establishment demonstrate that the system will actually perform as expected. An establishment must develop data to demonstrate that it has and can routinely meet the scientifically documented parameters in its HACCP systems under in-plant conditions, *i.e.,* with its own employees and equipment, and that its HACCP system, as implemented, is capable of achieving

the expected results. Data used to support this in-plant demonstration may include in-plant observations, measurements, microbiological test results, documentation to demonstrate that employees have been properly trained regarding the important aspects of their duties, or other information to demonstrate that the establishment can implement the preventive or control measures, as written into the HACCP system, in a manner that achieves the intended food safety objective.

For example, an establishment that has incorporated the use of a lactic acid spray intervention described in a peer-reviewed journal article into its HACCP system will need to assemble documentation to demonstrate that it is capable of following the procedures in the same manner in which they are described in the study. To conduct the in-plant demonstration, the establishment will need to measure and record the results for all critical operational parameters identified in the study, such as the concentration of the lactic acid spray, the pressure of the spray, the temperature of the lactic acid, and the temperature of the carcass at the point of delivery. The lactic acid intervention will be validated if, at the end of 90 days, the establishment has assembled data demonstrating that the establishment is consistently meeting all critical operating parameters documented in the scientific study under in-plant conditions.

As discussed above, an establishment must validate all measures that it relies upon to prevent or control the hazards that it has identified in its HACCP system, whether the measures are part of the establishment's HACCP plan itself or part of a program that includes interventions or controls that affect the hazard analysis. Under FSIS's regulations, these measures are not considered to be validated until the establishment has satisfied both elements described above.

For example, an establishment that receives, grinds, or otherwise processes ground beef may determine that *E. coli* O157:H7 is not a hazard reasonably likely to occur in its production process because it has a prerequisite program incorporating purchase specifications that require that the establishment's suppliers apply validated interventions to address *E. coli* O157:H7 on the product that they send the establishment. The establishment may reference the documentation provided by the supplier as the support for the prerequisite program. However, the prerequisite program is not validated until the receiving establishment has documentation from each supplier, such as a letter of guarantee, that assures that the supplier employs CCPs that address *E. coli* O157:H7, describes those CCPs and the method of monitoring of them and provides certificates of analysis that specify the sampling method that the supplier uses and the results of that sampling. The receiving establishment should also do its own testing or visit the supplier's establishment to confirm that the supplier is executing the purchase specifications in a consistent and effective manner to ensure that the product the supplier sends does not contain detectable levels of *E. coli* O157:H7. If the receiving establishment visits the supplier, the receiving establishment should develop and maintain records that document the findings of such visits.

As noted in the preamble to the HACCP final rule, adequate validation needs to include both supporting scientific information as well as in-plant operational data to ''* * * demonstrate not only that [the establishment's] HACCP plan is theoretically sound, but also that this establishment can implement it and make it work'' (61 FR 38806, 38826).

Initial Draft Guidance

FSIS developed an initial draft guidance document in 2010 to assist the industry, particularly small and very small establishments, in complying with the requirements for HACCP systems pursuant to 9 CFR 417.4. FSIS made this initial draft guidance available to the public in March 2010 by posting it on the FSIS Web site and announcing its availability in the Constituent Update. The Agency also mailed the guidance document to all federally-inspected meat and poultry product establishments.

The initial draft guidance described the types and sources of scientific information that establishments can use to meet the first element of the validation requirement, the scientific or technical support. It also described the types of observational data and in-plant measurements that establishments can use to meet the second element of validation, the in-plant demonstration. The guidance also explained that, in addition to gathering observational data, in-plant validation requires demonstrating that the array of interventions and process steps together in sequence are achieving the desired result. The guidance included an Appendix titled ''Validation Examples for Raw Products and Processed Products'' that provided examples on the kinds of data that establishments could use to meet the validation requirement.

With respect to the types of data that would be appropriate to demonstrate that an establishment's HACCP system was achieving the desired result, the initial draft guidance stated that:

''FSIS believes that microbiological testing that combines enumeration of indicators with the presence/absence of an identified pathogen in conjunction with monitoring critical parameters plays an important role in the initial validation of many interventions for biological food safety hazards. Microbiological testing data, where appropriate, can provide establishments information about whether the overall system of interventions can achieve the desired log reductions documented in the scientific supporting documentation. Establishments would need to provide support in instances where they believe microbiological testing data is not needed to demonstrate the effectiveness of the HACCP system in controlling biological food safety hazards. Once the operational effectiveness of each individual intervention is determined, the establishment can use microbiological testing data in conjunction with the data on the individual interventions to establish that the process as a whole results in the production of safe, unadulterated product. In this final part of step 2 initial in-plant validation, the establishment should pull together the data for each intervention and the data from microbiological testing at various points throughout the HACCP system to ensure that the multiple hurdle design of its entire HACCP system will result in the production of safe, unadulterated products. Failure to take these steps will raise questions whether the HACCP system has been adequately validated.''

Public Meeting

An array of issues were raised in comments submitted in response to the initial draft guidance, particularly with respect to the guidance on the use of microbiological testing to validate the effectiveness of HACCP systems in controlling biological hazards. To address these issues, the Agency developed, and made available on its Web site, a supplemental fact sheet to assist small and very small meat and poultry establishments obtain information to support the scientific design of their HACCP systems (*http://www.fsis.usda.gov/Science/HACCP_Validation/index.asp*).

In addition, on June 14, 2010, FSIS held a public meeting to discuss the draft HACCP validation guidance and received input from stakeholders.

The transcripts of the July 2010 public meeting are available on the FSIS Web site at: *http://www.fsis.usda.gov/PDF/Transcripts_HACCP_Validation_061410.pdf.*

Comments on the Initial Draft

FSIS received over 2000 comments on its March 2010 draft guidance on HACCP validation from consumers of organic meat and poultry, small livestock producers and family farmers, small and very small meat or poultry processors, trade associations representing meat and poultry processors, trade associations representing animal producers, State Departments of Agriculture and other local or State government officials, academics, insurance companies, and consumer advocacy organizations.

FSIS has carefully considered the comments and re-evaluated its draft guidance in light of these comments. Based on this re-evaluation, FSIS has revised the draft guidance. Following is a brief summary and discussion of the major issues raised by the comments.

1. Microbiological Testing vs. Critical Operating Parameters

Comment: FSIS received a significant number of comments on the use of microbiological testing to validate a HACCP system. The majority of these comments objected to the requirements for microbiological testing as part of the in-plant demonstration component of validation. The comments stated that the benefit of collecting microbial data is unclear and is not justified by the significant financial burden that such testing would impose.

A number of comments stated that instead of requiring microbiological testing, the focus of in-plant validation should be on critical operating parameters. The comments asserted that a scientific study is the safest and most effective method to validate a process, and that the in-plant validation should be focused on collecting data to demonstrate that the establishment is properly implementing the procedures described in the scientific support, allowing establishments to focus on meeting the established parameters.

Response: FSIS agrees and has revised the draft guidance to remove the references to the use of in-plant microbiological testing as a necessary part of the in-plant demonstration component of the HACCP validation process. FSIS has concluded that a key focus of validation should be on the establishment's ability to achieve the scientifically supported critical operating parameters under in-plant conditions. A showing that the establishment can effectively achieve these parameters will satisfy the in-plant demonstration requirements of validation and fulfill the objectives of the HACCP regulations without imposing significant costs on small businesses.

Accordingly, the in-plant demonstration of validation will be considered effective when an establishment has demonstrated that it is capable of effectively implementing the critical operational parameters identified in the establishment's scientific or technical support.

Although references to microbiological testing in the initial in-plant validation phase have been removed from the revised compliance guidance, FSIS will continue to include establishments that are conducting the initial validation in the Agency's regulatory microbiological sampling programs. FSIS would question the adequacy of an establishment's HACCP system if regulatory samples analyzed by the Agency show non-compliance with microbiological standards.

Comment: Some comments pointed out that all parameters specified in an establishment's supporting scientific and technical documentation may not in fact be needed for the intervention or control measure to be effective. The comments asserted that meeting only the critical parameters necessary to successfully implement an intervention should be required as part of the in-plant demonstration.

Response: As noted above, FSIS has revised the guidance to focus on the critical operational parameters. The critical operating parameters are those that have been shown to influence the effectiveness of an intervention when variations occur. If some of the operational parameters described in the scientific support have been found to have no impact on the effectiveness of the intervention, there would be no need to monitor those operational parameters during the initial validation period.

Comment: Some comments suggested that FSIS create safe harbors for establishments in which they can operate without concerns about the validity of their process. The comments stated that the Agency should only request in-plant information from an establishment when the validity of the process is being questioned, or if the establishment is implementing a new or unique process.

Several comments submitted by the industry stated that HACCP plans are backed by scientific studies that have been conducted by a university, trade association, or a regulatory body. The comments stated that these scientific studies validate that an establishment's HACCP plan is capable of producing a safe product.

Response: Establishments may use established processing guidelines, such as Appendix A of the final rule ''Performance Standards for the Production of Certain Meat and Poultry Products,'' for their scientific support. The parameters established in these guidelines would be considered ''safe harbors.'' However, the establishment would still need to collect in-plant data to demonstrate that is capable of achieving the critical operational parameters documented in these processing guidelines to complete the validation.

The regulations that prescribe requirements for validation require that establishments ''* * * repeatedly test the adequacy of the CCPs, critical limits, monitoring and recordkeeping procedures, and corrective actions'' described in their HACCP plans (9 CFR 417.4(a)(1)). While a scientific study may demonstrate that the HACCP system is designed to effectively address the relevant hazards, additional in-plant monitoring and observation is needed to demonstrate that the system will function as designed. Thus, a scientific study on its own is not sufficient to validate an establishment's HACCP system.

Comment: One trade association asked how the Agency will work to ensure that small and very small plants have access to the scientific support mentioned in the guidance document.

Response: FSIS has posted a list of relevant journal articles by pathogen on its Web site (*http://www.fsis.usda.gov/Science/HACCP_Validation_Articles/index.asp*). The Agency is also developing a tutorial on understanding scientific and technical journal articles and identifying critical operational parameters. FSIS will post that material on the Web site when it is complete.

2. Validation and Verification

Comment: Several comments expressed concern about requiring that establishments implement regular, year-round microbiological testing, regardless of whether problems have been identified. The comments also expressed concern about the annual cost for ongoing in-plant testing.

Response: The concerns about ongoing or year-round testing expressed by the comments are related to the on-going verification that is required after the validation is complete. After an establishment completes the initial validation, it is required to conduct verification activities to demonstrate

that it continues to achieve the critical operating parameters on an on-going basis. The draft guidance does note that these on-going verification procedures may need to include microbiological testing, although establishments may use a number of measures including ongoing communication with suppliers and third party audits, to support the HACCP system is functioning as intended on an ongoing basis.

3. Improve Agency Training and Management of Communication With Field Personnel

Comment: Some comments submitted by trade associations representing meat and poultry processors stated that FSIS needs to ensure that its field personnel interpret the validation guidance in an accurate and consistent manner. The comments suggested that FSIS conduct workshops and training sessions on the validation guidance for industry and inspection personnel.

Response: FSIS will provide instructions to the field when it issues final guidance on HACCP validation. The Agency also will provide additional materials and supplemental training to ensure that the validation requirements are properly implemented.

4. Accommodating Small and Very Small Establishments

Comment: Several comments emphasized the importance of recognizing that a ''one size fits all'' approach to regulatory requirements is not the most effective approach. Some comments suggested that FSIS should establish a separate set of requirements for small processors, or perhaps exempt small processors from the HACCP validation requirements.

Response: FSIS agrees that it is important to provide small and very small establishments the flexibility they need to comply with regulatory requirements. At the same time, in order to ensure that meat and poultry products are safe, wholesome, and accurately labeled, it is essential for all establishments to effectively validate their HACCP systems. The revised draft guidance provides small and very small plants the flexibility to choose the most appropriate procedures for them to achieve the requirements for HACCP validation. In addition, FSIS will continue to assist small and very small plants in meeting the regulatory requirements for HACCP through the Agency's ongoing small and very small plant outreach activities.

5. Data Sharing

Comment: One industry commenter asked whether a company that owns more than one establishment can use the validation data gathered from one facility to validate the HACCP systems of other facilities owned by the same company.

Response: Both the initial guidance document and our revised draft guidance explain that if a company owns multiple establishments that conduct the same operations, the establishments may use the same scientific support for all establishments to satisfy the first element of validation. However, each establishment would need to conduct its own on-site study to demonstrate that it is capable of meeting the critical operational parameters in the scientific study. It is important that each establishment do so because variations exist from establishment to establishment, such as differences in equipment configurations or building structures, which could have an impact on the implementation of a measure documented in the scientific support.

Revisions Made After Consideration of Comments

After careful consideration of the comments submitted on the March 2010 initial draft guidance, the Agency revised its draft guidance on HACCP systems validation. Following is a summary of major areas that FSIS addressed when it revised the draft guidance.

Scientific Support. As part of its HACCP verification activities, in addition to the issues related to the in-plant demonstration described above, FSIS has identified instances in which an establishment's HACCP system design did not reflect the critical operational parameters documented in the scientific or technical support. Therefore, the revised draft guidance provides additional recommendations on measures that an establishment can take to ensure that its scientific or technical support is properly applied to its production process and the hazards identified in the hazard analysis. The guidance emphasizes that to be effective, the establishment's HACCP system design must relate and adhere to the specifications in the supporting documentation.

The revised draft guidance also discusses the five major types of scientific support. These include: (1) Published processing guidelines, *e.g.* Appendix A of the final rule ''Performance Standards for the Production of Certain Meat and Poultry Products'' and Appendix B, Compliance Guidelines for Cooling Heat-Treated Meat and Poultry Products (Stabilization); (2) a scientific article from a peer-reviewed journal; (3) a challenge or inoculated pack study that is designed to determine the lethality or stabilization of a process; (4) data gathered in-house; and (5) regulatory performance standards.

The revised draft guidance recommends that scientific support contain microbiological data that specifies the level of pathogen reduction that an intervention for a target pathogen identified in the hazard analysis will achieve. If this information is not provided, establishments will need to conduct or provide additional research to show that either the target pathogen would behave similarly to the microorganisms studied in the scientific support, or that the intervention will function as intended.

In-plant support. The revised draft guidance explains that to conduct an adequate in-plant demonstration, establishments need to identify the critical operating parameters documented in the scientific support. The draft guidance stresses that the critical operating parameters often will be in addition to the critical limit associated with the critical control points. The document provides that establishments should implement all of the critical operating parameters identified in the scientific support.

The draft document has also been revised to remove references the use of in-plant microbiological testing as a necessary part of the in-plant demonstration component of the HACCP validation process. Instead, the revised guidance emphasizes the importance of achieving the scientifically supported critical operating parameters under in-plant conditions.

Identifying critical operating parameters. The revised draft guidance contains a new Appendix, ''*Guidance to Identify Critical Operational Parameters from Supporting Documentation,*'' that explains how establishments can apply journal articles to their own processes and how to identify in the journal article the essential or critical operating parameters. FSIS will post information on its Web site on how to identify critical operating parameters documented in a journal article. This Web posting will include examples of journal articles that have been broken down to identify the critical operating parameters.

FSIS shared the revised draft HACCP validation guidance with the National Advisory Committee on Meat and Poultry Inspection (NACMPI) at the committee's public meeting held on September 22–23, 2011. The draft compliance guidance that the Agency is making available through this **Federal**

Register document reflects recommendations made by the NACMPI HACCP Systems Validation Sub-Committee. Most of the revisions recommended by NACMPI were to improve the clarity of the document. For example, in response to a NACMPI recommendation, the draft compliance guidance now clearly and concisely describes the distinction between validation and verification and explains how the establishment's HACCP plan reassessment fits into the process. The draft guidance reiterates that the establishment is required to reassess its HACCP plan annually and whenever changes occur that affect the hazard analysis or HACCP plan (9 CFR 417.2(a)). The draft guidance also makes clear that that to conduct an effective reassessment, establishments should review the records generated by the entire HACCP system and analyze these records to determine how the HACCP system is performing as a whole. Pre-requisite programs are a critical part of the environment in which HACCP plans function and are therefore an important part of any HACCP plan reassessment. FSIS also updated the guidance to include guidance for validating cooking instructions for ground poultry patties.

The NACMPI report is available on the FSIS Web site at: *http://www.fsis.usda.gov/PDF/Validation_Issue_Paper_Final.pdf*.

In addition to comments on the draft guidance document, the NACMPI also made recommendations on FSIS's implementation and verification activities after the Agency issues final validation guidance. The NACMPI recommended that FSIS ''phase in'' its activities to ensure that establishments have appropriately validated HACCP systems by focusing first on those product categories that present the greatest public health risk. The NACMPI also recommended that at their next annual reassessment, existing establishments should be expected to have determined whether they need to collect additional in-plant data to complete their validation or whether the data they have collected meet the validation requirements. FSIS believes that both recommendations have merit and requests comments on them.

The revised draft guidance document is available for public viewing in the FSIS docket room and on the FSIS Web site at *http://www.fsis.usda.gov/Regulations_&_Policies/Compliance_Assistance/index.asp*. FSIS again invites comments on the revised guidance document, as well as on the issues discussed in this **Federal Register** document. The Agency will also hold a public meeting to discuss the revised draft guidance and to solicit additional input on validation requirements.

Next Steps

After considering the public input and comments it receives on the revised draft guidance document, FSIS will issue a final guidance document on HACCP system validation and publish a **Federal Register** document to announce its availability. At that time, FSIS will also announce when Agency personnel will begin to take enforcement actions if it finds that an establishment has failed to conduct and document in-plant validation.

Until then, FSIS inspection personnel will continue to issue a noncompliance record (NR) if an establishment lacks the required scientific or technical support for its HACCP system, or if the scientific or technical support is inadequate. FSIS will also continue to issue an NOIE if, taken together with other relevant findings, an establishment's scientific or technical support is inadequate, and the Agency can support a determination that the establishment's HACCP system is inadequate for any of the reasons provided in 9 CFR 417.6.

FSIS will also continue to conduct Food Safety Assessments (FSAs). If, when conducting an FSA, an EIAO finds that an establishment has not completed the in-plant demonstration, the EIAO will note this finding in the FSA and inform the establishment. Until the enforcement date, FSIS will not issue NRs or take enforcement actions based solely on a finding that an establishment lacks in-plant validation data.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this document, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2012_Notices_Index/*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS' policies, procedures, regulations, **Federal Register** notices, public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Information is available about a variety of topics including recalls, exports, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and they have the option to password protect their accounts.

Done at Washington, DC, on May 1, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–10895 Filed 5–8–12; 8:45 am]

BILLING CODE 3410–DM–P

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 404

[EXIM–OIG–2012–0010]

RIN 3048–AA02

Privacy Act of 1974: Implementation of Exemptions; Export-Import Bank of the United States Office of Inspector General—Office of Inspector General Investigative Records

AGENCY: The Export-Import Bank of the United States.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Export-Import Bank of the United States (hereafter known as ''Ex-Im Bank''), Office of Inspector General (hereafter known as ''OIG'' or ''Ex-Im Bank OIG'') is giving concurrent notice of a new system of records entitled, ''EIB–35–Office of Inspector General Investigative Records.'' In this proposed rulemaking, Ex-Im Bank proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments should be received on or before July 9, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by Docket Number EIB–2011–0010 by one of the following methods:

- Electronically through the eRulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments. Please search for EIB–2011–0010.
- *By Mail/Hand Delivery/Courier:* Alberto Rivera-Fournier, Ex-Im Bank,

Office of Inspector General/811 Vermont Avenue NW., Rm. 976, Washington, DC 20571. Please allow sufficient time for mailed comments to be received before the close of the comment period.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received before the end of the comment period will be posted on *http://www.regulations.gov* for public viewing, including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: Alberto Rivera-Fournier, Ex-Im Bank, Office of Inspector General, 811 Vermont Avenue NW., Rm. 976, Washington, DC 20571 or by telephone (202) 565–3908 or facsimile (202) 565–3988.

SUPPLEMENTARY INFORMATION: Concurrently with the publication of this notice of proposed rulemaking, the Ex-Im Bank OIG is publishing a new system of records notice that is subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system is entitled, ''EIB–35–Office of Inspector General Investigative Records''. The system of records is necessary in order for Ex-Im Bank OIG to carry out its investigative responsibilities pursuant to the Inspector General Act of 1978, as amended.

Ex-Im Bank is proposing to exempt this system, in part, from certain provisions of the Privacy Act. The OIG is responsible for conducting and supervising independent and objective audits, inspections, and investigations of the programs and operations of Ex-Im Bank. The OIG promotes economy, efficiency, and effectiveness within the Ex-Im Bank and prevents and detects fraud, waste, and abuse in its programs and operations. The OIG's Office of Investigations investigates allegations of criminal, civil, and administrative misconduct involving Ex-Im Bank employees, contractors, programs and activities. These investigations can result in criminal prosecutions, fines, civil monetary penalties, and administrative sanctions.

The new system of records assists the OIG with receiving and processing allegations of violation of criminal, civil, and administrative laws and regulations relating to Ex-Im Bank employees, contractors, and other individuals and entities associated with Ex-Im Bank. The system includes both paper investigative files and the ''Inspector General Information System'' (IGIS), an electronic case management and tracking information system, which also generates reports. IGIS allows the OIG to manage information provided during the course of its investigations, and, in the process, to facilitate its management of investigations and investigative resources.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of Ex-Im Bank by complying with Ex-Im Bank Privacy Act regulations, 12 CFR part 404.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

Ex-Im Bank is claiming exemptions from certain requirements of the Privacy Act for the ''EIB–35–Office of Inspector General Investigative Records'' because information in this system of records relates to official law enforcement activities. These exemptions are needed to protect information relating to Ex-Im Bank OIG activities from disclosure to subjects of investigations and others related to these activities.

Specifically, the exemptions are required to preclude subjects of investigations from frustrating the investigative process; to avoid disclosure of investigative techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure Ex-Im Bank OIG's ability to obtain information from third parties and other sources; to protect the privacy of third parties; to fulfill commitments made to protect the confidentiality of sources; and to safeguard confidential information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

List of Subjects in 12 CFR Part 404

Information disclosure.

For the reasons stated in the preamble, Ex-Im Bank proposes to amend chapter IV of Title 12, Code of Federal Regulations, as follows:

PART 404—INFORMATION DISCLOSURE

1. The authority citation for part 404 continues to read as follows:

Authority: 5 U.S.C. 552 and 552a. Section 404.7 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235. Section 404.21 also issued under 5 U.S.C. 552a note. Subpart C also issued under 5 U.S.C. 301, 12 U.S.C. 635.

Subpart B—Access to Records Under the Privacy Act of 1974

2. Add § 404.24 to subpart B to read as follows:

§ 404.24 Exemptions: EIB–35—Office of Inspector General Investigative Records

(a) *Criminal Law Enforcement.* (1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(j)(2), Ex-Im Bank hereby exempts the system of records entitled ''EIB–35—Office of Inspector General Investigative Records'' from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d)(1) through (4), (e)(1) through (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f), and (g) because the system contains information pertaining to the enforcement of criminal laws. ''EIB–35—Office of Inspector General Investigative Records'' is maintained by the Ex-Im Bank Office of Inspector General (''OIG'' or ''Ex-Im Bank OIG'').

(2) *Reasons for exemption.* The reasons for asserting this exemption are:

(i) Disclosure to the individual named in the record pursuant to 5 U.S.C. 552a(c)(3), (c)(4), or (d)(1) through (4) could seriously impede or compromise

the investigation by alerting the target(s), subjecting a potential witness or witnesses to intimidation or improper influence, and leading to destruction of evidence. Disclosure could enable suspects to take action to prevent detection of criminal activities, conceal evidence, or escape prosecution.

(ii) Application of 5 U.S.C. 552a(e)(1) is impractical because the relevance of specific information might be established only after considerable analysis and as the investigation progresses. Effective law enforcement requires the OIG to keep information that may not be relevant to a specific OIG investigation, but which may provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the OIG and/or other agencies.

(iii) Application of 5 U.S.C. 552a(e)(2) would be counterproductive to the performance of a criminal investigation because it would alert the individual to the existence of an investigation. In any investigation, it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation or prosecution.

(iv) Application of 5 U.S.C. 552a(e)(3) could discourage the free flow of information in a criminal law enforcement inquiry.

(v) The requirements of 5 U.S.C. 552a(e)(4)(G) and (H), and (f) would be counterproductive to the performance of a criminal investigation. To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or to grant access to an investigative file could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity or confidential sources, reveal confidential information supplied by these sources and disclose investigative techniques and procedures. Nevertheless, Ex-Im Bank OIG has published notice of its notification, access, and contest procedures because access may be appropriate in some cases.

(vi) Although the OIG endeavors to maintain accurate records, application of 5 U.S.C. 552a(e)(5) is impractical because maintaining only those records that are accurate, relevant, timely, and complete and that assure fairness in determination is contrary to established investigative techniques. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses.

(vii) Application of 5 U.S.C. 552a(e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(viii) The provisions of 5 U.S.C. 552a(g) do not apply to this system if an exemption otherwise applies.

(b) *Other Law Enforcement.* (1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(2), Ex-Im Bank hereby exempts the system of records entitled ''EIB–35—Office of Inspector General Investigative Records'' from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) for the same reasons as stated in paragraph (a)(2) of this section, that is, because the system contains investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2).

(2) *Reasons for exemption.* The reasons for asserting this exemption are because the disclosure and other requirements of the Privacy Act could substantially compromise the efficacy and integrity of OIG operations. Disclosure could invade the privacy of other individuals and disclose their identity when they were expressly promised confidentiality. Disclosure could interfere with the integrity of information which would otherwise be subject to privileges (see, *e.g.,* 5 U.S.C. 552(b)(5)), and which could interfere with other important law enforcement concerns (see, e.g., 5 U.S.C. 552(b)(7)).

(c) *Federal Civilian or Contract Employment.* (1) Exemption. Under the authority granted by 5 U.S.C. 552a(k)(5), Ex-Im Bank hereby exempts the system of records entitled ''EIB–35—Office of Inspector General Investigative Records'' from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) because the system contains investigatory material compiled for the purpose of determining eligibility or qualifications for federal civilian or contract employment.

(2) *Reasons for exemption.* The reasons for asserting this exemption are the same as described in paragraph (a)(2) of this section.

Dated: May 1, 2012.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–10903 Filed 5–8–12; 8:45 am]

BILLING CODE 6690–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0425; Directorate Identifier 2011–NM–273–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 717–200 airplanes. This proposed AD was prompted by multiple reports of cracks of overwing frames. This proposed AD would require repetitive inspections for cracking of the overwing frames, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct such cracking that could sever a frame, which may increase the loading of adjacent frames, and result in damage to the adjacent structure and consequent loss of structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by June 25, 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, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; email *dse.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: George Garrido, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: (562) 627–5357; fax: 562–627–5210; email: *george.garrido@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–2012–0425; Directorate Identifier 2011–NM–273–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 received multiple reports of cracks of overwing frames on Model MD–80 airplanes, and one report each on Model MD–90–30 and Model 717 airplanes. The Model 717 airplane had accumulated 18,235 total flight hours and 14,542 total flight cycles. Due to similarity in frame design, the manufacturer determined the overwing frames at stations 674, 696, and 715 on Model 717 airplanes are susceptible to cracks. The cracks, caused by fatigue, originate in the upper radius of the frame inboard tab just below the floor. This condition, if not corrected, could result in a severed frame, which may increase the loading of adjacent frames and result in damage to the adjacent structure and consequent loss of structural integrity of the airplane.

Related Rulemaking

The overwing frames on Model 717 airplanes have the same design as those installed on Model MD–80 and Model MD–90–30 airplanes. AD 2008–13–29, Amendment 39–15592 (73 FR 38883, July 8, 2008), addresses cracked overwing frames on Model MD–80 airplanes. AD 2010–05–04, Amendment 39–16213 (75 FR 8465, February 25, 2010), addresses cracked overwing frames on Model MD–90–30 airplanes.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 717–53A0034, dated October 5, 2011. That service bulletin describes procedures for repetitive general visual and high frequency eddy current inspections to detect cracking of the overwing frames at stations 674, 696, and 715, left and right sides, and related investigative and corrective actions if necessary.

Related investigative actions include measuring crack length. Corrective actions include a blend-out repair, or replacing the cracked overwing frame with a new frame, depending on the results of the inspection.

For the repetitive inspections for cracking of the overwing frames, the service information specifies an interval not to exceed 9,300 flight cycles; except after accomplishing a replacement, the next inspection is within 20,000 flight cycles after the replacement.

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 these 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 129 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
Inspections	46 work-hours × $85 per hour = $3,910 per inspection cycle	$0	$3,910	$504,390

We estimate the following costs to do any necessary replacements/repairs 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 replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Blendout repair	12 work-hours × $85 per hour = $1,020	$0	$1,020.
Replacement of a frame station	130 work-hours × $85 per hour = $11,050	Up to $86,977	Up to $98,027.

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–2012–0425; Directorate Identifier 2011–NM–273–AD.

(a) Comments Due Date

We must receive comments by June 25, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 717–200 airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53: Fuselage.

(e) Unsafe Condition

This AD was prompted by multiple reports of cracks of overwing frames. We are issuing this AD to detect and correct such cracking that could sever a frame, which may increase the loading of adjacent frames, and result in damage to the adjacent structure and consequent loss of structural integrity of the airplane.

(f) Compliance

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

(g) Actions

Before the accumulation of 20,000 total flight cycles, or within 8,275 flight cycles after the effective date of this AD, whichever occurs later: Do a general visual and high frequency eddy current inspection for cracking of the left and right side overwing frames at stations 674, 696, and 715; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 717–53A0034, dated October 5, 2011. Do all applicable related investigative and corrective actions before further flight. Repeat the inspections thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 717–53A0034, dated October 5, 2011.

(h) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(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, Los Angeles ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(i) Related Information

(1) For more information about this AD, contact George Garrido, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5357; fax: 562–627–5210; email: *george.garrido@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; email *dse.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 29, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–11022 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0448; Directorate Identifier 2010–SW–016–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109S helicopters, which would require modifying the electrical power distribution system to carry a higher electrical load. This proposed AD is prompted by an electrical failure on an Agusta Model A109E helicopter that resulted from ''inadequate functioning of the 35 amperes (amps) BATT BUS circuit breaker.'' The proposed actions are intended to require modifying the electrical power distribution system to prevent failure of the circuit breaker, loss of electrical power to instruments powered by the ''BATT BUS'' system,

and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by July 9, 2012.

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

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

Examining the AD Docket

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

For service information identified in this proposed AD, contact Agusta, S.p.A., Via Giovanni Agusta 520, 21017 Cascina Costa di Samarate (VA), Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39–0331–711180; or at *http://www.agustawestland.com/technical-bullettins.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mark F. Wiley, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *mark.wiley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for Italy, a Member State of the European Union, issued EASA AD No. 2009–0137, dated June 23, 2009, for the Agusta Model A109E helicopter to correct an unsafe electrical condition caused by an inadequately functioning circuit breaker that was not within design requirements. That EASA AD required installing a ''BATT BUS'' circuit breaker modification kit on the Model A109E helicopters. Based on the unsafe condition created by this circuit breaker as described in EASA AD No. 2009–0137, the FAA issued AD 2010–20–21 (75 FR 61341, October 5, 2010; Correction published at 75 FR 65224, October 22, 2010) to require installing a ''BATT BUS'' circuit breaker modification kit on Model A109E helicopters in the United States. Subsequently, EASA issued AD No. 2009–0264, dated December 15, 2009, to correct the same unsafe condition on the Agusta Model A109S helicopters due to the design commonality between the electrical power distribution system of the Model A109E and A109S helicopters. The FAA is now proposing to issue this AD for the Model A109S helicopters to correct this same unsafe condition.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD.

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

Related Service Information

Agusta has issued Bollettino Tecnico No. 109S–35, dated December 11, 2009 (BT), which specifies modifying and testing the ''BATT BUS'' circuit breaker installation. The EASA classified this BT as mandatory and issued AD No. 2009–0264, dated December 15, 2009, to ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would require compliance with specified portions of the manufacturer's service bulletin including modifying the electrical power distribution system by installing a ''BATT BUS'' Circuit Breaker Modification Kit, part number 109–0824–73–107, and thereafter, testing for proper functioning of the electrical system.

Differences Between This Proposed AD and the EASA AD

This proposed AD does not reference the calendar date of June 30, 2010, which has already passed.

Costs of Compliance

We estimate that this proposed AD would affect 15 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. It would take about 8 work-hours per helicopter to install the 'BATT BUS' circuit breaker modification kit at an average labor rate of $85 per work-hour and required parts would cost about $471 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $17,265.

According to the service information of the production approval holder (PAH), some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by the PAH. Accordingly, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AGUSTA S.p.A.: Docket No. FAA–2012–0448; 2010–SW–016–AD.

(a) Applicability

This AD applies to Agusta S.p.A. (Agusta) Model A109S helicopters, serial numbers up to and including 22151, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of the 35 ampere (amp) ''BATT BUS,'' which could result in an electrical failure and fire, loss of electrical power to instruments powered by the ''BATT BUS'' system, and subsequent loss of control of the helicopter.

(c) Compliance

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

(d) Required Actions

Within 50 hours time-in-service, modify the electrical power distribution system by installing the ''BATT BUS'' Circuit Breaker Modification Kit, part number 109–0824–73–107, as depicted in Figures 1 through 3 and by following the Compliance Instructions, paragraphs 4. through 7., of Agusta Bollettino Tecnico No. 109S–35, dated December 11, 2009 (ASB). Thereafter, operationally test the electrical system by following paragraphs 19.1 through 19.7 of the ASB.

(e) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished provided that you do not simultaneously operate the landing light and the search light.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Mark F. Wiley, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *mark.wiley@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (Italy) AD No. 2009–0264, dated December 15, 2009.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2460, DC Power/Distribution System.

Issued in Fort Worth, Texas, on April 17, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–11197 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0121; Airspace Docket No. 12–AAL–2]

Proposed Amendment of Class E Airspace; Scammon Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Scammon Bay Airport, Scammon Bay, AK. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Scammon Bay Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before June 25, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0121; Airspace Docket No. 12–AAL–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0121 and Airspace Docket No. 12–AAL–2) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0121 and Airspace Docket No. 12–AAL–2''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Scammon Bay Airport, Scammon Bay, AK. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at Scammon Bay Airport, Scammon Bay, AK. This action would enhance the safety and management of aircraft operations at the airport.

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

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Scammon Bay, AK [Modified]

Scammon Bay Airport, AK
(Lat. 61°50′40″ N., long. 165°34′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Scammon Bay Airport, and within 4 miles either side of the 099° bearing of Scammon Bay Airport extending from the 6.3-mile radius to 11 miles east of the airport; that airspace extending upward from 1,200 feet above the surface with a 73-mile radius of Scammon Bay Airport, AK.

Issued in Seattle, Washington, on May 1, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–11209 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0274; Airspace Docket No. 12–ANM–4]

Proposed Establishment of Class E Airspace; Roundup, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Roundup Airport, Roundup, MT. Controlled airspace is necessary to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Roundup Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before June 25, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0274; Airspace Docket No. 12–ANM–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0274 and Airspace Docket No. 12–ANM–4) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0274 and Airspace Docket No. 12–ANM–4''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Roundup Airport, Roundup, MT, to accommodate aircraft using new RNAV (GPS) standard instrument approach procedures at Roundup Airport. This action would enhance the safety and management of aircraft operations at Roundup Airport, Roundup, MT.

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

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Roundup, MT [New]

Roundup Airport, Roundup MT
(Lat. 46°28′30″ N., long. 108°32′36″ W.)

That airspace extending from 700 feet above the surface within a 7.6-mile radius of the Roundup Airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 46°53′00″ N., long. 109°17′00″ W.; lat. 47°04′00″ N., long. 108°04′00″ W.; lat. 46°51′00″ N., long. 107°39′00″ W.; lat. 46°32′00″ N., long. 107°27′00″ W.; lat. 46°06′00″ N., long. 107°42′00″ W.; lat. 45°54′00″ N., long. 109°01′00″ W.; lat. 46°10′00″ N., long. 109°33′00″ W.; lat. 46°32′00″ N., long. 109°37′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on May 1, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–11210 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0322; Airspace Docket No. 12–AAL–3]

Proposed Modification of Class E Airspace; Unalakleet, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Unalakleet Airport, Unalakleet, AK, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Unalakleet Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before June 25, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0322; Airspace Docket No. 12–AAL–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0322 and Airspace Docket No. 12–AAL–3) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0322 and Airspace Docket No. 12–AAL–3''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface at Unalakleet Airport, Unalakleet, AK. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) standard instrument approach procedures at Unalakleet Airport, and would enhance the safety and management of instrument flight rules operations at the airport.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR

71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AAL AK E2 Unalakleet, AK [Modified]

Unalakleet Airport, AK
(Lat. 63°53′19″ N., long. 160°47′57″ W.)

That airspace within a 4.2-mile radius of Unalakleet Airport beginning at the 020° bearing of the airport, clockwise to the 270° bearing of the airport, and within a 7-mile radius of Unalakleet Airport beginning at the 270° bearing of the airport clockwise to the 020° bearing of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Unalakleet, AK [Modified]

Unalakleet Airport, AK
(Lat. 63°53′19″ N., long. 160°47′57″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Unalakleet Airport beginning at the 360° bearing of the airport clockwise to the 260° bearing of the airport, and within a 13.5-mile radius of Unalakleet Airport beginning at the 260° bearing of the airport clockwise to the 360° bearing of the airport, and within 6 miles each side of the Unalakleet Airport 185° bearing of the airport extending from the 7-mile radius to 10 miles south of the airport; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of Unalakleet Airport.

Issued in Seattle, Washington, on May 1, 2012.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–11208 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–66910; File No. S7–08–07]

RIN 3235–AJ85

Amendments to Financial Responsibility Rules for Broker-Dealers

AGENCY: Securities and Exchange Commission

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Securities and Exchange Commission (''Commission'') is reopening the comment period for proposed amendments to its net capital, customer protection, books and records, and notification rules for broker-dealers under the Securities Exchange Act of 1934 (''Exchange Act''), which was issued by the Commission on March 9, 2007. The original comment period for the proposed amendments closed on May 18, 2007, and the Commission extended the public comment period until June 18, 2007. The Commission did not act on the rules at that time. The Commission is presently reconsidering the proposed rule amendments. Given the passage of time since the amendments were proposed, the Commission is reopening for 30 days the time period in which to provide the Commission with comments.

DATES: Comments should be received on or before June 8, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed*);
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–08–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–08–07. This file number should be included on the subject line if email is used. To help us 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/proposed*). Comments will also be available for public inspection and copying 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Deputy Associate Director, at (202) 551–5521; Randall Roy, Assistant Director, at (202) 551–5522; Raymond A. Lombardo, Branch Chief, at (202) 551–5755; or Sheila Dombal Swartz, Special Counsel, at (202) 551–5545; Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: On March 9, 2007 (Exchange Act Release No. 55431, 72 FR 12862 (Mar. 19, 2007)), the Commission requested comment on proposed amendments to the Commission's net capital, customer protection, books and records, and notification rules for broker-dealers under the Exchange Act.[1] Specifically, the proposed amendments are designed to address several areas of concern regarding the financial requirements for broker-dealers. They also would update the financial responsibility rules and make certain technical amendments.

The Commission originally requested that comments on this proposal be received by May 18, 2007, and subsequently extended the public comment period to June 18, 2007.[2] The Commission is reconsidering these proposals presently. Given economic events since the rule amendments were proposed, as well as regulatory developments, comments received on the proposed amendments, the continuing public interest in the proposed amendments and the passage of time, the Commission believes that it would be appropriate to facilitate additional public comments on the proposed rule amendments. Accordingly, the Commission is reopening the public comment period for 30 days.

By the Commission.

Dated: May 3, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–11133 Filed 5–8–12; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Exchange Act Release No. 55431, 72 FR 12862 (Mar. 19, 2007).

[2] *See* Exchange Act Release No. 55777 (May 17, 2007), 72 FR 28908 (May 23, 2007).

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

32 CFR Part 2403

Implementing the Freedom of Information Act

AGENCY: Office of Science and Technology Policy.

ACTION: Notice of proposed rulemaking and request for public comment.

SUMMARY: With this document, the White House Office of Science and Technology Policy (OSTP) is proposing to issue regulations implementing the Freedom of Information Act (FOIA). The proposed regulations contain provisions to comply with the President's January 21, 2009, Executive Memoranda on ''The Freedom of Information Act'' and ''Transparency and Open Government,'' as well as Attorney General Holder's March 19, 2009, Memorandum on ''The Freedom of Information Act (FOIA).'' In addition, the regulations reflect OSTP's policy and practices and reaffirm its commitment to provide the fullest possible disclosure of records to the public.

DATES: Comments will be received through June 11, 2012, 11:59 EST.

ADDRESSES: Comments of approximately one page or less in length (4000 characters) are requested and may be submitted by any of the following methods:

- *Email: ostpfoia@ostp.eop.gov.* Include ''FOIA PROPOSED RULEMAKING'' in the subject line of the message.
- *Mail:* Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Ave NW., Washington, DC 20504. Attention: ''FOIA PROPOSED RULEMAKING.''
- *FAX:* 202–395–1224.

All submissions must be in English and must include your name, return address and email address, if applicable. Please clearly label submissions as ''FOIA PROPOSED RULEMAKING.''

FOR FURTHER INFORMATION CONTACT: Jennifer Lee or Rachel Leonard, 202–456–4444. Questions about the content of this notice should be sent to *ostpfoia@ostp.eop.gov.* Include ''FOIA PROPOSED RULEMAKING'' in the subject line of the message. Questions may also be sent by mail (please allow additional time for processing) to: Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Ave NW., Washington, DC 20504. Attention: ''FOIA PROPOSED RULEMAKING.''

SUPPLEMENTARY INFORMATION: The Office of Science and Technology Policy (OSTP) is proposing regulations to govern its implementation of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. FOIA requires Federal agencies, as defined by the Act, to make official documents and other records available to the public upon request, unless the material requested falls under one of several statutorily prescribed exemptions. FOIA also requires agencies to publish rules stating the time, place, fees, and procedures to apply in making records available pursuant to a proper request. Further, Section 1803 of the Freedom of Information Reform Act of 1986 requires each agency to establish a system for recovering costs associated with responding to requests for information under FOIA. The Office of Management and Budget (OMB) has issued guidelines that set standard government-wide definitions for assessing and collecting FOIA fees (OMB Fee Guidelines). These proposed rules describe the structure of OSTP's FOIA Requester Service Center, prescribe methods of requesting records, explain the manner in which OSTP responds to records requests, and describe policies governing applicable fees.

The proposed regulations also incorporate the policies expressed in President Obama's January 21, 2009, Executive Memorandum on the Freedom of Information Act, Attorney General Holder's March 19, 2009, Memorandum for Heads of Executive Departments and Agencies, and OSTP's FOIA Improvement Plan, issued in response to these directives. As required by the President's January 2009 Executive Memorandum, agencies, including those entities within the Executive Office of the President that are subject to FOIA, must adopt a presumption in favor of disclosure (except where disclosure creates a ''foreseeable harm'' as described in the Department of Justice, Office of Information Policy's April 17, 2009, Guidance) and ensure that their FOIA operations treat requesters courteously and appropriately. In addition, each agency is required to provide FOIA requesters and the public in general with ''citizen-centered'' ways to learn about both the agency's FOIA

procedures and how to receive agency records that are publicly available.

By implementing the provisions of the January 21, 2009, Executive Memorandum and Attorney General Holder's March 19, 2009, Memorandum to the Heads of Executive Departments and Agencies, these regulations will improve FOIA-related service and performance, thereby strengthening OSTP's compliance with FOIA. Accordingly, OSTP proposes these regulations implementing FOIA and submits them for public comment pursuant to 5 U.S.C. 552(a)(4)(A), (a)(6)(B)(iv), (a)(6)(D), (a)(6)(E), and 5 U.S.C. 553.

Statutory and Executive Order Reviews

Executive Order 12866

These regulations have been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, Section 1(b), Principles of Regulation. These regulations are not a significant regulatory action under Section 3(f) of Executive Order 12866.

Paperwork Reduction Act

OSTP has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because these regulations do not contain any information collection requirements subject to approval by OMB.

Executive Order 12988

These regulations meet the applicable standards set forth in Executive Order 12988, Civil Justice Reform.

Executive Order 13132

These regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, OSTP has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulatory Flexibility Act

OSTP, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed these proposed regulations and certifies that they will not have a significant economic impact on a substantial number of small entities because they pertain to administrative matters affecting the agency.

Unfunded Mandates Reform Act of 1995

These regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

These regulations are not major regulations as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. They will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

National Environmental Policy Act of 1969

OSTP has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and has determined that this action will not have a significant effect on the human environment.

32 CFR Part 2402

Classified information.

Therefore, according to reasons stated in the preamble, the Office of Science and Technology Policy proposes to add 32 CFR part 2402 to read as follows:

PART 2402—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

Sec.

2402.1 Purpose and scope.
2402.2 Delegation of authority and responsibilities.
2402.3 General policy and definitions.
2402.4 Procedure for requesting records.
2402.5 Responses to requests.
2402.6 Business information.
2402.7 Appeal of denials.
2402.8 Fees.
2402.9 Waiver of fees.
2402.10 Maintenance of statistics.
2402.11 Disclaimer.

Authority: 5 U.S.C. 552; E.O. 13392, 70 FR 75373 (Dec. 14, 2005).

§ 2402.1 Purpose and scope.

These regulations prescribe procedures to obtain information and records from the Office of Science and Technology Policy (OSTP) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The regulations apply only to records that are:

(a) Either created or obtained by OSTP; and

(b) Under OSTP control at the time of the FOIA request.

§ 2402.2 Delegation of authority and responsibilities.

(a) The Director of the Office of Science and Technology Policy designates the OSTP General Counsel as the Chief FOIA Officer, and hereby delegates to the Chief FOIA Officer the authority to act upon all requests for agency records and to redelegate such authority at his or her discretion.

(b) The Chief FOIA Officer shall designate a FOIA Public Liaison, who shall serve as the supervisory official to whom a FOIA requester can raise concerns about the service the FOIA requester has received following an initial response. The FOIA Public Liaison will be listed on the OSTP Web site and may redelegate the FOIA Public Liaison's authority at his or her discretion.

(c) The Director establishes a FOIA Requester Service Center that shall be staffed by the Chief FOIA Officer and the FOIA Public Liaison. The contact information for the FOIA Requester Service Center is Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Ave. NW., Washington, DC 20504; Telephone: (202) 456–6125 Fax: (202) 456–6022; Email: *ostpfoia@ostp.eop.gov.*

§ 2402.3 General policy and definitions.

(a) *Non-exempt records available to public.* Except for records exempt from disclosure by 5 U.S.C. 552(b) or published in the **Federal Register** under 5 U.S.C. 552(a)(1), agency records of OSTP subject to FOIA are available to any person who requests them in accordance with these regulations.

(b) *Record availability at the OSTP e-FOIA Reading Room.* OSTP shall make records available on its Web site in accordance with 5 U.S.C. 552(a)(2), as amended, and other documents that, because of the nature of their subject matter, are likely to be the subject of FOIA requests. To save both time and money, OSTP strongly urges requesters to review documents available at the OSTP e-FOIA Reading Room before submitting a request.

(c) *Definitions.* For purposes of this part, all of the terms defined in the Freedom of Information Act, and the definitions included in the ''Uniform Freedom of Information Act Fee Schedule and Guidelines'' issued by the

Office of Management and Budget apply, unless otherwise defined in this subpart.

Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. OSTP shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because OSTP has reasonable cause to doubt a requester's stated use, OSTP shall provide the requester a reasonable opportunity to submit further clarification.

Disclose or disclosure refer to making records available, upon request, for examination and copying, or furnishing a copy of records.

Duplication means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

Noncommercial scientific institution means an institution that is not operated on a ''commercial'' basis, as that term is defined in these regulations, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

Perfected request means a FOIA request for records that adequately describes the records sought, that has been received by OSTP, and for which there is no remaining question about the payment of applicable fees.

Representative of the news media or *news media requester* mean any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. For purposes of this definition, the term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but OSTP shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

Search refers to the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

Working day means a regular Federal working day. It does not include Saturdays, Sundays, or legal Federal holidays.

§ 2402.4 Procedure for requesting records.

(a) *Format of requests.* (1) *In general.* Requests for information must be made in writing and may be delivered by mail, fax, or electronic mail, as specified in § 2402.2(c). The words ''Freedom of Information Act Request'' must be printed on the face of the request's envelope, cover sheet, or subject line, as appropriate, and must appear in the request itself. All requests must be made in English. Requests for information must specify the preferred form or format (including electronic formats) of the response. When requesters do not specify the preferred form or format of the response, OSTP shall produce printed copies of responsive records.

(2) *Electronic format records.* (i) OSTP shall provide the responsive record or records in the form or format requested if the record or records are readily reproducible by OSTP in that form or format. OSTP shall make reasonable efforts to maintain its records in forms or formats that are reproducible for the purpose of disclosure. For purposes of this paragraph, the term readily reproducible means, with respect to electronic format, a record or records that can be downloaded or transferred intact to a floppy disk, computer disk (CD), tape, or other electronic medium using equipment currently in use by the office or offices processing the request. Even though some records may initially be readily reproducible, the need to segregate exempt from nonexempt records may cause the releasable material to be not readily reproducible.

(ii) In responding to a request for records, OSTP shall make reasonable efforts to search for the records in electronic form or format, except where such efforts would significantly interfere with the operation of the agency's automated information system(s). For purposes of this paragraph, the term search means to locate, manually or by automated means, agency records for the purpose of identifying those records which are responsive to a request.

(iii) Searches for records maintained in electronic form or format may require the application of codes, queries, or other minor forms of programming to retrieve the requested records.

(b) *Contents.* A request must describe the records sought in sufficient detail to enable OSTP personnel to locate the records with a reasonable amount of effort. OSTP will regard a request for a specific category of records as fulfilling the requirements of this paragraph if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive to OSTP operations. Whenever possible, a request should include specific information about each record sought, such as the date, number, title or name, author, recipient, and subject matter of the record. If OSTP determines that a request does not reasonably describe the records sought, it will either provide notice of any additional information needed or otherwise state why the request is insufficient. OSTP will offer a requester reasonable opportunity to reformulate the request so that it meets the requirements of this section.

(c) *Date of receipt.* A request that complies with paragraphs (a) and (b) of this section is deemed a perfected request. A perfected request is deemed received on the actual date it is received by OSTP. A request that does not comply with paragraphs (a) and (b) of this section is deemed received when sufficient information to perfect the request is actually received by OSTP. For requests that are expected to result

in fees exceeding $250, the request shall not be deemed to have been received until OSTP has received full payment or satisfactory assurance of full payment as provided under § 2402.7.

§ 2402.5 Responses to requests.

(a) *Responses within 20 working days.* OSTP will exercise all reasonable efforts to acknowledge, grant, partially grant, or deny a request for records within 20 working days after receiving a perfected request.

(b) *Extensions of response time in ''unusual circumstances.''* In circumstances where a determination as provided in paragraph (a) of this section is not possible within 20 working days, OSTP may extend the time limit prescribed in paragraph (a) of this section as necessary to adequately respond to a request. OSTP shall notify the requester of the extension, the reasons for the extension, and the date on which a determination is expected. In such instances, the requester will be provided an opportunity to limit the scope of the request so that it may be processed within the time limit, or to agree to a reasonable alternative time frame for processing. Circumstances justifying a time limit extension as provided in this subsection include, but are not limited to, requests that require OSTP to:

(1) Search for and collect the requested records from off-site storage facilities;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request;

(3) Consult, with all practicable speed, with another agency having a substantial interest in the determination of the request; or

(4) Perform searches of records of former employees.

(c) *Two-track processing.* To ensure the most equitable treatment possible for all requesters, OSTP will process requests on a first-in, first-out basis, using a two-track processing system based upon the estimated time it will take to process the request.

(1) *Simple requests.* The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days. A requester whose request does not qualify as a simple request may be given an opportunity to limit the scope of his or her request in order to qualify for faster processing.

(2) *Complex requests.* The second track is for requests involving ''unusual circumstances,'' as described in paragraph (b) of this section, that are expected to take more than 20 working days to complete.

(d) *Expedited processing.* (1) *Expedited requests.* OSTP may take requests out of order and expedite the processing of a request upon receipt of a written statement that clearly demonstrates a compelling need for expedited processing. Requesters must provide detailed explanations to support their expedited requests. For purposes of determining expedited processing, the term compelling need means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of any individual; or

(ii) That a request is made by a person primarily engaged in disseminating information, and the person establishes that there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(2) *Certification.* A person requesting expedited processing must include a statement certifying that the compelling need provided is true to the best of the requester's knowledge and belief.

(3) *Expedited processing.* OSTP may grant or deny a request for expedited processing as a matter of agency discretion. A determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 working days after receipt of the perfected request.

(e) *Content of denial.* When OSTP denies a request for records, either in whole or in part, the written notice of the denial shall state the reason for denial, and cite the applicable statutory exemption(s), unless doing so would harm an interest protected by the exemption(s) under which the request was denied, and notify the requester of the right to appeal the determination as specified in § 2402.7. The requester's failure to make advance payment or to give a satisfactory assurance of full payment required under § 2402.8 may be treated as a denial of the request and appealed under § 2402.7.

(f) *Identifying responsive records.* In determining which records are responsive to a request, OSTP ordinarily will include only records in its possession as of the date the component begins its search for them.

(g) *Consultations and referrals.* When OSTP receives a request for a record in its possession, it shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the agency best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the agency best able to determine whether to disclose it, or to another agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(h) *Redactions.* OSTP shall provide to a requester a citation to the relevant statutory exemption(s) for redactions within disclosed records.

§ 2402.6 Business information.

(a) *In general.* Business information obtained by OSTP from a submitter will be disclosed under FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) Business information means commercial or financial information obtained by OSTP from a submitter that may be protected from disclosure under Exemption 4 of FOIA.

(2) Submitter means any person or entity from whom OSTP obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information. The notice shall either describe the business information requested or include copies of the requested records or record portions

containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice shall be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) OSTP has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* OSTP will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by OSTP until after its disclosure decision has been made shall not be considered by OSTP. Information provided by a submitter under this paragraph may itself be subject to disclosure under FOIA.

(g) *Notice of intent to disclose.* OSTP shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever OSTP decides to disclose business information over the objection of a submitter, OSTP shall give the submitter written notice, which shall include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) OSTP determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph

(c) of this section appears obviously frivolous—except that, in such a case, the component shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, OSTP shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever OSTP provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, OSTP shall also notify the requester(s). Whenever OSTP notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, OSTP shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, OSTP shall notify the requester(s).

§ 2402.7 Appeal of denials.

(a) A denial of a request for records, either in whole or in part, may be appealed in writing to the Chief FOIA Officer within 30 working days of the date of the letter denying an initial request.

(b) Appeals may be sent via email to *ostpfoia@ostp.eop.gov* or by mail to: Chief FOIA Officer, Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Ave. NW., Washington, DC 20504. The appeal letter should specify the internal control number assigned to the FOIA request by OSTP in its response, the records requested, and the basis for the appeal.

(c) The Chief FOIA Officer shall make a determination on the appeal under 5 U.S.C. 552(a)(6)(A)(ii) within 20 working days after the receipt of the appeal. If the denial is wholly or partially upheld, the Chief FOIA Officer shall notify the requester that judicial review is available pursuant to 5 U.S.C. 552(a)(4)(B)–(G).

§ 2402.8 Fees.

(a) *Fees generally required.* OSTP shall use the most efficient and least costly methods to comply with requests for documents made under FOIA. OSTP shall charge fees in accordance with paragraph (b) of this section unless fees are waived in accordance with § 2402.9.

(b) *Calculation of fees.* In general, fees for searching, reviewing, and duplication will be based on the direct costs of these services, including the average hourly salary (base plus locality payment plus 16 percent) for the employee(s) making the search.

(1) *Search fee.* Search fees may be charged even if responsive documents are not located or if they are located but withheld on the basis of an exemption. However, search fees shall be limited or not charged as follows:

(i) *Easily identifiable records.* Search fees shall not be charged for records that are identified by the requester by name and date.

(ii) *Educational, scientific or news media requests.* No search fee shall be charged if the request is not sought for a commercial use and is made by an educational or scientific institution, whose purpose is scholarly or scientific research, or by a representative of the news media.

(iii) *Other non-commercial requests.* No search fee shall be charged for the first two hours of searching if the request is not for a commercial use but is not by an educational or scientific institution, or a representative of the news media.

(iv) *Requests for records about self.* No search fee shall be charged to search for records performed under the terms of the Privacy Act, 5 U.S.C. 552a(f)(5).

(2) *Review fee.* A review fee shall be charged only for commercial requests. A review fee shall be charged for the initial examination of documents located in response to a request to determine the documents may be withheld from disclosure and for the redaction of document portions exempt from disclosure. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review are assessable.

(3) *Duplication fee.* Records will be photocopied at a rate of $0.15 per page. For other methods of reproduction or duplication, OSTP will charge the actual direct costs of producing the document(s). Duplication fees shall not be charged for the first 100 pages of copies unless the copies are requested for a commercial use.

(c) *Aggregation of requests.* When OSTP determines that a requester, or a group of requesters acting in concert, is attempting to evade the assessment of fees by submitting multiple requests in the place of a single more complex

request, OSTP may aggregate any such requests and charge accordingly.

(d) *Fees likely to exceed $25.* If the total fee charges are likely to exceed $25, OSTP shall notify the requester of the estimated amount of the charges. The notification shall offer the requester an opportunity to confer with the FOIA Public Liaison to reformulate the request to meet the requester's needs at a lower cost.

(e) *Advance payments.* Advance payment of fees will generally not be required. If, however, charges are likely to exceed $250, OSTP shall notify the requester of the likely cost and:

(1) Obtain satisfactory assurance of full payment; or

(2) if the requester has no history of payment or has failed to pay a fee within 30 days of the date of billing, OSTP may require the requester to pay the full amount of any fees owed and/or to make an advance payment of the full amount of the estimated charges before OSTP begins to process the new request or a pending request from that requester.

(f) *Other charges.* OSTP will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail.

(g) *Remittances.* Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the Chief FOIA Officer, Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Ave. NW., Washington, DC 20504.

(h) *Receipts and refunds.* A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

§ 2402.9 Waiver of fees.

(a) *In general.* OSTP shall waive part or all of the fees assessed under § 8 if the following conditions are satisfied:

(1) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(2) Disclosure is not primarily in the commercial interest of the requester.

(b) *Clarification.* Where OSTP has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, OSTP may seek clarification from the requester before assigning the request to a specific category for fee assessment purposes.

(c) *Partial waiver of fees.* If the two conditions stated in paragraph (a) of this section are met, OSTP will ordinarily waive all fees. In exceptional cases, however, a partial waiver may be granted if the request for records would impose an exceptional burden or require an exceptional expenditure of OSTP resources.

(d) *Failure to comply.* OSTP will not assess fees under § 2402.8 if the Agency fails to comply with any time limit and no exceptional circumstances apply to processing the request.

(e) *Waivers.* OSTP may waive fees in other circumstances solely at its discretion, consistent with 5 U.S.C. 552 and the Fee Waiver Policy Guidance issued by the Department of Justice.

§ 2402.10 Maintenance of statistics.

(a) OSTP shall maintain records that are sufficient to allow accurate reporting of FOIA processing statistics, as required under 5 U.S.C. 552 and all guidelines for the preparation of annual FOIA reports issued by the Department of Justice.

(b) OSTP shall annually, on or before February 1 of each year, prepare and submit to the Attorney General an annual report compiling the statistics maintained in accordance with paragraph (a) of this section for the previous fiscal year. A copy of the report will be available for public inspection at the OSTP Web site.

§ 2402.11 Disclaimer.

Nothing in this subpart shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under FOIA.

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2012–10868 Filed 5–8–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0227]

RIN 1625–AA00

Safety Zone, Temporary Change for Recurring Fifth Coast Guard District Fireworks Displays, Cavalier Golf & Yacht Club Independence Day Fireworks Display, Broad Bay Virginia Beach, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a temporary change to the enforcement period of a safety zone regulation for one recurring firework display within the Fifth Coast Guard District. This regulation refers to the firework display event that takes place on the navigable waters of Broad Bay in Virginia Beach, VA. This action is necessary to provide for the safety of life on navigable waters during the Cavalier Golf & Yacht Club Independence Day Fireworks Display. This action is intended to restrict vessel traffic movement to protect mariners from the hazards associated with firework displays.

DATES: Comments and related material must be received by the Coast Guard on or before June 8, 2012.

The Coast Guard anticipates that this proposed rule will be effective on July 1, 2012 and enforced from 9:30 p.m. to 10 p.m.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0227 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 Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0227), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0227'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0227'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

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

Basis and Purpose

On July 1, 2012 Cavalier Golf & Yacht Club will host a fireworks display on the shoreline of the navigable waters on Broad Bay in Virginia Beach, VA. The fireworks will be launched from a shore based platform centered on position 36°52′08″ N/076°00′46″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted on all navigable waters within 400 yard radius of the fireworks launch site.

Discussion of Proposed Rule

The Captain of the Port Hampton Roads proposes to change the enforcement period of the safety zone for one recurring fireworks event within the Fifth Coast Guard District. This regulation applies to the July 4th fireworks event listed at (c)(4), in the Table to Sec. 165.506. The event will not be taking place on July 4th.

The Table to Sec. 165.506, event (c)(4), establishes the enforcement date for the fireworks event held in Virginia Beach, VA, on specified waters of the Broad Bay within the area bounded by 400 yard radius centered on position 36°52′08″ N/076°00′46″ W (NAD 1983). The area of the safety zone enforcement will not change; the date of enforcement of the safety zone will change. This temporary safety zone will be enforced in the vicinity of Virginia Beach, VA from 9:30 p.m. to 10 p.m. on July 1, 2012. In the interest of public safety, general navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area.

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii)

the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 because the zone will only be in place for a limited duration and maritime advisories will be issued allowing the mariners to adjust their plans accordingly.

This proposed rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in that portion of the Broad Bay from 9:30 p.m. until 10 p.m. on July 1, 2012. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for only one-half hour in the evening, when vessel traffic is low. Although the safety zone would apply to the entirety of Broad Bay, traffic would be allowed to pass through the zone with the permission of the Captain of the Port Before the activation of the zone, we would issue maritime advisories widely available to users of the river.

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 LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination

that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. In accordance with the Coastal Zone Management Act, National Environmental Policy Act, and the Endangered Species Act an environmental consultation has been initiated with Virginia Department of Environmental Quality, Army Corps of Engineers, Virginia Marine Resource Commission, and The Department of Conservation and Recreation. Upon receipt of consultation comments all documentation will be made available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.506, amend ''Table to § 165.506'' under ''(c) Coast Guard Sector Hampton Roads—COTP Zone,'' suspend number 4, and add number 23, to read as follows:

§ 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays.

* * * * *

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

Number	Date	Location	Regulated area
(c) Coast Guard Sector Hampton Roads—COTP Zone			
*	*	*	*
23	July 1st	Broad Bay, Virginia Beach, VA, Safety Zone.	All Waters of the Broad Bay within a 400-yard radius of the fireworks display in approximate position latitude 36°52′08″ N, longitude 076°00′46″ W, located on the shoreline near Cavalier Golf and Yacht Club, Virginia Beach, Virginia.

Dated: April 4, 2012.

Mark S. Ogle,

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

[FR Doc. 2012–11138 Filed 5–8–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0251]

RIN 1625–AA00

Safety Zone, Temporary Change for Recurring Fifth Coast Guard District Fireworks Displays; Northwest Harbor (East Channel) and Tred Avon River, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a temporary change to the enforcement periods and regulated areas of safety zone regulations for two recurring fireworks displays within the Fifth Coast Guard District. This regulation applies to a recurring fireworks display events that take place at Baltimore, MD and Oxford, MD. Safety zone regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Northwest Harbor (East Channel), Patapsco River, and Tred Avon River during the event.

DATES: Comments and related material must be received by the Coast Guard on or before May 23, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0251 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, Sector Baltimore Waterways Management Division, Coast Guard; 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 (USCG–2012–0251), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand

delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box and insert ''USCG–2012–0251'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0251'' and click ''Search.'' You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Basis and Purpose

Fireworks display events are frequently held on or adjacent to navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation proposes to temporarily change the enforcement period and regulated area for a safety zone for two annually recurring fireworks events, described at (b)(5) and (b)(21) of the Table to 33 CFR 165.506, that are normally scheduled to occur each year on June 14th and June and July—Saturday or Sunday before Independence Day holiday, respectively.

On June 16, 2012, the American Flag Foundation will sponsor their annual fireworks event. This event will take place in Baltimore, MD on the waters of the Patapsco River. The regulation at 33 CFR 165.506 is enforced annually for this event. Also, a fleet of spectator vessels is expected to gather near the event site to view the fireworks.

On July 3, 2012, the Tred Avon Yacht Club will sponsor their annual fireworks event. This event will take place in Oxford, MD on the waters of the Tred Avon River. The regulation at 33 CFR 165.506 is enforced annually for this event. Also, a fleet of spectator vessels is expected to gather near the event site to view the fireworks.

Discussion of Proposed Rule

The Coast Guard proposes to temporarily change the enforcement period and geographic regulated area of the safety zone for two recurring fireworks events within the Fifth Coast Guard District. This regulation applies to the June 14th fireworks event listed at (b)(5) and the June and July—Saturday or Sunday before Independence Day holiday fireworks event listed at (b)(21), both in the Table to Sec. 165.506.

The Table to Sec. 165.506, event (b)(5), establishes the enforcement date and regulated area for the American Flag Foundation fireworks event held in Baltimore, MD. This regulation also temporarily changes the regulated area for the fireworks event. The position is changed to latitude 39°15′54″ N, longitude 076°34′40″ W (NAD 1983) and the distance is change to a 200-yard radius. The temporary safety zone will be enforced from 8 p.m. to 10:30 p.m. on June 16, 2012, and will restrict general navigation in the regulated area during the event. The American Flag Foundation, which is the sponsor for this event, holds this event annually. Except for participants and vessels authorized by the Coast Guard Captain of the Port Baltimore or the designated on-scene patrol personnel, no person or vessel will be allowed to enter or remain in the regulated area. This regulation is needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

The Table to Sec. 165.506, event (b)(21), establishes the enforcement date and regulated area for the Tred Avon Yacht Club fireworks event held in Oxford, MD. This regulation temporarily changes the regulated area for the fireworks event. The position is changed to latitude 38°41′24″ N, longitude 076°10′37″ W (NAD 1983). The temporary safety zone will be enforced from 8 p.m. to 10:30 p.m. on July 3, 2012, and will restrict general navigation in the regulated area during the event. The Tred Avon Yacht Club, which is the sponsor for this event, holds this event annually. Except for participants and vessels authorized by the Coast Guard Captain of the Port Baltimore or the designated on-scene patrol personnel, no person or vessel will be allowed to enter or remain in the regulated area. This regulation is needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

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 proposed 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 regulation would restrict access to these areas, the effect of this proposed rule will not be significant because: (i) The safety zones will only be in effect from 8 p.m. to 10:30 p.m. on June 16, 2012 and July 3, 2012, (ii) the Coast Guard will give

advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) although the safety zone will apply to the sections of the Patapsco River, Northwest Harbor (East Channel), and the Tred Avon River, vessel traffic will be able to transit safely around the safety zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate, transit, or anchor in the specified portions of the Patapsco River, Northwest Harbor (East Channel), from 8 p.m. through 10:30 p.m. on June 16, 2012, and the Tred Avon River, from 8 p.m. through 10:30 p.m. on July 3, 2012. This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The regulated areas are of limited size, (ii) this proposed rule will only be in effect for five hours total, and (iii) although the safety zone will apply to a section of the Patapsco River and Tred Avon River, vessel traffic will be able to transit safely around the safety zone. Before the enforcement period, the Coast Guard will issue maritime advisories widely available to users of the waterway, to allow mariners to make alternative plans for transiting the affected area.

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 Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such 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 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 proposed 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 proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland

Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves implementation of regulations at 33 CFR part 165 that establish safety zones on navigable waters of the United States for fireworks events. These safety zones are enforced for the duration of fireworks display events. The fireworks are launched from or immediately adjacent to navigable waters of the United States and may have potential for negative impact on the safety or other interest of waterway users and near shore activities in the event area. The category of activities includes fireworks launched from barges at or near the shoreline that generally rely on the use of navigable waters as a safety buffer.

This proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of this instruction. This rule establishes a temporary safety zone to protect the public from fireworks fallouts and premature detonations. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise the Table to § 165.506 as follows:

a. Under ''(b) Coast Guard Sector Baltimore—COTP Zone,'' suspend number 5,

b. Under ''(b) Coast Guard Sector Baltimore—COTP Zone,'' suspend number 21, and

c. Under ''(b) Coast Guard Sector Baltimore—COTP Zone,'' add numbers 26 and 27, to read as follows:

§ 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays.

* * * * *

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

Number	Date	Location	Regulated area
		Coast Guard Sector Baltimore—COTP Zone	
*	*	*	*
26	June 16th, July 4th, September—2nd Saturday, December 31st.	Northwest Harbor (East Channel), Patapsco River, MD, Safety Zone.	All waters of the Patapsco River within a 200 yards radius of the fireworks barge in approximate position 39°15′54″ N, 076°34′40″ W, located adjacent to the East Channel of Northwest Harbor.
*	*	*	*
27	July 3rd	Tred Avon River, Oxford, MD, Safety Zone.	All waters of the Tred Avon River within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′24″ N, longitude 076°10′37″ W, approximately 500 yards northwest of the waterfront at Oxford, MD.

* * * * *

Dated: April 11, 2012.

Mark P. O'Malley,

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

[FR Doc. 2012–11140 Filed 5–8–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2012–0296, FRL–9670–4]

Notice of Data Availability Supporting Approval and Promulgation of Air Quality Implementation Plans; State of New York; Regional Haze State Implementation Plan and Federal Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability (NODA).

SUMMARY: EPA proposed on April 25, 2012 (77 FR 24794) to take action on a revision to the state implementation plan (SIP) addressing regional haze submitted by the State of New York. In that proposal, EPA proposed to address through a Federal Implementation Plan (FIP) certain requirements not addressed in New York's regional haze SIP submission or, alternatively, to approve a substantively identical SIP revision by New York, should the State timely submit such a revision. In two letters dated April 16, 2012, New York submitted additional materials relevant to our proposed action on its regional haze SIP submission, including proposed SIP revisions addressing the requirements for best available retrofit technology controls (BART) for a number of sources. EPA is providing notice of availability of these materials. The comment period on EPA's proposed action on the New York regional haze SIP closes on June 18, 2010.

DATES: Comments must be received on or before June 18, 2012.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2012–0296, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2012–0296. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, State Implementation Planning Section, Air Programs Branch, EPA Region 2, 290 Broadway, New York, New York 10007–1866. The telephone number is (212) 637–4049. Mr. Kelly can also be reached via electronic mail at *kelly.bob@epa.gov.*

SUPPLEMENTARY INFORMATION: In two submissions dated April 16, 2012, New York State Department of Environmental Conservation submitted two SIP revision requests. The first SIP revision requests that EPA include in New York's Regional Haze SIP the New York State legislation regulating the sulfur content of fuel oil, Bill Number S1145C, which amends the New York Environmental Conservation Law to include a new section 19–0325.

The second SIP revision requests that EPA take action on proposed SIP revisions from New York in parallel with the State's processing of the following draft Title V permits that the State intends to submit as SIP revisions to meet the BART requirement: Bowline Point Generating Station, Danskammer Generating Station, Kodak Operations at Eastman Business Park, Oswego Harbor Power Owens Corning Delmar Plant, and Syracuse Energy Corporation.

New York also requested processing of the following adopted Title V permits implementing BART for the following facilities: 59th Street Station [Con Ed], ALCOA Massena Operations (West Plant), Arthur Kill Generating Station [NRG], EF Barrett Power Station (NG), Holcim (US) Inc–Catskill Plant, International Paper Ticonderoga Mill, Lafarge Building Materials, Lehigh Northeast Cement Northport Power Station (NG), Ravenswood Generating Station [TC], Ravenswood Steam Plant [Con Edison], Roseton Generating Station [Dynegy], and Samuel A Carlson Generating Station [Jamestown Board of Public Utilities (BPU)].

These materials have been placed in the docket for our proposed action on the New York regional haze SIP submission, Docket ID No. EPA–R02–OAR–2012–0296.

EPA was aware that New York State intended to submit additional information relevant to the action EPA was proposing on New York's Regional Haze SIP. EPA, therefore, discussed in its proposal the possible actions EPA would take should this information be timely submitted. EPA included in the record the draft information that New York was in the process of finalizing and submitting as part of its SIP revision. EPA evaluated this draft information as part of the Agency's proposed action on New York's Regional Haze SIP.

EPA is notifying interested parties that EPA's final action will be based on the proposed rulemaking, the additional information identified in this notice of data availability, and an assessment of any public comments that may be received.

Portions of this SIP revision are being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in the proposal, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in the proposal, EPA will publish a final rulemaking on the revisions.

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

Dated: May 1, 2012.

Judith Enck,

Regional Administrator, Region 2.

[FR Doc. 2012–11186 Filed 5–8–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0171; FRL–9345–2]

RIN 2070–ZA16

Butylate, Clethodim, Dichlorvos, Dicofol, Isopropyl Carbanilate, et al.; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing, in follow-up to canceled uses or where a commodity is no longer a significant feed item, to revoke certain tolerances for butylate, clethodim, dichlorvos, dicofol, isopropyl carbanilate, methanearsonic acid, methomyl, naled, primisulfuron-methyl, tralomethrin, and ziram, and tolerance exemptions for rotenone, derris, cube roots, and pine oil. Also, EPA is proposing to make minor revisions to the tolerance expressions for dicofol, methanearsonic acid, methomyl, and tralomethrin, revise the nomenclature of specific tolerances for butylate, methomyl, and tralomethrin, and remove expired tolerances for certain pesticide active ingredients, in accordance with current EPA practice. In addition, EPA is proposing to reinstate popcorn tolerances for metolachlor to remedy an inadvertent omission and cover existing registrations.

DATES: Comments must be received on or before July 9, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0171, 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–2012–0171. 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: Joseph Nevola, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; email address: *nevola.joseph@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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. 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.

C. What can I do if I wish the agency to maintain a tolerance that the agency proposes to revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance or tolerance exemption proposed for revocation. If EPA receives a comment within the 60-day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(f), if needed. The order would specify data needed and the timeframes for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What action is the agency taking?

EPA is proposing to revoke certain tolerances and to promulgate other tolerances with expiration dates, for the fungicide ziram, the herbicides butylate, clethodim, isopropyl carbanilate, methanearsonic acid, and primisulfuron-methyl; the insecticides dichlorvos, dicofol, methomyl, naled, and tralomethrin, and tolerance exemptions for the pesticides rotenone, derris, cube roots, and pine oil.

Section 321 of FFDCA defines a pesticide residue as including metabolites and degradates of the pesticide. Therefore, EPA is proposing to make minor revisions to the tolerance expressions for dicofol, methanearsonic acid, methomyl, and tralomethrin, in accordance with current Agency practice to describe more clearly the measurement of residues for tolerances and coverage of metabolites and degradates of a pesticide by the tolerances. The revisions to the tolerance expressions do not substantively change the tolerance or, in any way, modify the permissible level of residues permitted by the tolerance.

In addition, EPA is proposing to revise the nomenclature of specific tolerances for butylate, methomyl, and tralomethrin, and remove expired tolerances for arsanilic acid, cyhexatin, ethion, fenthion, fonofos, lindane, orthoarsenic acid, phosphamidon, and triazamate. In addition, EPA is proposing to reinstate popcorn tolerances for metolachlor.

EPA is proposing to revoke certain tolerances because they are no longer needed or are associated with food uses that are no longer registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The proposed revocations for dichlorvos, naled, and pine oil are consistent with the recommendations in the dichlorvos, naled, and pine oil Reregistration Eligibility Decisions (REDs) of 2006. As part of the tolerance reassessment process, EPA is required to determine whether each of the amended tolerances meets the safety standard of FFDCA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each RED. REDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone number: 1–800–490–9198; fax number: 1–513–489–8695; Internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: 1–800–553–6847 or (703) 605–6000; Internet at *http://www.ntis.gov.* Electronic copies are available on the Internet for the dichlorvos, naled, and pine oil REDs at *http://www.epa.gov/pesticides/reregistration/status.htm.*

In REDs, Chapter IV on risk management, reregistration, and tolerance reassessment typically describes the regulatory position, cumulative safety determination, determination of safety for U.S. general population, and safety for infants and children. In particular, the human health risk assessment document which supports the RED describes risk exposure estimates and whether the Agency has concerns. EPA also seeks to harmonize tolerances with international standards set by the Codex Alimentarius Commission, as described in Unit III.

It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or legally treated domestic commodities.

Certain tolerances pertaining to the pesticides subject to this proposal have expired due to previous EPA regulation setting expiration dates. Therefore, EPA is proposing to remove the expired tolerances from the Code of Federal Regulations. This rule only corrects the Code of Federal Regulations to conform with the fact that the tolerances already expired, and therefore EPA is not accepting comments regarding the expiration itself.

1. *Arsanilic acid.* Because the sole tolerance for the plant growth regulator arsanilic acid expired on February 28, 2001, EPA is proposing to remove it from 40 CFR 180.550, and remove that section in its entirety.

2. *Butylate.* In the **Federal Register** notice of July 28, 2010 (75 FR 44240) (FRL–8835–2), EPA published a notice of cancellation of pesticides for non-payment of year 2010 registration maintenance fees, which included the announcement of cancellations for both an end-use product registration and last technical chemical registration for butylate. The cancellation orders permitted the registrant to sell and distribute existing stocks of affected products until January 15, 2011, one year after the date on which the fee was due. Persons other than registrant are permitted to sell, distribute, and/or use existing stocks of products whose labels include the deleted uses until supplies are exhausted, provided that the use complies with the EPA approved label

and labeling of the affected products. In the **Federal Register** notice of January 26, 2011 (76 FR 4692) (FRL–8856–9), EPA published a notice of receipt of voluntary requests by registrants to cancel certain pesticide registrations, including an end-use registration for butylate, the last butylate product registered for use in the United States. In the **Federal Register** notice of March 23, 2011 (76 FR 16417) (FRL–8867–8), EPA issued a cancellation order which granted the requested cancellation for the last butylate registration and permitted the registrant to sell and distribute existing stocks of the affected product containing butylate for 1 year after the date of publication of the cancellation order in the **Federal Register**; i.e., until March 23, 2012. Persons other than registrant are permitted to sell, distribute, and/or use existing stocks of products whose labels include the deleted uses until supplies are exhausted, provided that the use complies with the EPA approved label and labeling of the affected products.

EPA believes that existing stocks are likely to be exhausted by March 23, 2013. Therefore, EPA is proposing to revoke the tolerances for butylate in 40 CFR 180.232(a) on corn, field, forage; corn, field, grain; corn, field, stover; corn, pop, forage; corn, pop, grain; corn, sweet, forage; and corn, sweet, kernel plus cob with husks removed; each with an expiration/revocation date of March 23, 2013.

Also, in order to conform to current Agency practice, EPA is proposing in 40 CFR 180.232(a) to revise the commodity terminology for ''corn, pop, forage'' to ''corn, pop, stover.''

3. *Clethodim.* The commodity ''soybean soapstock'' is no longer considered by the Agency to be a significant animal feed item and therefore the tolerance is no longer needed. Consequently, EPA is proposing to revoke the tolerance in 40 CFR 180.458(a) on soybean, soapstock.

4. *Cyhexatin.* Because the sole tolerance for the insecticide cyhexatin expired on June 13, 2009, EPA is proposing to remove it from 40 CFR 180.144, and remove that section in its entirety.

5. *Dichlorvos.* On February 5, 1998 (63 FR 5907) (FRL–5743–9), EPA published a proposed rule in the **Federal Register** concerning a number of pesticide active ingredients and proposed tolerance actions, including the proposed revocation of the tomato tolerance for dichlorvos in 40 CFR 180.235 because there were no active registrations for use of dichlorvos on tomatoes in the United States, and therefore the tolerance was no longer needed. However, during the public comment period and as described in the final rule published in the **Federal Register** on October 26, 1998 (63 FR 57067) (FRL–6035–6), EPA received comment from the Canadian Horticultural Council (CHC). Consequently, EPA did not revoke the dichlorvos tolerance on tomato at that time. The CHC stated that revocation of the tomato tolerance would create a barrier to Canadian exports and requested that tolerances be maintained until pesticide alternatives were available to producers in Canada. EPA believes that there is no longer a need for the dichlorvos tolerance on tomato. Possible alternative insecticides such as fenpropathrin, deltamethrin, chlorantraniliprole, spinetoram, spinosad, permethrin, acetamiprid, imidacloprid, and lambda-cyhalothrin have both Canadian MRLs and U.S. tolerances on tomato or vegetable, fruiting, group 8, where a U.S. tolerance is at or exceeds the level of the corresponding Canadian MRL for the pesticide. Therefore, EPA is proposing to revoke the dichlorvos tolerance in 40 CFR 180.235(a)(1) on tomato, postharvest (residues expressed as naled).

6. *Dicofol.* As a result of on an agreement in principle signed by the EPA and the technical registrants of dicofol on May 17, 2011, registrants requested voluntary product cancellation and amendment. The cancellations included the last products containing dicofol registered for use in the United States. Dicofol registrants agreed to cease all production of dicofol as of May 17, 2011, cease all sales and distribution of dicofol end-use products by October 31, 2013, and amend end-use products to add a condition of registration that as of August 31, 2011, registrants will not sell or distribute dicofol end-use products that do not bear a prominent sticker prior to sale or distribution by the dicifol registrants that declares: ''It is unlawful to use this product after October 31, 2016.''

In the **Federal Register** of June 22, 2011 (76 FR 36535) (FRL–8875–7), EPA announced its receipt of the requests from registrants to voluntarily cancel the last product registrations for use of dicofol in the United States. In the **Federal Register** of December 14, 2011 (76 FR 77824) (FRL–9326–5), EPA published a cancellation order in follow-up to the June 22, 2011 Notice of Receipt of Requests. The cancellation order allowed registrants of dicofol end-use products to sell and distribute existing stocks until October 31, 2013, persons other than the registrants to sell and distribute existing stocks until December 31, 2013, and use of existing stocks of any of the dicofol end-use products until October 31, 2016. Therefore, EPA is proposing to revoke the dicofol tolerances in 40 CFR 180.163(a)(1) on apple, wet pomace; bean, dry, seed; bean, succulent; butternut; caneberry subgroup 13A; chestnut; citrus, dried pulp; citrus oil; cotton, refined oil; cotton, undelinted seed; fruit, citrus, group 10; fruit, pome, group 11; fruit, stone, group 12; grape; grape, raisin; hazelnut; hop, dried cones; nut, hickory; nut, macadamia; pecan; peppermint, oil; peppermint, tops; spearmint, oil; spearmint, tops; strawberry; tea, dried; tea, plucked leaves; vegetable, cucurbit, group 9; vegetable, fruiting, group 8; and walnut; each with an expiration/revocation date of October 31, 2016.

Also, EPA is proposing to revoke the dicofol tolerances in 40 CFR 180.163(a)(2) on cattle, fat; cattle, liver; cattle, meat; cattle, meat byproducts, except liver; egg; goat, fat; goat, liver; goat, meat; goat, meat byproducts, except liver; hog, fat; hog, liver; hog, meat; hog, meat byproducts, except liver; horse, fat; horse, liver; horse, meat; horse, meat byproducts, except liver; milk, fat (reflecting 0.75 ppm in whole milk); poultry, fat; poultry, meat; poultry, meat byproducts; sheep, fat; sheep, liver; sheep, meat; and sheep, meat byproducts, except liver; each with an expiration/revocation date of October 31, 2016.

In addition, EPA is proposing to revise the section heading in 40 CFR 180.163 from ''1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol'' to ''dicofol.'' Also, in order to describe more clearly the measurement of residues for tolerances and coverage of metabolites and degradates of a pesticide by the tolerances, EPA is proposing to revise the tolerance expressions for dicofol in 40 CFR 180.163(a)(1) and (a)(2) to read as set out in the proposed regulatory text at the end of this document.

7. *Ethion.* Because all the tolerances for the insecticide ethion expired on October 1, 2008, EPA is proposing to remove them from 40 CFR 180.173, and remove that section in its entirety.

8. *Fenthion.* Because all the tolerances for the insecticide fenthion expired, some on April 1, 2006 and some on April 1, 2003, EPA is proposing to remove them from 40 CFR 180.214, and remove that section in its entirety.

9. *Fonofos.* Because all the tolerances for the insecticide *O*-ethyl *S*-phenyl ethylphosphonodithioate, also known as fonofos, expired on December 31, 2002, EPA is proposing to remove them from 40 CFR 180.221, and remove that section in its entirety.

10. *Isopropyl carbanilate.* Because there have been no active registrations in the United States for isopropyl carbanilate (also called propham) since 1991, the interim tolerances are no longer needed and therefore should be revoked. Therefore, EPA is proposing to revoke the interim tolerances for isopropyl carbanilate in 40 CFR 180.319 on alfalfa, hay; clover, hay; grass, hay; alfalfa, forage; clover, forage; grass, forage; flax, seed; lentil; lettuce, head; lettuce, leaf; pea; safflower, seed; spinach; beet, sugar, roots; beet, sugar, tops; egg; cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; milk; sheep, fat; sheep, meat; sheep, meat byproducts; poultry, fat; poultry, meat; and poultry, meat byproducts.

11. *Lindane.* Because all the tolerances for the insecticide lindane expired on October 2, 2009, EPA is proposing to remove them from 40 CFR 180.133, and remove that section in its entirety.

12. *Methanearsonic acid.* As a result of an agreement in principle signed by the EPA and the technical registrants of the organic arsenicals on January 16 and February 5, 2009, registrants requested voluntary product cancellation and amendment. Some of the cancellations included the last products containing disodium methanearsonate (DSMA) registered for use in the United States, and cancellation and amendment of products for monosodium methanearsonate (MSMA) which would terminate its citrus, bearing and non-bearing, uses. In the **Federal Register** of July 8, 2009 (74 FR 32596) (FRL–8422–6), EPA announced its receipt of the requests and provided a public comment period. In the **Federal Register** of September 30, 2009 (74 FR 50187) (FRL–8437–7), EPA published a cancellation order in follow-up to the July 8, 2009, Notice of Receipt of Requests. The cancellation order prohibited registrants from selling or distributing existing stocks (with citrus uses) after December 31, 2009, and persons other than the registrants from selling or distributing existing stocks after December 31, 2010, but allowed their use until exhaustion. EPA believes that existing stocks (with citrus use) will be exhausted 2 years after December 31, 2010; i.e., by December 31, 2012. Therefore, EPA is proposing to revoke the tolerance in 40 CFR 180.289(a) for methanearsonic acid, from application of DSMA and MSMA, in or on fruit, citrus with an expiration/revocation date of December 31, 2012.

Also, in order to describe more clearly the measurement of residues for tolerances and coverage of metabolites and degradates of a pesticide by the tolerances, EPA is proposing to revise the tolerance expression for methanearsonic acid in 40 CFR 180.289(a) to read as set out in the proposed regulatory text at the end of this document.

13. *Methomyl.* In the **Federal Register** notice of October 24, 2007 (72 FR 60364) (FRL–8153–3), EPA published a notice of receipt of voluntary requests for amendments by registrants to delete the grape use in methomyl registrations. In the **Federal Register** notice of December 8, 2010 (75 FR 76456) (FRL–8855–6), EPA issued a cancellation order granting the requested amendments to terminate use and permitted the registrant to sell and distribute existing stocks of the affected products containing methomyl for 18 months after the date of the cancellation order; i.e., until June 8, 2012. Persons other than the registrant are permitted to sell, distribute, and/or use existing stocks of products whose labels include the deleted uses until supplies are exhausted, provided that the use complies with the EPA approved label and labeling of the affected products.

EPA believes that existing stocks will be exhausted by June 8, 2013. Therefore, EPA is proposing to revoke the tolerance for methomyl in 40 CFR 180.253(a) on grape with an expiration/revocation date of June 8, 2013.

In order to describe more clearly the measurement of residues for tolerances and coverage of metabolites and degradates of a pesticide by the tolerances, EPA is proposing to revise the tolerance expressions for methomyl in 40 CFR 180.253(a) and (c) to read as set out in the proposed regulatory text at the end of this document.

Also, in order to conform to current Agency practice, EPA is proposing in 40 CFR 180.253(a) to revise the commodity terminology for ''cucurbits'' to ''vegetable, cucurbit, group 9;'' ''orange, sweet'' to ''orange;'' ''pepper'' to ''pepper, bell'' and ''pepper, nonbell;'' ''sorghum, forage'' to ''sorghum, grain, forage;'' ''sorghum, grain'' to ''sorghum, grain, grain;'' ''soybean'' to ''soybean, seed;'' ''vegetable, fruiting'' to ''vegetable, fruiting, group 8;'' and ''vegetable, root'' to ''vegetable, root and tuber, group 1;'' and to remove the ''(N)'' designation, which means negligible residues, wherever it appears in 40 CFR 180.253(a).

14. *Metolachlor.* In the **Federal Register** of September 17, 2008 (73 FR 53732) (FRL–8375–2), EPA finalized tolerance actions for specific active ingredients including metolachlor, for which the Agency completed a number of actions, including decreasing tolerance levels in 40 CFR 180.368(a)(1) on corn fodder and forage to 6.0 parts per million (ppm) and revising the commodity terminology of the tolerances on corn, grain to corn, field, grain; and corn, fodder to corn, field, stover and corn, sweet, stover. However, the Agency inadvertently omitted corn, pop, grain (previously covered by corn, grain) and corn, pop, stover (previously covered by corn, fodder) as part of the commodity terminology revisions for metolachlor in the final rule. Nor did the Agency include the popcorn tolerances for metolachlor in the **Federal Register** of August 8, 2007 (72 FR 44439) (FRL–8138–8) for the proposed rule. To remedy this inadvertent error and to cover existing popcorn registrations for metolachlor, the Agency proposes to correct the revisions and reinstate the tolerances in 40 CFR 180.368(a)(1) for corn, pop, grain at 0.10 ppm and corn, pop, stover at 6.0 ppm.

15. *Naled.* On February 5, 1998 (63 FR 5907)(FRL–5743–9), EPA published a proposed rule in the **Federal Register** concerning a number of pesticide active ingredients and proposed tolerance actions, including the proposed revocation of the lettuce tolerance for naled in 40 CFR 180.215 because there were no active registrations for use of naled on lettuce in the United States, and therefore the tolerance was no longer needed. However, during the public comment period and as described in the final rule published in the **Federal Register** on October 26, 1998 (63 FR 57067) (FRL–6035–6), EPA received comment from Valent USA Corporation, on behalf of Amvac Chemical Corporation, and the Canadian Horticultural Council (CHC). Consequently, EPA did not revoke the naled tolerance on lettuce at that time. Amvac requested that the lettuce tolerance be retained for import purposes and that it would support that import tolerance. However, recently, Amvac notified the Agency that it was no longer interested in supporting the lettuce tolerance for import purposes. The CHC stated that revocation of the lettuce tolerance would create a barrier to Canadian exports and requested that tolerances be maintained until pesticide alternatives were available to producers in Canada. EPA believes that there is no longer a need for the naled tolerance on lettuce. Possible alternative insecticides such as chlorantraniliprole, spinetoram, spinosad, permethrin, acetamiprid, imidacloprid, lambda-cyhalothrin,

tebufenozide, and thiamethoxam have both Canadian MRLs and U.S. tolerances on lettuce, crop subgroup 4A (including lettuce), or vegetable, leafy, except *brassica,* group 4, where a U.S. tolerance is at or exceeds the level of the corresponding Canadian MRL for the pesticide. Therefore, EPA is proposing to revoke the naled tolerance in 40 CFR 180.215(a)(1) on lettuce.

16. *Orthoarsenic acid.* Because the sole tolerance for the defoliant orthoarsenic acid expired on July 1, 1995, EPA is proposing to remove it from 40 CFR 180.180, and remove that section in its entirety.

17. *Phosphamidon.* Because the sole tolerance for the insecticide phosphamidon expired on December 31, 2002, EPA is proposing to remove it from 40 CFR 180.239, and remove that section in its entirety.

18. *Pine oil.* Because there have been no active registrations in the United States for more than 10 years regarding the use of pine oil in honey and honeycomb, the exemption from the requirement of a tolerance for pine oil (also known as 1-methyl-4-isopropyl-1-cyclo-hexen-8-ol) residues in or on honey and honeycomb, when present as a result of its use as a deodorant at no more than 12 percent in formulation with the bee repellent butanoic anhydride applied in an absorbent pad over the hive, is no longer needed and therefore should be revoked. The revocation of the tolerance exemption is consistent with the recommendation in the pine oil RED of 2006. Consequently, EPA is proposing to revoke the tolerance exemption for pine oil in 40 CFR 180.1035 on honey and honeycomb.

19. *Primisulfuron-methyl.* Because there have been no active registrations for use of primisulfuron-methyl on sweet corn for more than 10 years and, for at least 10 years, active registrations have shown a label prohibition of its use on sweet corn, the tolerances on sweet corn are no longer needed. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.452 on corn, sweet, forage and corn, sweet, stover.

20. *Rotenone.* In the **Federal Register** of July 28, 2010 (75 FR 44256) (FRL–8831–7), February 3, 2010 (75 FR 5643) (FRL–8807–6) and January 26, 2010 (75 FR 4072) (FRL–8808–2), EPA announced its receipt of requests for voluntary cancellation of certain pesticide registrations, including ones for rotenone (and other associated cube root resins) with agricultural uses, and provided public comment periods. In the **Federal Register** of March 23, 2011 (76 FR 16415) (FRL–8865–9), August 11, 2010 (75 FR 48669) (FRL–8839–9) and May 11, 2010 (75 FR 26227) (FRL–8822–4), EPA published cancellation orders in follow-up to the July 28, 2010, January 26, 2010 and February 3, 2010 Notice of Receipt of Requests, respectively. The cancellation order of March 23, 2010 allowed registrants to sell and distribute existing stocks until May 2011 and persons other than the registrants to sell, distribute, or use existing stocks until May 2011. The cancellation order of August 11, 2010 allowed registrants to sell and distribute existing stocks until August 11, 2011 and persons other than the registrants to sell, distribute, or use existing stocks until exhaustion. The cancellation order of May 11, 2010 allowed registrants to sell and distribute existing stocks until May 11, 2011 and persons other than the registrants to sell, distribute, or use existing stocks until exhaustion. EPA believes that existing stocks will be exhausted by August 11, 2012. Therefore, in 40 CFR 180.905, EPA is proposing to redesignate existing paragraph (b) as new paragraph (c) and recodify the tolerance exemptions for rotenone or derris or cube roots from existing paragraph (a) into newly designated paragraph (b) with expiration/revocation dates of August 11, 2012.

21. *Tralomethrin.* In the **Federal Register** of May 4, 2011 (76 FR 25334) (FRL–8870–5), November 17, 2010 (75 FR 70256) (FRL–8850–1), and November 10, 2010 (75 FR 69073) (FRL–8851–5), EPA announced its receipt of requests for voluntary cancellation of certain pesticide registrations, including ones for tralomethrin associated with agricultural and food/feed handling establishment uses, and provided public comment periods. In the **Federal Register** of July 8, 2011 (76 FR 40359) (FRL–8878–7) and February 25, 2011 (76 FR 10587) (FRL–8863–4), EPA published cancellation orders in follow-up to the May 4, 2011, and the November 17, 2010 and November 10, 2010 Notice of Receipt of Requests, respectively. The cancellation order of February 25, 2011 allowed registrants to sell and distribute existing stocks until February 25, 2012 and persons other than the registrants to sell, distribute, or use existing stocks until exhaustion. The cancellation order of July 8, 2011 allowed registrants to sell and distribute existing stocks until July 9, 2012 and persons other than the registrants to sell, distribute, or use existing stocks until exhaustion. EPA believes that existing stocks will be exhausted by July 9, 2013. Therefore, EPA is proposing to revoke tralomethrin tolerances in 40 CFR 180.422(a)(1) on broccoli; cotton, undelinted seed; cotton, oil; lettuce, head; lettuce, leaf; soybean; and sunflower, seed; each with an expiration/revocation date of July 9, 2013. Also, in order to conform to current Agency practice, EPA is proposing in 40 CFR 180.422(a)(1) to revise the commodity terminology for ''soybean'' to read ''soybean, seed.''

Also, EPA is proposing to revoke the tralomethrin tolerance in 40 CFR 180.422(a)(2) on food commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food-handling establishments at 0.02 ppm with an expiration/revocation date of July 9, 2013.

In addition, EPA is proposing to revoke the tralomethrin tolerance in 40 CFR 180.422(a)(3) on feed commodities (other than those covered by a higher tolerance as a result of use on growing crops) in feed-handling establishments at 0.02 ppm with an expiration/revocation date of July 9, 2013.

In order to describe more clearly the measurement of residues for tolerances and coverage of metabolites and degradates of a pesticide by the tolerances, EPA is proposing to revise the tolerance expressions for tralomethrin in 40 CFR 180.422(a)(1), (a)(2), and (a)(3) to read as set out in the proposed regulatory text at the end of this document.

22. *Triazamate.* Because the sole tolerance for triazamate expired on December 31, 2001, EPA is proposing to remove it from 40 CFR 180.536, and remove that section in its entirety.

23. *Ziram.* In the **Federal Register** notice of December 1, 2010 (75 FR 74714) (FRL–8854–3), EPA published a notice of receipt of voluntary requests for amendments by registrants to delete certain uses, including the last blackberry uses in ziram registrations. In the **Federal Register** notice of May 11, 2011 (76 FR 27317) (FRL–8871–2), EPA issued a cancellation order, which included granting the requested amendments to terminate the last ziram registrations for blackberry use and permitted the registrant to sell and distribute existing stocks of the affected products containing ziram for 12 months after the date of the cancellation order; i.e., until May 11, 2012. Persons other than the registrants are permitted to sell, distribute, and/or use existing stocks of products whose labels include the deleted uses until supplies are exhausted, provided that the use complies with the EPA approved label and labeling of the affected products.

EPA believes that existing stocks are likely to be exhausted by May 11, 2013. Therefore, EPA is proposing to revoke the tolerance for ziram in 40 CFR 180.116(a) on blackberry with an

expiration/revocation date of May 11, 2013.

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

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under FFDCA section 402(a), 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under FFDCA section 408, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When do these actions become effective?

EPA proposes that these regulations become effective on the date of publication of the final rule in the **Federal Register**. With the exception of certain tolerances for butylate, dicofol, methanearsonic acid (and salts), methomyl, tralomethrin, and ziram, and tolerance exemptions for rotenone, derris, and cube roots for which EPA is proposing specific expiration/revocation dates, the Agency is proposing that these tolerance revocations and reinstatements, and revisions of tolerance nomenclatures and tolerance expressions become final on the date of publication of the final rule in the **Federal Register**. With the exception of the specific tolerances for which EPA is proposing expiration/revocation dates, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have been completely exhausted and that treated commodities have cleared the channels of trade. EPA is proposing an expiration/revocation date of March 23, 2013 for all of the tolerances for butylate, October 31, 2016 for all of the tolerances for dicofol, December 31, 2012 for the methanearsonic acid tolerance on fruit, citrus, June 8, 2013 for the methomyl tolerance on grape, July 9, 2013 for all of the tolerances for tralomethrin, May 11, 2013 for the ziram tolerance on blackberry, and August 11, 2012 for the tolerance exemptions for rotenone (or derris or cube roots). The Agency believes that these revocation dates allow users to exhaust stocks and allows sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

III. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture

Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for butylate, isopropyl carbanilate (also called propham), methanearsonic acid (and salts), metolachlor, naled, pine oil, primisulfuron-methyl, rotenone (or derris or cube roots), tralomethrin, clethodim in or on soybean soapstock, or for dichlorvos on tomato.

The Codex has not established a MRL for ziram *per se,* but has MRLs for total dithiocarbamates (which includes the dithiocarbamate ziram), determined as carbon disulfide. However, there is no MRL for total dithiocarbamates in or on blackberry.

The Codex has established a MRL for methomyl in or on grapes at 5 milligrams/kilogram (mg/kg). This MRL is the same as the tolerance established for methomyl on grapes in the United States.

The Codex has established MRLs for dicofol in or on cattle meat at 3 mg/kg, eggs at 0.05 mg/kg, poultry meat and cottonseed at 0.1 mg/kg, and cherries at 5 mg/kg. These MRLs and some others are the same as the tolerances established for dicofol in the United States.

The Codex has established MRLs for dicofol in or on various other commodities, including beans, dry at 0.1 mg/kg, citrus fruits at 5 mg/kg, hops, dry at 50 mg/kg, melons, except watermelon at 0.2 mg/kg, pecans and walnuts at 0.01 mg/kg, and peppers, summer squash, and tomato at 1 mg/kg. These MRLs are all covered by U.S. tolerances at higher levels. These MRLs are different than the tolerances established for dicofol in the United States because of differences in use patterns and/or good agricultural practices.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (e.g., tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020) (FRL–5753–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed rule will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal

Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

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 27, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.116 is amended by revising the table in paragraph (a) to read as follows:

§ 180.116 Ziram; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ revocation date
Almond	[1] 0.1	None
Apple	[1] 7.0	None
Apricot	[1] 7.0	None
Blackberry	[1] 7.0	5/11/13
Blueberry	[1] 7.0	None
Cherry, sweet	[1] 7.0	None
Cherry, tart	[1] 7.0	None
Grape	7.0	None
Huckleberry	7.0	None
Peach	7.0	None
Pear	[1] 7.0	None
Pecan	0.1	None
Quince	[1] 7.0	None
Strawberry	7.0	None
Tomato	[1] 7.0	None

* * * * *

§§ 180.133 and 180.144 [Removed]

3. Sections 180.133 and 180.144 are removed.

4. Section 180.163 is amended by revising the section heading and paragraph (a) to read as follows:

§ 180.163 Dicofol; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide dicofol, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only dicofol as the sum of its p,p-dicofol and o,p-dicofol isomers: 4-chloro-α-(4-chlorophenyl)-α-(trichloromethyl)benzenemethanol and 2-chloro-α-(4-chlorophenyl)-α-(trichloromethyl)benzenemethanol, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Apple, wet pomace	38.0	10/31/16
Bean, dry, seed	0.5	10/31/16
Bean, succulent	3.0	10/31/16
Butternut	0.1	10/31/16
Caneberry subgroup 13A	5.0	10/31/16
Chestnut	0.1	10/31/16
Citrus, dried pulp	12.0	10/31/16
Citrus oil	200.0	10/31/16
Cotton, refined oil	0.5	10/31/16
Cotton, undelinted seed	0.1	10/31/16
Fruit, citrus, group 10	6.0	10/31/16
Fruit, pome, group 11	10.0	10/31/16
Fruit, stone, group 12	5.0	10/31/16
Grape	5.0	10/31/16
Grape, raisin	20.0	10/31/16
Hazelnut	0.1	10/31/16
Hop, dried cones	65.0	10/31/16
Nut, hickory	0.1	10/31/16
Nut, macadamia	0.1	10/31/16
Pecan	0.1	10/31/16
Peppermint, oil	30.0	10/31/16
Peppermint, tops	25.0	10/31/16
Spearmint, oil	30.0	10/31/16
Spearmint, tops	25.0	10/31/16
Strawberry	10.0	10/31/16
Tea, dried	50.0	10/31/16
Tea, plucked leaves	30.0	10/31/16
Vegetable, cucurbit, group 9	2.0	10/31/16
Vegetable, fruiting, group 8	2.0	10/31/16
Walnut	0.1	10/31/16

(2) Tolerances are established for residues of the insecticide dicofol, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of p,p-dicofol, 4-chloro-α-(4-chlorophenyl)-α-(trichloromethyl)benzenemethanol, its isomer o,p-dicofol, 2-chloro-α-(4-chlorophenyl)-α-(trichloromethyl)benzenemethanol, and its metabolites 4-chloro-α-(4-chlorophenyl)-α-(dichloromethyl)benzenemethanol and 2-chloro-α-(4-chlorophenyl)-α-(dichloromethyl)benzenemethanol, calculated as the stoichiometric equivalent of p,p-dicofol, 4-chloro-α-(4-chlorophenyl)-α-(trichloromethyl)benzenemethanol, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Cattle, fat	50.0	10/31/16
Cattle, liver	5.0	10/31/16
Cattle, meat	3.0	10/31/16
Cattle, meat by-products, except liver	3.0	10/31/16
Egg	0.05	10/31/16
Goat, fat	50.0	10/31/16
Goat, liver	5.0	10/31/16
Goat, meat	3.0	10/31/16
Goat, meat by-products, except liver	3.0	10/31/16
Hog, fat	50.0	10/31/16
Hog, liver	5.0	10/31/16
Hog, meat	3.0	10/31/16
Hog, meat by-products, except liver	3.0	10/31/16
Horse, fat	50.0	10/31/16
Horse, liver	5.0	10/31/16
Horse, meat	3.0	10/31/16
Horse, meat by-products, except liver	3.0	10/31/16
Milk, fat (reflecting 0.75 ppm in whole milk)	22.0	10/31/16
Poultry, fat	0.1	10/31/16
Poultry, meat	0.1	10/31/16
Poultry, meat by-products	0.1	10/31/16
Sheep, fat	50.0	10/31/16
Sheep, liver	5.0	10/31/16
Sheep, meat	3.0	10/31/16
Sheep, meat by-products, except liver	3.0	10/31/16

* * * * *

§§ 180.173, 180.180, and 180.214 [Removed]

5. Sections 180.173, 180.180, and 180.214 are removed.

§ 180.215 [Amended]

6. Section 180.215 is amended by removing the entry for ''lettuce'' from the table in paragraph (a)(1).

§ 180.221 [Removed]

7. Section 180.221 is removed.

8. Section 180.232 is amended by revising the table in paragraph (a) to read as follows:

§ 180.232 Butylate; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ revocation date
Corn, field, forage	0.1	3/23/13
Corn, field, grain	0.1	3/23/13
Corn, field, stover	0.1	3/23/13
Corn, pop, grain	0.1	3/23/13
Corn, pop, stover	0.1	3/23/13

Commodity	Parts per million	Expiration/ revocation date
Corn, sweet, forage	0.1	3/23/13
Corn, sweet, kernel plus cob with husks removed	0.1	3/23/13

* * * * *

§ 180.235 [Amended]

9. Section 180.235 is amended by removing the entry for ''tomato, postharvest (residues expressed as naled)'' from the table in paragraph (a)(1).

§ 180.239 [Removed]

10. Section 180.239 is removed.

11. Section 180.253 is amended by revising paragraphs (a) and (c) to read as follows:

§ 180.253 Methomyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide methomyl, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only methomyl, methyl *N*-[[(methylamino)carbonyl]oxy]ethanimidothioate, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Alfalfa, forage	10	None
Alfalfa, hay	10	None
Apple	1	None
Asparagus	2	None
Avocado	2	None
Barley, grain	1	None
Barley, hay	10	None
Barley, straw	10	None
Bean, dry, seed	0.1	None
Bean, forage	10	None
Bean, succulent	2	None
Beet, garden, tops	6	None
Bermudagrass, forage	10	None
Bermudagrass, hay	40	None
Blueberry	6	None
Broccoli	3	None
Brussels sprouts	2	None
Cabbage	5	None
Cabbage, Chinese, bok choy	5	None
Cabbage, Chinese, napa	5	None
Cauliflower	2	None
Celery	3	None
Collards	6	None
Corn, field, forage	10	None
Corn, field, grain	0.1	None
Corn, field, stover	10	None
Corn, pop, grain	0.1	None
Corn, pop, stover	10	None
Corn, sweet, forage	10	None
Corn, sweet, kernel plus cob with husks removed	0.1	None
Corn, sweet, stover	10	None
Cotton, undelinted seed	0.1	None
Dandelion, leaves	6	None
Endive	5	None
Grape	5	6/8/13
Grapefruit	2	None
Hop, dried cones [1]	12	None
Kale	6	None
Lemon	2	None
Lentil, seed	0.1	None
Lettuce	5	None
Mustard greens	6	None
Nectarine	5	None
Oat, forage	10	None
Oat, grain	1	None
Oat, hay	10	None
Oat, straw	10	None
Onion, green	3	None
Orange	2	None
Parsley, leaves	6	None
Pea	5	None
Pea, field, vines	10	None
Peach	5	None
Peanut	0.1	None
Pecan	0.1	None
Pepper, bell	2	None
Pepper, nonbell	2	None
Peppermint, tops	2	None
Pomegranate	0.2	None
Rye, forage	10	None
Rye, grain	1	None
Rye, straw	10	None
Sorghum, grain, forage	1	None
Sorghum, grain, grain	0.2	None
Soybean, forage	10	None
Soybean, seed	0.2	None
Spearmint, tops	2	None
Spinach	6	None
Swiss chard	6	None
Tangerine	2	None
Tomato	1	None
Turnip, greens	6	None
Vegetable, brassica, leafy, group 5	6.0	None
Vegetable, cucurbit, group 9	0.2	None
Vegetable, fruiting, group 8	0.2	None
Vegetables, leafy [1]	0.2	None
Vegetable, root and tuber, group 1	0.2	None
Wheat, forage	10	None
Wheat, grain	1	None
Wheat, hay	10	None
Wheat, straw	10	None

[1] [exc. Beet (tops), broccoli, Brussels sprouts, cabbage, cabbage, Chinese, cauliflower, celery, collards, dandelions, endive (escarole), kale, lettuce, mustard greens, parsley, spinach, Swiss chard, turnip, greens (tops), and watercress].

[2] There are no U.S. registrations for use of methomyl on hop, dried cone, as of February 14, 1990.

* * * * *

(c) *Tolerances with regional registrations.* A tolerance with regional registration, as defined in § 180.1(l), is established for residues of the insecticide methomyl, including its metabolites and degradates, in or on the commodity in the table in this paragraph. Compliance with the tolerance level specified in this paragraph is to be determined by measuring only methomyl, methyl *N*-[[(methylamino)carbonyl]oxy]ethanimidothioate, in or on the commodity.

* * * * *

12. Section 180.289 is amended by revising paragraph (a) to read as follows:

§ 180.289 Methanearsonic acid; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide methanearsonic acid, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only methanearsonic acid, from application of the disodium and monosodium salts of methanearsonic acid, calculated as the stoichiometric equivalent of As_2O_3, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Cotton, undelinted seed	0.7	None
Cotton, hulls	0.9	None
Fruit, citrus	0.35	12/31/12

* * * * *

13. Section 180.319 is revised to read as follows:

§ 180.319 Interim tolerances.

(a) *General.* While petitions for tolerances for negligible residues are pending and until action is completed on these petitions, interim tolerances are established for residues of the listed pesticide chemicals in or on the following raw agricultural commodities:

Substances	Uses	Tolerance in parts per million	Raw agricultural commodity	Expiration/ revocation date
Coordination product of zinc ion and maneb	Fungicide	1.0 (Calculated as zinc ethylene-bisdithiocarbamate).	Potato	None
Endothall (7-oxabicyclo-(2,2,1)heptane 2,3-dicarboxylic acid	Herbicide	0.2	Beet, sugar	None
Methyl parathion	Herbicide	0.5	Rye	12/31/13

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

14. Section 180.368 is amended by alphabetically adding the following commodities to the table in paragraph (a)(1) to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Corn, pop, grain	0.10
Corn, pop, stover	6.0
* * * * *	

* * * * *

15. Section 180.422 is amended by revising paragraph (a) to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide tralomethrin, including its metabolites and degradates, in or on the commodities in the table in this paragraph. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of tralomethrin, (*S*)-cyano(3-phenoxyphenyl)methyl (1*R*,3*S*)-2,2-dimethyl-3-(1,2,2,2-tetrabromoethyl)cyclopropane carboxylate, and its metabolites (*S*)-cyano(3-phenoxyphenyl)methyl (1*R*,3*R*)-3-(2,2-dibromoethenyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-cyano(3-phenoxyphenyl)methyl (1*S*,3*R*)-3-(2,2-dibromoethenyl)-2,2-dimethylcyclopropanecarboxylate, calculated as the stoichiometric equivalent of tralomethrin, in or on the commodity.

Commodity	Parts per million	Expiration/ revocation date
Broccoli	0.5	7/9/13
Cotton, undelinted seed	0.02	7/9/13
Cotton, oil	0.20	7/9/13
Lettuce, head	1.00	7/9/13
Lettuce, leaf	3.00	7/9/13
Soybean, seed	0.05	7/9/13
Sunflower, seed	0.05	7/9/13

(2) A tolerance of 0.02 part per million with an expiration/revocation date of July 9, 2013 is established for residues of the insecticide tralomethrin, including its metabolites and degradates, in or on food commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food-handling establishments. Compliance with the tolerance level specified in this paragraph is to be determined by measuring only the sum of tralomethrin, (*S*)-cyano(3-phenoxyphenyl)methyl (1*R*,3*S*)-2,2-dimethyl-3-(1,2,2,2-tetrabromoethyl)cyclopropane carboxylate, and its metabolites (*S*)-cyano(3-phenoxyphenyl)methyl (1*R*,3*R*)-3-(2,2-dibromoethenyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-cyano(3-phenoxyphenyl)methyl (1*S*,3*R*)-3-(2,2-dibromoethenyl)-2,2-dimethylcyclopropanecarboxylate, calculated as the stoichiometric equivalent of tralomethrin, in or on the commodity.

(i) The insecticide may be present as a residue from application of tralomethrin in food-handling establishments, including food service, manufacturing, and processing establishments, such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries.

(ii) The application shall be made in accordance with the following prescribed conditions: Application shall be limited to a general surface and spot and/or crack and crevice treatment in food-handling establishments where food and food products are held, processed, prepared, and served. General surface application may be used only when the facility is not in operation provided exposed food has been covered or removed from the area being treated. All food-contact surfaces and equipment must be thoroughly cleaned after general surface applications. Spot and/or crack and crevice application may be used while the facility is in operation provided exposed food is covered or removed from the area being treated prior to application. Spray concentration shall be limited to a maximum of 0.06 percent active ingredient. Contamination of food and food-contact surfaces shall be avoided.

(3) A tolerance of 0.02 part per million with an expiration/revocation date of July 9, 2013 is established for residues of the insecticide tralomethrin, including its metabolites and degradates, in or on feed commodities (other than those covered by a higher tolerance as a result of use on growing crops) in feed-handling establishments. Compliance with the tolerance level specified in this paragraph is to be determined by measuring only the sum of tralomethrin, (*S*)-cyano(3-phenoxyphenyl)methyl (1*R*,3*S*)-2,2-dimethyl-3-(1,2,2,2-tetrabromoethyl) cyclopropanecarboxylate, and its metabolites (*S*)-cyano(3-phenoxyphenyl)methyl (1*R*,3*R*)-3-(2,2-dibromoethenyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-cyano(3-phenoxyphenyl)methyl (1*S*,3*R*)-3-(2,2-dibromoethenyl)-2,2-dimethylcyclopropanecarboxylate, calculated as the stoichiometric equivalent of tralomethrin, in or on the commodity.

(i) The insecticide may be present as a residue from application of tralomethrin in feed-handling establishments, including feed

manufacturing and processing establishments.

(ii) The application shall be made in accordance with the following prescribed conditions: Application shall be limited to a general surface and spot and/or crack and crevice treatment in feed-handling establishments where feed and feed products are held or processed. General surface application may be used only when the facility is not in operation provided exposed feed has been covered or removed from the area being treated. All feed-contact surfaces and equipment must be thoroughly cleaned after general surface applications. Spot and/or crack and crevice application may be used while the facility is in operation provided exposed feed is covered or removed from the area being treated prior to application. Spray concentration shall be limited to a maximum of 0.06 percent active ingredient. Contamination of feed and feed-contact surfaces shall be avoided.

* * * * *

§ 180.452 [Amended]

16. Section 180.452 is amended by removing the entries for ''corn, sweet, forage'' and ''corn, sweet, stover'' from the table in paragraph (a).

§ 180.458 [Amended]

17. Section 180.458 is amended by removing the entry for ''soybean, soapstock'' from the table in paragraph (a).

§§ 180.536 and 180.550 [Removed]

18. Sections 180.536 and 180.550 are removed.

19. Section 180.905 is revised to read as follows:

§ 180.905 Pesticide chemicals; exemptions from the requirement of a tolerance.

(a) When applied to growing crops, in accordance with good agricultural practice, the following pesticide chemicals are exempt from the requirement of a tolerance:

(1) Petroleum oils.

(2) Piperonyl butoxide.

(3) Pyrethrins.

(4) Sabadilla.

(b) When applied to growing crops, in accordance with good agricultural practice, the pesticides rotenone or derris or cube roots are exempt from the requirement of a tolerance until their tolerance exemptions expire on August 11, 2012.

(c) These pesticides are not exempted from the requirement of a tolerance when applied to a crop at the time of or after harvest.

§ 180.1035 [Removed]

20. Section 180.1035 is removed.

[FR Doc. 2012–11063 Filed 5–8–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 22

[Docket No. FWS–R9–MB–2011–0054; FF09M21200–123–FXMB123209EAGL0L2]

RIN 1018–AX91

Eagle Permits; Changes in the Regulations Governing Eagle Permitting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We announce the extension of the public comment period for our April 13, 2012, proposed rule to revise the regulations for permits for nonpurposeful take of golden eagles (*Aquila chrysaetos*) and bald eagles (*Haliaeetus leucocephalus*) where the take is associated with, but not the purpose of, an activity. In that proposed rule, we propose to increase the maximum term for programmatic permits to 30 years and to increase permit application processing fees for such long-term permits. We are extending the public comment period to allow all interested parties an additional opportunity to comment on the proposed rule. Comments previously submitted need not be resubmitted, as we will fully consider them when preparing a final determination.

DATES: Electronic comments on the proposal published at 77 FR 22267, April 13, 2012, must be submitted via *http://www.regulations.gov* by 11:59 p.m. Eastern time on July 12, 2012. Comments submitted by mail must be postmarked no later than July 12, 2012.

ADDRESSES: You may submit comments by either of the following two methods. Please do not submit comments by both.

- *Federal eRulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2011–0054.
- *U.S. mail or hand delivery:* Public Comments Processing, Attention: FWS–R9–MB–2011–0054; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203–1610.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information that you provide. See the Public Comments section below for more information.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Migratory Bird Management, at 703–358–1714.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 2012, we proposed revisions to the regulations governing permits for take of golden eagles *(Aquila chrysaetos)* and bald eagles *(Haliaeetus leucocephalus),* where the take is associated with, but not the purpose of, an activity (see 77 FR 22267, April 13, 2012). We proposed to extend the maximum term for a programmatic permit from 5 to 30 years, if the permit incorporates conditions requiring implementation of additional measures to ensure the preservation of eagles, if needed. This change would facilitate the responsible development of renewable energy and other projects that will be in operation for many decades while being consistent with statutory mandates protecting eagles.

The proposed rule would amend the schedule of permit fees set forth at 50 CFR 13.11 to substantially increase the fees charged for processing programmatic permit applications for such long-term permits. The permit application processing fee is proposed to be $36,000. In addition, the regulations propose an ''administration fee'' based on the duration of the permits to recover our costs for monitoring and working with the permittees over the lives of the permits. The proposed administration fee ranges from $2,600 for permits with tenures of 5 years or less to $15,600 for 30-year permits. The regulations propose a reduced application processing fee of $5,000 for permit applications for small wind projects and other activities not expected to have significant effects on eagles.

The proposed rule also contains provisions that would allow permits to be transferred from one party to another and to clarify that programmatic permits issued under the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) to Federal, State, tribal, or local governmental entities provide take authorization for persons acting under the jurisdiction of the permitted government agency under certain circumstances.

We are now extending the public comment period for the proposed rule to

allow interested members of the public an additional opportunity to provide input. The comment period will close on July 12, 2012. If you have already submitted comments on the April 13, 2012, proposed rule, please do not resubmit them. We will fully consider all comments we receive when preparing a final determination on the proposed rule.

For more information about the proposed regulatory changes, please see the April 13, 2012, proposed rule, available on *http://www.regulations.gov* at Docket No. FWS–R9–MB–2011–0054 and on our Web site at: *http://www.fws.gov/migratorybirds/BaldAndGoldenEagleManagement.htm.*

Public Comments

You may submit your comments and supporting materials by one of the methods listed in **ADDRESSES**. We request that you submit comments by only one method. We will not consider comments sent by email or fax, or written comments sent to an address other than the one listed 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. If you submit a hardcopy comment that includes personal identifying information, you may request that we withhold this information from public review, but 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 this proposed rule, will be available for public inspection at *http://www.regulations.gov,* or by appointment, during normal business hours, by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT**.

Authority for Part 13: 16 U.S.C. 668a, 704, 712, 742j–l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

Authority for Part 22: 16 U.S.C. 668–668d; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

Dated: May 1, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–11111 Filed 5–8–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120412409–2409–01]

RIN 0648–BB95

Control Date To Limit Excessive Accumulation of Control, Qualifying Landings History, and Referendum Eligibility in the Monkfish Fishery

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

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: At the request of the New England and Mid-Atlantic Fishery Management Councils (Councils), this notice announces a control date that may be applicable to, but not limited to, limits on the accumulation of excessive control or ownership of fishing privileges, qualifying landings history for an allocation-based management program, and referendum qualification, should one be required in the monkfish fishery. This notice is intended to promote awareness of possible rulemaking; provide notice to the public that any future accumulation of fishing privilege interests in the monkfish fishery may be affected, restricted, or even nullified; and to discourage speculative behavior in the market for fishing privileges while the Councils consider whether and how such limitations on accumulation of fishing privileges should be developed. Interested participants should locate and preserve records that substantiate and verify their ownership or control of monkfish permits and other fishing privileges, as well as monkfish landings history in Federal waters.

DATES: May 9, 2012, shall be known as the ''control date'' for the monkfish fishery and may be used as a reference date for future management measures related to the maintenance of a fishery with characteristics consistent with the Councils' objectives and applicable Federal laws. Written comments must be received on or before 5 p.m., local time, June 8, 2012.

ADDRESSES: You may submit comments on this document, identified by ''NOAA–NMFS–2012–0080,'' 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–2012–0080'' 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, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Monkfish Accumulation Limits Control Date.''
- *Fax* (978) 281–9135; Attn: Douglas Christel.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, phone: 978–281–9141, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: The Monkfish FMP is jointly managed by the Councils. The Councils have managed the fishery since 1999 primarily through the allocation of days-at-sea (DAS) and establishment of trip limits for both the directed (DAS) and incidental fisheries. While scientific evidence for stock structure remains equivocal, the fishery has been managed as two stocks divided by a boundary that bisects Georges Bank. Since 2007, both stock components have been determined by stock assessments to be rebuilt (above their respective biomass targets) and not subject to overfishing.

On November 30, 2010, the Councils published a Notice of Intent to prepare an amendment (Amendment 6) to the FMP to consider modifications to the

management program that may include one of several catch shares management alternatives, including sectors or Limited Access Privilege Programs (LAPPs). Sectors are voluntary, self-selected groups of fishermen that are allocated a portion of the available catch. Sector management has already been adopted in the Northeast Multispecies FMP, and a substantial number of vessels that have limited access permits in the monkfish fishery also participate in groundfish sectors. LAPPs are a category of management approaches that provides a person or entity (for example, a community) the exclusive privilege to harvest a specific portion of a fishery's total allowable catch. LAPPs can include individual fishery quotas (IFQs) or community development quotas. Section 303A of the Magnuson-Stevens Act specified general requirements for LAPPs, including the requirement that such programs be approved in a referendum of eligible participants (as defined by the Councils) for New England fisheries.

The Councils are considering catch shares management in the monkfish fishery to address some operational considerations for vessels that participate in the monkfish fishery and also are members of groundfish sectors. NOAA's 2010 Catch Share Policy promotes catch shares management and encourages Councils to consider such programs, where appropriate, to achieve the conservation, social, and economic goals of sustainable fishery management.

Because some elements of catch share programs involve allocation of privileges based on historical performance in the fishery, including, in the case of LAPPs, eligibility to participate in the required referendum, on February 2 and February 16, 2012, the Councils requested that NMFS publish this ANPR announcing a control date in the monkfish fishery, in part to discourage speculative activity, including, but not limited to, increasing landings history, accumulation of fishing permits, or participation in the fishery solely for the purpose of qualifying to vote in the referendum.

The date of publication of this notification, May 9, 2012, shall be known as the ''control date'' for the monkfish fishery and may be used as a reference date for future management measures in determining how to treat fishing privileges or landings history acquired before this date and those acquired after this date, depending on the Councils' determinations on limiting control and ownership of such privileges and landings. The establishment of a control date, however, does not obligate the Councils to use this control date or take any action, nor does it prevent the Councils from picking another control date or imposing limits on permits acquired prior to the control date.

Accordingly, this notification is intended to promote awareness that the Councils may be developing management measures to address these concerns, to provide notice to the public that any current or future accumulation of fishing privilege interests in the monkfish fishery may be affected, restricted, or even nullified, and discourage speculative behavior in the market for fishing privileges while the Councils consider whether and how such limitations on accumulation of fishing privileges should be developed. Any measures the Councils are considering may require changes to the Monkfish FMP. Such measures may be adopted in a future amendment to the FMP, which would include opportunity for further public participation and comment.

If the Councils decide to propose a LAPP for the monkfish fishery, this control date may be used in determining eligibility for referendum voters. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) section 303A(c)(6)(D) requires that any IFQ program developed by the New England Fishery Management Council must be approved by a referendum. NMFS published guidelines for conducting a referendum on December 15, 2008 (73 FR 75968), that detailed the procedures for (1) determining procedures and voting eligibility requirements for IFQ program referenda, and (2) conducting such referenda in a fair and equitable manner. A referendum conducted on a proposed IFQ program in New England must be approved by more than ⅔ of those voting in the referendum among eligible permit holders and other eligible voters. Other eligible voters may include crew members who derive a significant portion of their income from the monkfish fishery.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their ownership or control of monkfish permits and other fishing privileges in the monkfish fishery, as well as monkfish landings in Federal waters. Fishing privileges include, but are not limited to, vessels, fishing permits, DAS, and any other type of catch share.

This notification and control date do not impose any legal obligations, requirements, or expectation.

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

Dated: May 4, 2012.

Paul Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2012–11202 Filed 5–8–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 90

Wednesday, May 9, 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

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for the Quality Samples Program; Correction

AGENCY: Foreign Agricultural Service, U.S. Department of Agriculture.

ACTION: Notice; correction.

SUMMARY: The Foreign Agricultural Service published a document in the **Federal Register** of April 23, 2012, concerning funds availability and inviting applications for the Quality Samples Program (QSP). The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Mark Slupek, 202–720–4327.

Correction

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9635, on page 24166, in the third column, correct the **DATES** caption to read:

DATES: To be considered for funding, applications must be received by 5 p.m. Eastern Daylight Time, May 23, 2012. Any applications received after this time will be considered only if funds are still available.

IV. Application and Submission Information

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9635, on page 24168, in the second column, correct the ''3. Submission Dates and Times'' caption to read:

3. Submission Dates and Times. QSP funding is reviewed on a rolling basis during the fiscal year as long as remaining QSP funding is available as set forth below:

- Proposals received by, but not later than 5 p.m. Eastern Daylight Time, May 23, 2012, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during this review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. Eastern Daylight Time, May 23, 2012, will be considered in the order received for funding only if funding remains available.

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9635, on page 24168, in the second column, correct the ''4. Other Submission Requirements'' caption to read:

4. Other Submission Requirements: All Internet-based applications must be properly submitted by 5 p.m., Eastern Daylight Time, May 23, 2012, in order to be considered for funding; late submissions received after the deadline will be considered only if funding remains available. All applications submitted by email must be received by 5 p.m. Eastern Daylight Time, May 23, 2012, at *podadmin@fas.usda.gov* in order to receive the same consideration.

Dated: April 27, 2012.

Suzanne E. Heinen,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2012–11121 Filed 5–8–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for the Foreign Market Development Cooperator Program; Correction

AGENCY: Foreign Agricultural Service, U.S. Department of Agriculture.

ACTION: Notice; correction.

SUMMARY: The Foreign Agricultural Service published a document in the **Federal Register** of April 23, 2012, concerning funds availability and inviting applications for the Foreign Market Development (Cooperator) Program. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Mark Slupek, 202–720–4327.

Correction

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9638, on page 24171, in the second column, correct the **DATES** caption to read:

DATES: All applications must be received by 5 p.m. Eastern Daylight Time, May 23, 2012. Applications received after this date will not be considered.

IV. Application and Submission Information

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9638, on page 24172, in the second column, correct the ''3. Submission Dates and Times'' caption to read:

3. Submission Dates and Times. All applications must be received by 5 p.m. Eastern Daylight Time, May 23, 2012. All Cooperator program applicants, regardless of the method of submitting an application, also must submit by the application deadline, an original signed certification statement as specified in 7 CFR section 1484.20(a)(14) to the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250. Applications or certifications received after this date will not be considered.

Dated: April 27, 2012.

Suzanne E. Heinen,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2012–11120 Filed 5–8–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for the Technical Assistance for Specialty Crops Program; Correction

AGENCY: Foreign Agricultural Service, U.S. Department of Agriculture.

ACTION: Notice; correction.

SUMMARY: The Foreign Agricultural Service published a document in the **Federal Register** of April 23, 2012, concerning funds availability and inviting applications for the Technical Assistance for Specialty Crops (TASC)

program. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Mark Slupek, 202–720–4327.

Correction

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9633, on page 24164, in the third column, correct the **DATES** caption to read:

DATES: To be considered for funding, applications must be received by 5 p.m. Eastern Daylight Time, May 23, 2012. Any applications received after this time will be considered only if funds are still available.

IV. Application and Submission Information

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9633, on page 24165—24166, in the third column, correct the ''3. Submission Dates and Times'' caption to read:

3. *Submission Dates and Times.* TASC funding is reviewed on a rolling basis during the fiscal year as long as TASC funding is available as set forth below:

- Proposals received by, but not later than, 5 p.m. Eastern Daylight Time, May 23, 2012, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during the review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. Eastern Daylight Time, May 23, 2012, will be considered in the order received for funding only if funding remains available.

Notwithstanding the foregoing, a proposal may be submitted for expedited consideration under the TASC Quick Response process if, in addition to meeting all requirements of the TASC program, a proposal clearly identifies a time-sensitive activity. In these cases, a proposal may be submitted at any time for an expedited evaluation. Such a proposal must include a specific request for expedited evaluation.

FAS will track the time and date of receipt of all proposals.

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9633, on page 24166, in the first column, correct the ''5. Other Submission Requirements'' caption to read:

5. *Other Submission Requirements:* All Internet-based applications must be properly submitted by 5 p.m., Eastern Daylight Time, May 23, 2012, in order to be considered for funding; late submissions received after the deadline will be considered only if funding remains available. All applications submitted by email must be received by 5 p.m. Eastern Daylight Time, May 23, 2012, at *podadmin@fas.usda.gov* in order to receive the same consideration.

Dated: April 27, 2012.

Suzanne E. Heinen,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2012–11122 Filed 5–8–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for the Emerging Markets Program; Correction

AGENCY: Foreign Agricultural Service, U.S. Department of Agriculture.

ACTION: Notice; correction.

SUMMARY: The Foreign Agricultural Service published a document in the **Federal Register** of April 23, 2012, concerning funds availability and inviting applications for the Emerging Markets Program (EMP). The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Mark Slupek, 202–720–4327.

Correction

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9637, on page 24173, in the third column, correct the **DATES** caption to read:

DATES: To be considered for funding, applications must be received by 5 p.m. Eastern Daylight Time, May 23, 2012. Any applications received after this time will be considered only if funds are still available.

IV. Application and Submission Information

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9637, on page 24176, in the first column, correct the ''4. Submission Dates and Times'' caption to read:

4. *Submission Dates and Times.* EMP funding is reviewed on a rolling basis during the fiscal year as long as EMP funding is available as set forth below:

- Proposals received by, but not later than, 5 p.m. Eastern Daylight Time, May 23, 2012, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during the review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. Eastern Daylight Time, May 23, 2012, will be considered in the order received for funding only if funding remains available.

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9637, on page 24176, in the first column, correct the ''5. Other Submission Requirement and Considerations'' caption to read:

5. *Other Submission Requirements.* All Internet-based applications must be properly submitted by 5 p.m., Eastern Daylight Time, May 23, 2012, in order to be considered for funding; late submissions received after the deadline will be considered only if funding remains available. All applications submitted by email must be received by 5 p.m. Eastern Daylight Time, May 23, 2012, at *podadmin@fas.usda.gov* in order to receive the same consideration.

Dated:April 27, 2012.

Suzanne E. Heinen,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2012–11123 Filed 5–8–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for the Market Access Program; Correction

AGENCY: Foreign Agricultural Service, U.S. Department of Agriculture.

ACTION: Notice; correction.

SUMMARY: The Foreign Agricultural Service published a document in the **Federal Register** of April 23, 2012, concerning funds availability and inviting applications for the Market Access Program (MAP). The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Mark Slupek, 202–720–4327.

Correction

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9639, on page 24169, in the second column, correct the **DATES** caption to read:

DATES: All applications must be received by 5 p.m. Eastern Daylight Time, May 23, 2012. Applications

received after this date will not be considered.

IV. Application and Submission Information

In the **Federal Register** of April 23, 2012, in FR Doc. 2012–9639, on page 24170, in the second column, correct the ''3. Submission Dates and Times'' caption to read:

3. *Submission Dates and Times.* All applications must be received by 5 p.m. Eastern Daylight Time, May 23, 2012. All MAP applicants, regardless of the method of submitting an application, must also submit by the application deadline, an original signed certification statement as specified in 7 CFR 1485.13(a)(2)(i)(G) to the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250. Applications or certifications received after this date will not be considered.

Dated: April 27, 2012.

Suzanne E. Heinen,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2012–11124 Filed 5–8–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet on June 6 and 7, 2012. The meeting will be held in Washington, DC at the U.S. Forest Service Yates Building. The purpose of this meeting is to have the working committees discuss the 2013 grant categories; preparation for the 10 year action plan revisions; work plan action items; communications; and accomplishment/recommendations report.

DATES: The meeting will be held on June 6 and 7, 2012, 9 a.m. to 5 p.m. or until Council business is completed.

ADDRESSES: The meeting will be at the U.S. Forest Service,Yates Building, 201 14th Street SW., Washington, DC, second floor training room.

Written comments concerning this meeting should be addressed to Nancy Stremple, Executive Staff to the National Urban and Community Forestry Advisory Council, 201 14th Street SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Comments may also be sent via email to *nstremple@fs.fed.us,* or via facsimile to 202–690–5792.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Visitors are encouraged to call ahead to facilitate entry into the Forest Service building.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff to the National Urban and Community Forestry Advisory Council, 201 14th Street SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, desk phone 202–205–7829, or unit phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Those interested in attending should contact Nancy Stremple to be placed on the meeting attendance list. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff (201 14th Street SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, email: *nstremple@fs.fed.us*) before or after the meeting. Public input sessions will be provided at the meeting.

Dated: May 2, 2012.

Robin L. Thompson,

Associate Deputy Chief, State & Private Forestry.

[FR Doc. 2012–11165 Filed 5–8–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability for the Section 533 Housing Preservation Grants for Fiscal Year 2012

SUMMARY: The Rural Housing Service (RHS), an Agency within Rural Development, announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG program is a grant program which provides qualified public agencies, private non-profit organizations, which may include, but not be limited to, faith-based and community organizations, and other eligible entities grant funds to assist very low- and low-income homeowners in repairing and rehabilitating their homes in rural areas. In addition, the HPG program assists rental property owners and cooperative housing complexes in repairing and rehabilitating their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with RHS regulations which require RHS to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

DATES: If submitting a paper pre-application, the closing deadline for receipt of all applications in response to this Notice is 5 p.m., local time for each Rural Development State Office on June 25, 2012. If submitting the pre-application in electronic format, the deadline for receipt is 5 p.m. Eastern Standard Time on [same date as paper application]. The pre-application closing deadline is firm as to *date and hour.* RHS will not consider any pre-application that is received after the closing deadline. Applicants intending to mail pre-applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting requirements contained in this Notice have been approved by the Office of Management and Budget under Control Number 0575–0115.

Overview

Funding Opportunity Title: Notice of Funds Availability for the Section 533 Housing Preservation Grants for Fiscal Year 2012.

Announcement Type: Initial Notice inviting pre-applications from qualified applicants for Fiscal Year 2012.

Catalog of Federal Domestic Assistance Numbers (CFDA): 10.433.

Dates: If submitting a paper pre-application, the closing deadline for receipt of all applications in response to this Notice is 5 p.m., local time for each Rural Development State Office on June 25, 2012. If submitting the pre-application in electronic format, the deadline for receipt is 5 p.m. Eastern Standard Time on [same date as paper application]. The pre-application

closing deadline is firm as to *date and hour.* RHS will not consider any pre-application that is received after the closing deadline. Applicants intending to mail pre-applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

Program Administration

I. Funding Opportunities Description

The funding instrument for the HPG Program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. You should contact the Rural Development State Office to determine the state allocation.

II. Award Information

For Fiscal Year 2012, $4,167,178.87 is available for the HPG Program. The total includes $472,932.27 in carryover funds from previous appropriations. A set-aside of $600,000.00 has been established for grants located in Rural Economic Area Partnership Zones. Rural Economic Area Partnership Zones and other funds will be distributed under a formula allocation to states pursuant to 7 CFR part 1940 Subpart L, ''Methodology and Formulas for Allocation of Loan and Grant Program Funds.'' Decisions on funding will be based on pre-applications.

III. Eligibility Information

7 CFR part 1944, subpart N provides details on what information must be contained in the pre-application package. Entities wishing to apply for assistance should contact the Rural Development State Office to receive further information, the State allocation of funds, and copies of the pre-application package. Eligible entities for these competitively awarded grants include state and local governments, non-profit corporations, which may include, but not be limited to faith-based and community organizations, Federally recognized Indian tribes, and consortia of eligible entities.

Federally recognized Indian tribes, pursuant to 7 CFR 1944.674, are exempt from the requirement to consult with local leaders including announcing the availability of its statement of activities for review in a newspaper.

As part of the application, all applicants must also provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain registration in the Central Contractor Registration (CCR) database in accordance with 2 CFR part 25. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or by accessing *http://www.dnb.com/us/*. Additional information concerning this requirement is provided in a policy directive issued by OMB and published in the **Federal Register** on June 27, 2003 (68 FR 38402–38405). Similarly, applicants may register for the CCR at *https://www.uscontractorregistration.com/or* by calling 1–877–252–2700.

The Department of Agriculture is participating as a partner in the Government-wide Grants.gov site. Electronic applications must be submitted through the grants.gov web site at: *http://www.grants.gov*, following the instructions found on the web site. Please be mindful that the application deadline for electronic format differs from the deadline for paper format. The electronic format deadline will be based on Eastern Standard Time. The paper format deadline is local time for each Rural Development State Office.

In addition to the electronic application at the *http://www.grants.gov* web site, all applicants must complete and submit the Fiscal Year 2012 pre-application for Section 533 HPG, a copy of which is included with this Notice. Applicants are encouraged to submit this pre-application form electronically by accessing the Web site: *http://www.rurdev.usda.gov/HAD-HPG_Grants.html* and clicking on the link for ''Fiscal Year 2012 Pre-application for Section 533 Housing Preservation Grants (HPG)''.

Applicants are encouraged but not required, to also provide an electronic copy of all hard copy forms and documents submitted in the pre-application/application package as requested by this Notice. The forms and documents must be submitted as read-only PDF Adobe Acrobat files on an electronic media such as CDs, DVDs or USB drives. For each electronic device that you submit, you must include a Table of Contents of all documents and forms on that device. The electronic medium must be submitted to the local State Office.

Please Note: If you receive a loan or grant award under this Notice, USDA reserves the right to post all information submitted as part of the pre-application/application package which is not protected under the Privacy Act on a public Web site with free and open access to any member of the public.

IV. Application and Submission Information

All pre-applications must meet the requirements of 7 CFR part 1944, subpart N, as well as comply with the provisions of this Notice. Pre-applications can be submitted either electronically using the Section 533 pre-application form as found at *http://www.rurdev.usda.gov/HAD-HPG_Grants.html* or by hard copy to the appropriate Rural Development State Office where the project will be located. A hard-copy of the electronic pre-application form is included with this Notice. **Note:** Submission of the electronic Section 533 pre-application form does not constitute submission of the entire pre-application package which requires additional forms and supporting documentation as listed in Section V of this Notice. Although applicants are encouraged to submit the pre-application form electronically, the complete package in its entirety must still be submitted to the local State Office.

Hard copy pre-applications that are submitted to a USDA Rural Development State Office will be date and time stamped to evidence timely or untimely receipt, and upon request, Rural Development will provide the applicant with a written acknowledgement of receipt. A list of State Office contacts may be found in the Section VIII, Agency Contacts, of this Notice. Incomplete pre-applications will be returned to the applicant. No pre-application will be accepted after 5 p.m., local time, for paper copies or 5 p.m. Eastern Standard Time for electronic applications on the application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register**.

Please note that all applicants must obtain DUNS number and register in the CCR prior to submitting a pre-application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration of the CCR database at all times during which it has an active Federal award or an application or plan of construction by the Agency. Similarly all recipients of Federal Financial assistance are required to report information about first-tier subawards and executive compensation in accordance with 2 CFR part 170. So long as an entity applicant does not have exception under 2 CFR Section 170.110(b), the applicant must have necessary processes and systems in place to comply with the reporting

requirements should the applicant receive funding. See 2 CFR Section 170.200(b).

V. Application Review Information

Applicants wishing to apply for assistance must make their statement of activities available to the public for comment. The applicant(s) must announce the availability of its statement of activities for review in a newspaper of general circulation in the project area and allow at least 15 days for public comment. The start of this 15-day period must occur no later than 16 days prior to the last day for acceptance of pre-applications by USDA Rural Development.

All applications for Section 533 funds must be filed electronically or with the appropriate Rural Development State Office and must meet the requirements of this Notice and 7 CFR part 1944, subpart N. Pre-applications determined not eligible and/or not meeting the selection criteria will be notified by the Rural Development State Office. All adverse determinations are appealable pursuant to 7 CFR part 11. Instructions on the appeal process will be provided at the time the applicant is notified of the adverse decision.

If submitting a paper application, applicants will file an original and two copies of Standard Form (SF) 424, ''*Application for Federal Assistance*,'' and supporting information with the appropriate Rural Development State Office. A pre-application package, including SF–424, is available in any Rural Development State Office. In addition, the pre-application form included with this Notice must be submitted either electronically or in hard copy form with all supporting documentation.

All pre-applications shall be accompanied by the following information which Rural Development will use to determine the applicant's eligibility to undertake the HPG program and to evaluate the pre-application under the project selection criteria of 7 CFR 1944.679. References to private non-profit organizations include, but are not limited to faith and community-based organizations:

(a) A statement of activities proposed by the applicant for its HPG program as appropriate to the type of assistance the applicant is proposing, including:

(1) A complete discussion of the type of and conditions for financial assistance for housing preservation, including whether the request for assistance is for a homeowner assistance program, a rental property assistance program, or a cooperative assistance program;

(2) The process for selecting recipients for HPG assistance, determining housing preservation needs of the dwelling, performing the necessary work, and monitoring/inspecting work performed;

(3) A description of the process for identifying potential environmental impacts in accordance with 7 CFR 1944.672, and the provisions for compliance with Stipulation I, A–G of the Programmatic Memorandum of Agreement, also known as PMOA, (RD Instruction 2000–FF, available in any Rural Development State Office or at *http://www.rurdev.usda.gov/SupportDocuments/2000ff.pdf*) in accordance with 7 CFR 1944.673(b);

(4) The development standard(s) the applicant will use for the housing preservation work; and, if the applicant will use the Rural Development standards for existing dwellings, the evidence of its acceptance by the jurisdiction where the grant will be implemented;

(5) The time schedule for completing the program;

(6) The staffing required to complete the program;

(7) The estimated number of very low- and low-income minority and nonminority persons the grantee will assist with HPG funds; and, if a rental property or cooperative assistance program, the number of units and the term of restrictive covenants on their use for very low- and low-income persons;

(8) The geographical area(s) to be served by the HPG program;

(9) The annual estimated budget for the program period based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, i.e., monthly, quarterly, lump sum for program activities, etc.;

(10) A copy of an indirect cost proposal as required in 7 CFR parts 3015, 3016, and 3019, as applicable, when the applicant has another source of Federal funding in addition to the Rural Development HPG program;

(11) A brief description of the accounting system to be used;

(l2) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to Rural Development in accordance with 7 CFR 1944.683(b) and the monitoring plan for rental properties and cooperatives (when applicable) according to 7 CFR 1944.689;

(13) The source and estimated amount of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities;

(14) The use of program income, if any, and the tracking system used for monitoring same;

(15) The applicant's plan for disposition of any security instruments held by them as a result of its HPG activities in the event of its loss of legal status;

(16) Any other information necessary to explain the proposed HPG program; and

(17) The outreach efforts outlined in 7 CFR 1944.671(b).

(b) Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program.

(c) Evidence of the applicant's legal existence, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence 1 year or more; and the names and addresses of the applicant's members, directors and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, pre-applications should be accompanied by the names, addresses, and principal purpose of the other organizations. If the applicant is a consortium, documentation showing compliance with paragraph (4)(ii) under the definition of ''organization'' in 7 CFR 1944.656 must also be included.

(d) For a private non-profit entity, the most recently audited statement and a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant.

(e) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and the actual number of both very low-income and low-income minority

households and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts.

(f) A statement containing the component for alleviating any overcrowding as defined by 7 CFR 1944.656.

(g) Applicant must submit an original and one copy of Form RD 1940–20, ''*Request for Environmental Information,''* prepared in accordance with Exhibit F–1 of RD Instruction 1944–N (available in any Rural Development State Office or at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1940-20.PDF*).

(h) Applicant must also submit a description of its process for:

(1) Identifying and rehabilitating properties listed on, or eligible for listing on, the National Register of Historic Places;

(2) Identifying properties that are located in a floodplain or wetland;

(3) Identifying properties located within the Coastal Barrier Resources System; and

(4) Coordinating with other public and private organizations and programs that provide assistance in the rehabilitation of historic properties (Stipulation I, D, of the PMOA, RD Instruction 2000–FF), available in any Rural Development State Office or at: *http://www.rurdev.usda.gov/SupportDocuments/2000ff.pdf*.

(i) The applicant must also submit evidence of the State Historic Preservation Office's (SHPO), or where appropriate the Tribal Historic Preservation Office's (THPO) concurrence in the proposal, or in the event of nonconcurrence, a copy of SHPO's comments together with evidence that the applicant has received the Advisory Council on Historic Preservation's (Council) advice as to how the disagreement might be resolved, and a copy of any advice provided by the Council.

(j) The applicant must submit written statements and related correspondence reflecting compliance with 7 CFR 1944.674(a) and (c) regarding consultation with local government leaders in the preparation of its program and the consultation with local and state government pursuant to the provisions of Executive Order 12372.

(k) The applicant is to make its statement of activities available to the public for comment prior to submission to Rural Development pursuant to 7 CFR 1944.674(b). The application must contain a description of how the comments (if any were received) were addressed.

(l) The applicant must submit an original and one copy of Form RD 400–1, ''Equal Opportunity Agreement,'' and Form RD 400–4, ''*Assurance Agreement,*'' in accordance with 7 CFR 1944.676. These forms can be obtained at any state office or at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-1.PDF* and *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-4.PDF*.

Applicants should review 7 CFR part 1944, subpart N for a comprehensive list of all application requirements.

VI. Selection Criteria

Applicants and proposed projects must meet the criteria in accordance with 7 CFR 1944.679:

- Provide a financially feasible program of housing preservation assistance. ''Financially feasible'' is defined as proposed assistance which will be affordable to the intended recipient or result in affordable housing for very low- and low-income persons.
- Serve eligible rural areas with a concentration of substandard housing for households with very low- or low-income.
- Be an eligible applicant as defined in 7 CFR 1944.658.
- Meet the requirements of consultation and public comment in accordance with 7 CFR 1944.674.
- Submit a complete pre-application as outlined in 7 CFR 1944.676.

VII. Points System

For applicants meeting all of the requirements listed above, the Rural Development State Offices will then use weighted criteria in accordance with 7 CFR part 1944, subpart N to select the grant recipients. Each preapplication and its accompanying statement of activities will be evaluated and, based solely on the information contained in the pre-application; the applicant's proposal will be numerically rated on each selection criteria within the point range provided. The highest-ranking applicant(s) will be selected based on allocation of funds available to the State.

- Points are awarded based on the percentage of very low-income persons that the applicant proposes to assist, using the following scale:
  - More than 80%: 20 points
  - 61% to 80%: 15 points
  - 41% to 60%: 10 points
  - 20% to 40%: 5 points
  - Less than 20%: 0 points
- The applicant's proposal is expected to result in the following percentage of HPG fund use (excluding administrative costs) in comparison to the total cost of unit preservation. This percentage reflects maximum repair or rehabilitation results with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches. Points are awarded based on the following percentage of HPG funds (excluding administrative costs) to total funds:
  - 50% or less: 20 points
  - 51% to 65%: 15 points
  - 66% to 80%: 10 points
  - 81% to 95%: 5 points
  - 96% to 100%: 0 points
- The applicant has demonstrated its administrative capacity in assisting very low- and low-income persons to obtain adequate housing based on the following (30 points maximum):
  - The organization or a member of its staff has at least one or more years experience successfully managing and operating a rehabilitation or weatherization type program: 10 points.
  - The organization or a member of its staff has at least one or more years experience successfully managing and operating a program assisting very low- and low-income persons obtain housing assistance: 10 points.
  - If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.
- The proposed program will be undertaken entirely in rural areas outside Metropolitan Statistical Areas (MSAs), identified by Rural Development as having populations in excess of 10,000, but not in excess of 20,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population) as defined in 7 CFR 1944.656: 10 points.
- The program will use less than 20 percent of HPG funds for administration purposes:
  - More than 20%: Not eligible
  - 20%: 0 points
  - 19%: 1 point
  - 18%: 2 points
  - 17%: 3 points
  - 16%: 4 points
  - 15% or less: 5 points
- The proposed program contains a component for alleviating overcrowding as defined in 7 CFR 1944.656: 5 points.
- In the event more than one preapplication receives the same amount of points, those pre-applications will then be ranked based on the actual percentage of very-low income persons that the applicant proposes to assist. Further, in the event that preapplications are still tied, then those

preapplications still tied will be ranked based on the percentage for HPG fund use (low to high). Further, for applications where assistance to rental properties or cooperatives is proposed, those still tied will be further ranked based on the number of years the units are available for occupancy under the program (a minimum of 5 years is required). For this part, ranking will be based from most to least number of years.

Finally, if there is still a tie, then a lottery system will be used. After the award selections are made all applicants will be notified of the status of their applications by mail.

VIII. Agency Contacts

Applicants must contact the Rural Development State Office serving the state in which they desire to submit an application to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely and untimely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, Alabama 36106–3683, (334) 279–3455, TDD 1(800) 877–8339, Melinda George.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, Alaska 99645, (907) 761–7740, TDD (907) 761–7786, Cynthia Jackson.

Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Avenue, Suite 206, Phoenix, Arizona 85003–1706, (602) 280–8764, TDD (602) 280–8705, Ernie Wetherbee.

Arkansas State Office, 700 West Capitol Avenue, Room 3416, Little Rock, Arkansas 72201–3225, (501) 301–3258, TDD (501) 301–3279, Clinton King.

California State Office, 430 G Street, #4169, Davis, California 95616–4169, (530) 885–6505, TDD (530) 792–5848, Debra Moretton.

Colorado State Office, Denver Federal Center, Building 56, Room 2300, P.O. Box 25426, Denver, Colorado 80225–0426, (720) 544–2924, TDD 1(800) 659–3656, Donald Nunn.

Connecticut, Served by Massachusetts State Office. Delaware and Maryland State Office, 1221 College Park Drive Suite 200, Dover, Delaware 19904, (302) 857–3606, TDD (302) 857–3585, Marquisa Morrison.

Florida and Virgin Islands State Office, 4440 NW. 25th Place Gainesville, Florida 32606–6563, (352) 338–3438, TDD (352) 338–3499, Theresa Purnell.

Georgia State Office, Stephens Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601–2768, (706) 546–2164, TDD (706) 546–2034, Jack Stanek.

Hawaii State Office, (Services all Hawaii, American Samoa, Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, Hawaii 96720, (808) 933–8303, TDD (808) 933–8321, Nathan Riedel.

Idaho State Office, Suite A1, 9173 West Barnes Drive, Boise, Idaho 83709, (208) 378–5628, TDD 1(800) 877–8339, Joyce Weinzetl.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, Illinois 61821–2986, (217) 403–6225, TDD 711 Relay (217) 403–6225, Brenda Barr.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 290–3100 (ext. 423), TDD (317) 295–5799, Michael Boards.

Iowa State Office, 210 Walnut Street, Room 873, Des Moines, Iowa 50309, (515) 961–5365 (ext. 129), TDD (515) 284–4858, Tony Putz.

Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, Kansas 66604–4040, (785) 271–2700, TDD (785) 271–2767, Mike Resnik.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, Kentucky 40503, (859) 224–7357, TDD (859) 224–7422, Paul Higgins.

Louisiana State Office, 3727 Government Street, Alexandria, Louisiana 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.

Maine State Office, Post Office Box 405, Bangor, Maine 04402–0405, (207) 990–9110, TDD (207) 942–7331, Bob Nadeau.

Maryland, served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street Suite 2, Amherst, Massachusetts 01002, (413) 253–4328, TDD, (413) 253–4590, Richard Lavoie.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, Michigan 48823, (517) 324–5194, TDD (517) 324–5169, Julie Putnam.

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, Minnesota 55125, (763) 689–3354 x 4, TDD (651) 602–7830, Linda Swanson.

Mississippi State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, Mississippi 39269, (601) 965–4325, TDD (601) 965–5717, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, Missouri 65203, (573) 876–0990, TDD (573) 876–9480, Nathan Tutt.

Montana State Office, 2229 Boot Hill Court, Bozeman, Montana 59715, (406) 585–2515, TDD 1(800) 253–4091, Deborah Chorlton.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, Nebraska 68508, (402) 437–5505, TDD (402) 437–5093, Teresa Brohimer.

Nevada State Office, 1390 South Curry Street, Carson City, Nevada 89703–9910, (775) 887–1222 (ext. 106), TDD 711 Relay (775) 887–1222, Mona Sargent.

New Hampshire State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, Vermont 05602, (802) 828–6028, TDD (802) 223–6365, Tammy Surprise.

New Jersey State Office, 5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, New Jersey 08054, (856) 787–7773, TDD (856) 787–7784, Derrick S. Waltz.

New Mexico State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, New Mexico 87109, (505) 761–4945, TDD 1(800) 877–8339, Yvette Pacheco.

New York State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357 5th Floor, Syracuse, New York 13202, (315) 263–4363, TDD (315) 477–6447, Tia Shulkin.

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, North Carolina 27609, (919) 873–2061, TDD 711 Relay (919) 873–2061, LaShonda McKnight.

North Dakota State Office, Federal Building, Room 208, Post Office Box 1737, Bismarck, North Dakota 58502, (701) 530–2049, TDD (800) 366–6888, Kathy Lake.

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, Ohio 43215–2477, (614) 255–2409, TDD 1 (800) 877–8339, Cathy Simmons.

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, Oklahoma 74074–2654, (580) 237–4321, TDD (405) 742–1007, Lesley Worthan.

Oregon State Office, 1201 NE Lloyd Boulevard, Suite 801, Portland, Oregon 97232–1274, (503) 414–3353, TDD (503) 414–3387, Rod Hansen.

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, Pennsylvania 17110–2996, (717) 237–2282, TDD (717) 237–2261, Martha Hanson.

Puerto Rico State Office, IBM Building, Suite 601, Munoz Rivera Ave. #654, San Juan, Puerto Rico 00918, (787) 837–4450 (ext. 104), TDD (787) 766–5332, Angel Lopez.

Rhode Island, served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, South Carolina 29201, (803) 765–5122, TDD (803) 765–5697, Tim Chandler.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street SW., Huron, South Dakota 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka, Linda Weber or Vickie Hampton.

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, Tennessee 37203–1084, (615) 783–1300, TDD (615) 783–1397, Abby Boggs.

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, Texas 76501, (254) 742–9772, TDD 1 (800) 877–8339, Ana Placencia.

Utah State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 301, Salt Lake City, Utah 84138, (801) 524–4308, TDD 711 Relay (801) 524–4308, Janice Kocher.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, Vermont 05602, (802) 828–6028, TDD (802) 223–6365, Tammy Surprise.

Virgin Islands, served by Florida State Office.

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, Virginia 23229, (804) 287–1596, TDD (804) 287–1753, CJ Michels.

Washington State Office, 1835 Black Lake Boulevard, Suite B, Olympia, Washington 98512, (360) 704–7706, TDD 1 (800) 833–6384, Bill Kirkwood.

Western Pacific Territories, served by Hawaii State Office.

West Virginia, 530 Freedom Road, Ripley, West Virginia 25271–9794, (304) 372–3441, ext. 105, TDD (304) 284–4836, Penny Thaxton.

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, Wisconsin 54481, (715) 345–7620, TDD (715) 345–7614, Dave Schwobe or Julie Czappa.

Wyoming State Office, Post Office Box 82601, Casper, Wyoming 82602–5006, (307) 233–6733, TDD 1 (800) 877–9965, Laura Koenig.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Bonnie Edwards-Jackson, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, USDA Rural Development, Stop 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781, telephone (202) 690–0759 (voice) (this is not a toll free number) or (800) 877–8339 (TDD–Federal Information Relay Service) or via email at, *Bonnie.Edwards@wdc.usda.gov.*

VIV. Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), (202) 720–6382 (TDD). ''USDA is an equal opportunity provider, employer, and lender.''

Dated:May 2, 2012.

Tammye Treviño,

Administrator, Rural Housing Service.

Fiscal Year 2012 Pre-application for Section 533 Housing Preservation Grants (HPG) Instructions

Applicants are encouraged, but not required, to submit this pre-application form electronically by accessing the Web site: *http://www.rurdev.usda.gov/HAD-HPG_Grants.html* and clicking on the link for the ''Fiscal Year 2012 Pre-application for Section 533 Housing Preservation Grants (HPG).'' Please note that electronic submittals are not on a secured Web site. If you do not wish to submit the form electronically by clicking on the Send Form button, you may still fill out the form, print it and submit it with your application package to the State Office. You also have the option to save the form, and submit it on an electronic media to the State Office.

Supporting documentation required by this pre-application may be attached to the email generated when you click the Send Form button to submit the form. However if the attachments are too numerous or large in size, the email box will not be able to accept them. In that case, submit the supporting documentation for this pre-application to the State Office with your complete application package. Under item IX. Documents Submitted, indicate the supporting documents that you are submitting either with the pre-application or to the State Office.

I. Applicant Information

a. Applicant's Name: _____

b. Applicant's Address:

Address, Line 1: _____

Address, Line 2: _____

City: _____

State: _____

Zip: _____

c. Name of Applicant's Contact Person:

_____

d. Contact Person's Telephone Number:

_____

e. Contact Person's Email Address:

_____

f. Entity Type: (Check One)

☐ State Government
☐ Local Government
☐ Non-Profit Corporation
☐ Federally Recognized Indian Tribes
☐ Faith-based Organization
☐ Community Organization
☐ Other consortia of an eligible entity

II. Project Information

a. Project Name:

_____

b. Project Address:

Address, Line 1: _____

Address, Line 2: _____

City: _____

State: _____

Zip: _____

c. Organization DUNS number: _____

d. Grant Amount Requested: _____

e. This grant request is for one of the following types of assistance:

☐ Homeowner assistance program
☐ Rental property assistance program
☐ Cooperative assistance program

f. In response to e. above, answer one of the following:

The number of low- and very-low income persons that the grantee will assist in the Homeowner assistance program: _____ OR

The number of Units for low- and very-low income persons in the Rental property or Cooperative assistance program: _____

g. This proposal is for one of the following:

☐ Housing Preservation Grant (HPG) program (no set-aside)
☐ Set-aside for Grant located in a Rural Economic Area Partnership (REAP) zone

III. Low-Income Assistance

Check the percentage of very low-income persons that this application proposes to assist in relation to the total population of the project:

☐ More than 80 percent (20 points)
☐ 61 percent to 80 percent (15 points)
☐ 41 percent to 60 percent (10 points)
☐ 20 percent to 40 percent (5 points)
☐ Less than 20 percent (0 points)
☐ **Points:** _____

IV. Percent of HPG Fund Use

Check the percentage of HPG fund use (excluding administrative costs) in comparison to the total cost of unit preservation. This percentage reflects maximum repair or rehabilitation results with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches.

☐ 50 percent or less of HPG Funds (20 points)

☐ 51 percent to 65 percent of HPG Funds (15 points)
☐ 66 percent to 80 percent of HPG Funds (10 points)
☐ 81 percent to 95 percent of HPG Funds (5 points)
☐ 96 percent to 100 percent of HPG Funds (0 points)
Points: _____

V. Administrative Capacity

The following three criteria demonstrate your administrative capacity to assist very low- and low-income persons to obtain adequate housing (30 points maximum).

a. Does this organization or a member of its staff have at least one or more years of experience successfully managing and operating a rehabilitation or weatherization type of program? (10 points) Yes _____ No _____ **Points:** _____

b. Does this organization or a member of its staff have at least one or more years of experience successfully managing and operating a program assisting very low- or low-income persons obtain housing assistance? (10 points) Yes _____ No _____ **Points:** _____

c. If this organization has administered grant programs, are there any outstanding or unresolved audit or investigative findings which might impair carrying out the proposal? (10 points for No) No _____ Yes _____ **Points:** _____

If Yes, please explain:

_____
_____
_____

VI. Area Served

Will this proposal be undertaken entirely in rural areas outside Metropolitan Statistical Areas, also known as MSAs, in areas identified by Rural Development as having populations below 10,000, or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population) as defined in 7 CFR 1944.656 (10 points) Yes _____ No _____ **Points:** _____

VII. Percent of HPG Funds for Administration

Check the percentage of HPG funds that will be used for Administration purposes:
More than 20 percent (Not eligible) _____
☐ 20 percent (0 points)
☐ 19 percent (1 point)
☐ 18 percent (2 points)
☐ 17 percent (3 points)
☐ 16 percent (4 points)
☐ 15 percent or less (5 points)
Points: _____

VIII. Alleviating Overcrowding

Does the proposed program contain a component for alleviating overcrowding as defined in 7 CFR1944.656? (5 points) Yes _____ No _____ **Points:** _____

IX. Documents Submitted

Check if the following documents are being submitted electronically with this pre-application or will be mailed to the State Office with your complete pre-application package.

NOTE: You are only required to submit supporting documents for programs in which you will be participating as indicated in this pre-application. Points will be assigned for the items that you checked based on a review of the supporting documents. **Please refer to the NOFA for the complete list of documents that you are required to submit with your complete pre-application package.**

Reference	Item	Submitted with this pre-application	Submitted to state office
III.	Low Income Assistance		
IV.	Percent of HPG Fund Use		
V.	Administrative Capacity		
VI.	Area Served		
VII	Percent of HPG Funds for Administration		
VIII.	Alleviating Overcrowding		

X. HPG 2012 Scoring

PLEASE NOTE: The scoring below is based on the responses that you have provided on this pre-application form and may not accord with the final score that the Agency assigns upon evaluating the supporting documentation that you submit. Your score may change from what you see here if the supporting documentation does not adequately support your answer or, if required documentation is missing.

	Scoring Items for HPG 2012	**Points Earned**
1.	Low Income Assistance (5, 10, 15, 20)	
2.	Percent of HPG Fund Use (5, 10, 15, 20)	
3.	Administrative Capacity (10, 20, 30)	
	Scoring Items for HPG 2012	**Points Earned**
4.	Area Served (10)	
5.	Percent of HPG Funds for Administration (1, 2, 3, 4, 5)	
6.	Alleviating Overcrowding (5)	
	Total Score:	

[FR Doc. 2012–11036 Filed 5–8–12; 8:45 am]
BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council (council): Native Hawaiian, Fishing, Education, Research (primary only), Hawai'i County, Kaua'i County, Maui County,

Honolulu County (alternate only), Commercial Shipping (alternate only) and Youth/Student Seat (ages 14–17). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the council's charter.

DATES: Applications are due by 30 June 2012.

ADDRESSES: Application kits may be obtained from Joseph Paulin, 6600 Kalanianaole Hwy, Suite 301, Honolulu, HI 96825 or *Joseph.Paulin@noaa.gov.* Completed applications should be sent to the same address. Applications are also available on line at *http://hawaiihumpbackwhale.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Paulin, 6600 Kalanianaole Hwy, Suite 301, Honolulu, HI 96825 or *Joseph.Paulin@noaa.gov* or 808.397.2651 x 257.

SUPPLEMENTARY INFORMATION: The Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council was established in March 1996 to assure continued public participation in the management of the sanctuary. Since its establishment, the council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The council's nineteen voting members represent a variety of local user groups, as well as the general public.

The council is supported by five committees: An Executive Committee chaired by the Sanctuary Advisory Council Chair, a Research Committee chaired by the Research Representative, an Education Committee chaired by the Education Representative, a Conservation Committee chaired by the Conservation Representative, and a Native Hawaiian Committee chaired by the Native Hawaiian Representative, each respectively dealing with matters concerning research, education, resource protection, and Native Hawaiian Culture.

The council represents the coordination link between the sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The council functions in an advisory capacity to the sanctuary management and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The council works in concert with the sanctuary management by keeping him or her informed about issues of concern throughout the sanctuary, offering recommendations on specific issues, and aiding in achieving the goals of the sanctuary within the context of marine programs and policies of Hawai'i.

Authority: 16 U.S.C. 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 1, 2012.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–11032 Filed 5–8–12; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC019

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for three new scientific research permits, two research permit renewals, and one permit modification.

SUMMARY: Notice is hereby given that NMFS has received six scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on June 8, 2012.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE. Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by email to *nmfs.nwr.apps@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rob Clapp, Portland, OR (ph.: 503–231–2314), Fax: 503–230–5441, email: *Robert.Clapp@noaa.gov*). Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Puget Sound (PS); threatened lower Columbia River (LCR); endangered upper Columbia River (UCR); threatened Snake River (SR) spring/sum (spr/sum); threatened SR fall;

Steelhead (*O. mykiss*): Threatened PS; threatened LCR; threatened UCR; threatened SR; threatened middle Columbia River (MCR).

Chum salmon (*O. keta*): Threatened Columbia River (CR).

Coho salmon (*O. kisutch*): Threatened LCR.

Eulachon: (*Thaleichthys pacificus):* Threatened southern distinct population segment (DPS)

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1135–7R

The United States Geological Survey (USGS) is requesting to renew its permit to take adult and juvenile LCR steelhead. The purpose of this study is to collect information on the survival,

growth, habitat use, population density, health, and life-histories of steelhead in the Wind River subbasin of southern Washington. The research would provide information to help state, tribal, and Federal managers in their efforts to restore LCR steelhead populations and habitats. Permit 1135 has been in place for several years and recently expired on December 31, 2011. Adult and juvenile LCR steelhead would be observed and possibly harassed during snorkel and habitat surveys. Juvenile LCR steelhead would be collected (using backpack electrofishers, minnow traps, angling, seines, and weir traps), anesthetized, sampled for biological data (length, weight, disease status) and tissues/scales. The fish would then be allowed to recover from the anesthesia and released. In addition, some juvenile LCR steelhead would be tagged with passive integrated transponders (PIT-tags), some would be killed for pathological analyses, and a few more may die as an unintended result of the research.

Permit 1175–5R

The Gifford Pinchot National Forest (GPNF) is requesting to renew its permit to take juvenile PS Chinook salmon, PS steelhead, MCR steelhead, LCR Chinook salmon, LCR coho salmon, and LCR steelhead. The purpose of this research is to determine fish species presence and distribution, record fish habitat conditions, and inventory spawning areas on lands the GPNF administers. The information would be used in broad-scale analyses (e.g., watershed analysis) and project-level planning (e.g., timber sales and habitat restoration projects). The research would benefit listed salmonids by providing the GPNF with information to improve forest management. Permit 1175 has been in place for ten years and recently expired on December 31, 2011. The GPNF would observe/harass adult and juvenile salmonids during spawner and redd counts, snorkel surveys, and habitat surveys. The GPNF would also capture (using backpack electrofishing equipment or seines), handle, and release juvenile salmonids. The GPNF does not intend to kill any fish being captured, but a small number of fish may die as an unintentional result of the research activities.

Permit 16290–2M

The Oregon Department of Fish and Wildlife (ODFW) is seeking to modify its permit that currently allows it to annually take listed salmonids while conducting research on the Oregon chub. The ODFW is requesting to increase the number of juvenile fish they may take. The purpose of the research is to study the distribution, abundance, and factors limiting the recovery of Oregon chub. The ODFW would capture, handle, and release juvenile UWR Chinook salmon, UWR steelhead, LCR Chinook salmon, LCR steelhead, LCR coho salmon, and CR chum salmon while conducting the research. The Oregon chub is endemic to the Willamette Valley of Oregon and the habitats it depends on are also important to salmonids. Research on the Oregon chub would benefit listed salmonids by helping managers recover habitats the species share. The ODFW would use boat electrofishing equipment, minnow traps, beach seines, dip nets, hoop nets, and fyke nets to capture juvenile fish. Researchers would avoid contact with adult fish. If listed salmonids are captured during the research they would be released immediately. The researchers do not expect to kill any listed salmonids but a small number may die as an unintended result of the research activities.

Permit 16791

The United States Fish and Wildlife Service (FWS) is seeking a 5-year permit to take juvenile LCR coho salmon and steelhead during research designed to assess the distribution of coastal cutthroat trout in the lower Columbia River basin and establish a baseline dataset for long-term monitoring. The objectives are to (1) establish a random sampling protocol for coastal cutthroat trout, (2) determine coastal cutthroat trout distribution and abundance, (3) record baseline habitat parameters at all sample sites, and (4) determine if habitat parameters correlate to coastal cutthroat trout distribution and abundance. Research on coastal cutthroat trout would benefit listed salmonids by helping managers recover habitats the species share. Researchers would use backpack electrofishing equipment to capture fish. The FWS would immediately release listed salmon and steelhead. Researchers may also harass adult LCR Chinook and coho salmon during habitat surveys. The FWS does not intend to kill any listed salmonids but a small number of juvenile fish may die as an unintended result of the research activities.

Permit 16792

The FWS is seeking a 5-year permit to take juvenile LCR coho salmon and steelhead during research designed to assess the distribution of bull trout in the Lewis River, Washington. The objectives of the research are to (1) establish a random sampling protocol for bull trout, (2) determine bull trout distribution and abundance, (3) record baseline habitat parameters at all sample sites, and (4) determine if habitat parameters correlate to bull trout distribution and abundance. Research on bull trout would benefit listed salmonids by helping managers recover habitats the species share. Researchers would use backpack electrofishing equipment to capture fish. The FWS would immediately release listed salmon and steelhead. The FWS does not intend to kill any listed salmonids but a small number of juvenile fish may die as an unintended result of the research activities.

Permit 16866

The Oregon State University (OSU) Department of Fisheries and Wildlife is requesting a five-year research permit to take adult and juvenile UCR Chinook and steelhead, SR spr/sum and fall Chinook, SR steelhead, MCR steelhead, LCR Chinook, LCR coho, LCR steelhead, CR chum, and UWR Chinook and steelhead during the course of research designed to provide information on the dynamics and use of cold water refuges by anadromous salmon and other cold water species. The project would also take Southern DPS eulachon. The information would provide managers with a more rigorous understanding of thermal regimes in river systems and help guide conservation and restoration planning and species management. The study would benefit listed salmonids by helping determine whether (and how) the ecosystem services of cold water habitats can be quantified and incorporated into restoration and conservation programs. The OSU proposes to capture (using boat electrofishing), identify, measure, and release juvenile fish. Adult fish may be encountered but would not be netted. The OSU does not intend to kill any of the fish being captured, but a few may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: May 3, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–11205 Filed 5–8–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC020

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; availability of hatchery plans and request for comment

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has submitted four Hatchery and Genetic Management Plans (HGMPs) pursuant to the protective regulations promulgated for Pacific salmon and steelhead under the Endangered Species Act (ESA). The HGMPs specify the operations of four hatchery programs rearing salmon and steelhead in the Sandy River subbasin within the State of Oregon. This document serves to notify the public of the availability of the HGMPs and associated draft environmental assessment (EA) for comment prior to a decision by NMFS whether to approve the proposed hatchery programs.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on June 8, 2012.

ADDRESSES: Written comments on the application should be addressed to the NMFS Salmon Management Division, 1201 NE. Lloyd Boulevard, Suite 1100, Portland, OR 97232, or faxed to 503–872–2737. Comments may be submitted by email. The mailbox address for providing email comments is: *SandyHatcheries.nwr@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Oregon's Sandy hatchery plans.

FOR FURTHER INFORMATION CONTACT: Rich Turner, at phone number: (503) 736–4737, or email: *Rich.Turner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated Lower Columbia River.

Chum salmon (*O. keta*): threatened, naturally produced and artificially propagated Columbia River.

Coho salmon (*O. kisutch*): threatened, naturally produced and artificially propagated Lower Columbia River.

Steelhead (*O. mykiss*): threatened, naturally produced and artificially propagated Lower Columbia River.

Pacific eulachon (*Thaleichthys pacificus*): threatened, naturally produced southern distinct population segment.

ODFW has submitted to NMFS four HGMPs describing hatchery programs that release salmon and steelhead into the Sandy River in a manner that is intended to comply with requirements of the ESA under limit 5 of the 4(d) Rule. The programs are designed to meet mitigation responsibilities related to impacts from development in the Sandy River and Columbia River basins by providing hatchery fish to support fishing opportunities while minimizing potential risks to natural-origin spring Chinook salmon, coho salmon, and winter steelhead populations, consistent with Oregon's Lower Columbia River Conservation and Recovery Plan for Oregon Populations of Salmon and Steelhead.

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422) and updated June 28, 2005 (70 FR 37160), NMFS may approve an HGMP if it meets criteria set forth in 50 CFR 223.203(b)(5)(i)(A) through (K). Prior to final approval of an HGMP, NMFS must publish notification announcing its availability for public review and comment.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 5 of the updated 4(d) rule (50 CFR 223.203(b)(5)) further provides that the prohibitions of paragraph (a) of the updated 4(d) rule (50 CFR 223.203(a)) do not apply to activities associated with artificial propagation programs provided that an HGMP has been approved by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005).

Dated: May 3, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–11206 Filed 5–8–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Extension of Application Period for Seats for the Channel Islands National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of extension for application period and request for applications.

SUMMARY: The ONMS is extending the deadline and seeking applications for the following vacant seats on the Channel Islands National Marine Sanctuary Advisory Council: Chumash Community Member and Alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the council's Charter.

DATES: Applications are due by May 16, 2012.

ADDRESSES: Application kits may be obtained at *http://www.channelislands.noaa.gov/sac/news.html.* Completed applications should be sent to *Sara.Hutto@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Murray, Channel Islands National Marine Sanctuary, 113 Harbor Way Suite 150 Santa Barbara, CA 93109–2315, 805–884–1464 extension 464, *michael.murray@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Council was originally established in December 1998 and has a broad representation consisting of 21 members, including ten government agency representatives and eleven members from the general public. The Council functions in an advisory capacity to the Sanctuary Superintendent. The Council works in concert with the Sanctuary

Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the National Marine Sanctuary Program. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting to develop an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the National Marine Sanctuary Program.

Authority: 16 U.S.C. 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 26, 2012.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–11031 Filed 5–8–12; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA961

Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Marine Geophysical Survey in the South-Eastern Pacific Ocean, May, 2012

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

ACTION: Notice; issuance of an Incidental Take 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 the Scripps Institution of Oceanography (SIO) to take marine mammals, by Level B harassment, incidental to conducting a low-energy marine geophysical (*i.e.,* seismic) survey in the south-eastern Pacific Ocean, May, 2012.

DATES: Effective May 4, 2012 through June 29, 2012.

ADDRESSES: A copy of the final IHA and application are available by writing 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 or by telephoning the contacts listed here.

A copy of the IHA 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 visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce (Secretary) 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 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'' 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 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's 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.

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].

The National Science Foundation (NSF) has prepared a ''National Environmental Policy Act Analysis Pursuant to Executive Order 12114 of a Marine Geophysical Survey by the R/V *Melville* in the South-Eastern Pacific Ocean May 2012.'' The analysis incorporates an ''Final Environmental Analysis of a Marine Geophysical Survey by the R/V *Melville* in the South-Eastern Pacific Ocean off Chile, May 2012,'' prepared by LGL Ltd., Environmental Research Associates (LGL), on behalf of NSF and SIO, which is also available at the same internet address. To meet NMFS's NEPA requirements for the issuance of an IHA to SIO, NMFS prepared an ''Environmental Assessment on the Issuance of an Incidental Harassment Authorization to the Scripps Institution of Oceanography to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the South-Eastern Pacific Ocean, May, 2012.'' NMFS also issued a Biological Opinion (BiOp) under section 7 of the Endangered Species Act (ESA) to evaluate the effects of the survey and IHA on marine species listed as threatened or endangered. The NMFS BiOp will be available online at: *http://www.nmfs.noaa.gov/pr/consultations/opinions.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

Summary of Request

NMFS received an application on December 23, 2011, from SIO for the taking by harassment, of marine mammals, incidental to conducting a low-energy marine seismic survey in the

south-eastern Pacific Ocean. SIO, a part of the University of California San Diego, with research funding from the NSF, plans to conduct a low-energy seismic survey in the South-Eastern Pacific Ocean off the coast of Chile during May, 2012, for approximately five to 11 days. The survey will use a pair of Generator Injector (GI) airguns each with a discharge volume of 45 or 105 cubic inches (in^3) (maximum total volume of 210 in^3) . SIO plans to conduct the survey from approximately May 4 to 18, 2012. The seismic survey will be conducted in the Exclusive Economic Zone (EEZ) of Chile. On behalf of SIO, the U.S. State Department will seek authorization from Chile for clearance to work in its EEZ. On March 13, 2012, NMFS published a notice in the **Federal Register** (77 FR 14744) making preliminary determinations and proposing to issue an IHA. The notice initiated a 30 day public comment period.

SIO plans to use one source vessel, the R/V *Melville* (*Melville*) and a seismic airgun array to collect seismic reflection and refraction profiles to monitor the post-seismic response of the outer acretionary prism, the area where sediments are accreted onto the non-subducting tectonic plate at the convergent plate boundary off of the coast of Chile. In addition to the operations of the seismic airgun array, SIO intends to operate a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) continuously throughout the survey.

Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause a short-term behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal taking associated with these activities and SIO has requested an authorization to take 20 species of marine mammals by Level B harassment. Take is not expected to result from the use of the MBES or SBP, for reasons discussed in this notice; nor is take expected to result from collision with the vessel because it is a single vessel moving at a relatively slow speed during seismic acquisition within the survey, for a relatively short period of time (approximately five to 11 days). It is likely that any marine mammal would be able to avoid the vessel.

Description of the Specified Activity

SIO's planned seismic survey in the south-eastern Pacific Ocean will take place for approximately 5 to 11 days in May, 2012 (see Figure 1 of the IHA application). The seismic survey will take place in water depths ranging from approximately 1,000 to 5,300 meters (m) (3,280.8 to 17,388.5 feet [ft]) and the program will consist of approximately 1,145 kilometers (km) (618.3 nautical miles [nmi]) of seismic survey tracklines (see Figure 1 of the IHA application). The survey will take place in the area approximately 34° to 36° South, 72° to 74° West, off the coast of Chile. The project is scheduled to occur from approximately May 4 to 18, 2012. Some minor deviation from these dates is possible, depending on logistics and weather.

The survey will involve one source vessel, the *Melville.* For the seismic component of the research program, the *Melville* will deploy an array of two low-energy Sercel Generator Injector (GI) airguns as an energy source (each with a discharge volume of 45 or 105 in^3, maximum total volume 210 in^3) at a tow depth of 2 m (6.6 ft). The acoustic receiving system will consist of a 200 to 800 m (656.2 to 2,624.7 ft) hydrophone streamer with up to 48 channels with 12.5 m (41 ft) channel spacing, and broadband Ocean Bottom Seismometers (OBSs). The energy to the airguns is compressed air supplied by compressors on board the source vessel. As the airgun is towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the on-board processing system. The OBSs acquire the signal, process the data, and log it internally until the instrument is retrieved and the data is recovered.

SIO plans to use conventional low-energy seismic methodology to monitor the post-seismic response of the outer accretionary prism, the area where sediments are accreted onto the non-subducting tectonic plate at the convergent plate boundary. To provide constraints on the fault structure and seismic stratigraphy in the accretionary wedge, high resolution seismic data will be acquired using two GI airguns shot simultaneously. Simultaneous shots from both airguns will provide penetration to basement in the trench and clearly define fault structures and folds in the slop basin sediments that overlie the accretionary complex. The primary tracklines, approximately 569 km (307.2 nmi), identified in Figure 1 of the IHA application, will be surveyed first. Depending on the weather, quality and at sea conditions, efforts will be made to survey the secondary tracklines, approximately 576 km (311 nmi), identified in Figure 1 of the IHA application. During the survey OBSs will be deployed and survey profiles will be taken along the tracklines that extend from the trench across the accretionary complex to the region of greatest slip. These data will be processed onboard the vessel and will be used to optimize the location of remaining profiles to be collected within the survey site area. In addition to the operations of the airgun array, a MBES and SBP will also be operated from the *Melville* continuously throughout the cruise. There will be additional seismic operations associated with equipment testing, start-up, and possible line changes or repeat coverage of any areas where initial data quality is sub-standard. In SIO's calculations, 25% has been added for those contingency operations.

All planned geophysical data acquisition activities will be conducted by technicians provided by SIO, with on-board assistance by the scientists who have planned the study. The Principal Investigator (PI) is Dr. Anne Trehu of Oregon State University. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

Description of the Dates, Duration, and Specified Geographic Region

The *Melville* is expected to depart and return to Bahia de Valparaiso, Chile. The cruise is scheduled to occur for approximately 5 to 11 days from May 4 to 18, 2012. Of the approximately 15 day cruise, approximately five days will be spent collecting seismic data along the primary tracklines, with potential for an additional six days of seismic data acquisition along the secondary tracklines, barring weather or instrument related issues. Remaining cruise time will be spent transiting to and from port. Some minor deviation from this schedule is possible, depending on logistics and weather. The survey will occur in the area approximately 34° to 35° South, approximately 72° to 74° West (see Figure 1 of the IHA application). Water depths in the survey area generally range from approximately 1,000 to 5,300 m (3,280.8 to 17,388.5 ft). The seismic survey will be conducted in the EEZ of Chile, approximately 50 km (27 nmi) off the coast of Chile.

NMFS outlined the purpose of the program in a previous notice for the proposed IHA (77 FR 14744, March 13, 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 proposed IHA notice (77 FR 14744, March 13, 2012), the IHA application, EA, and associated

documents referenced above this section.

Comments and Responses

A notice of proposed IHA for the SIO seismic survey was published in the **Federal Register** on March 13, 2012 (77 FR 14744). During the 30 day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). The Commission's comments are online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are their substantive comments and NMFS's response:

Comment 1: The Commission recommends that NMFS require SIO to re-estimate exclusion zones (EZ) and buffer zones for the two airgun array and associated number of marine mammal takes using operational and site-specific environmental parameters—if the EZs and buffer zones and number of takes are not re-estimated; and require SIO to provide a detailed justification for basing the EZs and buffer zones for the proposed survey in the south-eastern Pacific Ocean on modeling that relies on measurements from the Gulf of Mexico (GOM). The Commission would like an opportunity to evaluate the detailed justification prior to issuance of the authorization.

Response: With respect to the Commission's first point, based upon the best available information and NMFS' analysis of the likely effects of the specified activity on marine mammals and their habitat, NMFS is satisfied that the data supplied by SIO are sufficient for NMFS to conduct its analysis and support the determinations under the MMPA, Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), and the National Environmental Policy Act (NEPA). The identified zones are appropriate for the survey and additional field measurements are not necessary at this time. Thus, for this survey, NMFS will not require SIO to re-estimate the proposed exclusion zones (EZs) and buffer zones and associated number of marine mammal takes using operational and site-specific environmental parameters.

With respect to the Commission's second point, SIO has modeled the EZ and buffer zones in the action area based on L–DEO's 2003 (Tolstoy *et al.,* 2004) and 2007–2008 (Tolstoy *et al.,* 2009) peer-reviewed, calibration studies in the northern Gulf of Mexico. Received levels have been modeled by L–DEO for a number of airgun configurations, including two 105 in^3 GI airguns, in relation to distance and direction from the airguns (see Figure 2a and 2b of the IHA application). NSF's environmental analysis (see Appendix A) includes detailed information on the study, their modeling process, and a comparison of SIO's modeled results with results of the 2007 to 2008 *Marcus G. Langseth* calibration experiment in shallow, intermediate, and deep water. The conclusions in Appendix A show that SIO's model represents the actual produced sound levels, particularly within the first few kms, where the predicted zone (*i.e.,* EZ) lie. At greater distances, local oceanographic variations begin to take effect, and the model tends to over predict.

Because the modeling matches the observed measurement data, the authors concluded that those using the models to predict zones can continue to do so, including predicting EZs and buffer zones around the vessel for various tow depths. At present, L–DEO's model does not account for site-specific environmental conditions and the calibration study analysis of the model predicted that using site-specific information may actually estimate less conservative EZs at greater distances.

While it is difficult to estimate exposures of marine mammals to acoustic stimuli, NMFS is confident that SIO's approach to quantifying the EZs and buffer zones uses the best available scientific information and estimation methodologies. After considering this commend and evaluating the respective approaches for establishing EZs and buffer zones, NMFS had determined that SIO's approach and corresponding monitoring and mitigation measures will effect the least practicable impact on affected marine mammal species or stocks.

Comment 2: The Commission recommends that NMFS, before issuing the requested IHA, (1) use species-specific maximum densities derived by multiplying the best density estimates by a precautionary correction factor and (2) re-estimate the anticipated number of takes using that precautionary approach.

Response: For purposes of this IHA, NMFS is using the estimated densities provided in the applicant's application to estimate the number of authorized takes for SIO's seismic survey in the south-eastern Pacific Ocean as NMFS is confident in the assumptions and calculations used to estimate density for this survey area. SIO used reported densities from five sources (*i.e.,* Read *et al.,* 2009; Ferguson and Barlow, 2003; Shiavini *et al.,* 1999; Heinrich, 2006; and Galletti-Vernazzani and Cabrera, 2009) that included habitat modeling for estimating cetacean densities based on numerous surveys in the eastern tropical Pacific for 11 cetacean species as well as a correction factor (0.5) for estimated densities from regional aerial and/or vessel surveys near the action area for dusky and Chilean dolphins as well as blue whales. Estimated densities that were obtained or assigned to each cetacean species have been corrected for both detectability and availability bias by the authors. SIO's use of these peer-reviewed, model-based, density estimates are the best available information to estimate density for the survey area and to estimate the number of authorized takes for the seismic survey in the south-eastern Pacific Ocean. The results of the associated monitoring reports show that the past use of the best estimates was appropriate and has not refuted NMFS's past determinations.

Comment 3: The Commission recommends that, before issuing the requested IHA, NMFS prohibit the use of a 15 minute pause (*i.e.,* extended shut-down) following the sighting of a mysticete or large odontocete in the exclusion zone and extend that pause to cover the maximum dive times of the species likely to be encountered prior to initiating ramp-up procedures.

Response: NMFS would like to clarify the Commission's understanding of two conditions within the IHA—one related to turning on the airguns (ramp-up) after a shut-down due to a marine mammal sighting about to enter or within the EZ, and the other related to a ramp-up after an extended shut-down (*i.e.,* the 15 minute pause due to equipment failure or routine maintenance).

To clarify, the IHA requires the *Melville* to shut-down the airguns when a Protected Species Observer (PSO) sees a marine mammal within, approaching, or entering the relevant EZs for cetaceans or for pinnipeds. Following a shut-down, the *Melville* would only ramp-up the airguns if a marine mammal had exited the EZ or if the PSO had not seen the animals within the relevant EZ for 15 minutes for species with shorter dive times (*i.e.,* small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (*i.e.,* mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

NMFS believes that 30 minutes is an adequate length for the monitoring period prior to the ramp-up of the airgun array after sighting a mysticete or large odontocete for the following reasons:

- The *Melville* can transit roughly 5 knots; the ship would move 2.3 km (1.25 nmi) in 15 minutes or 4.6 km (2.5 nmi) in 30 minutes. At this distance, the

vessel will have moved 65.7 times (4.6 km/0.07 km) away from the distance of the original 180 dB EZ (70 m [229.7 ft] for two 105 in^3 airguns) from the initial sighting. The vessel will have moved 115 times (4.6 km/0.04 km) away from the distance of the 180 dB EZ (40 m [131.2 ft] for the two 45 in^3 GI airguns) from the initial sighting.

• The relevant EZs for cetaceans and pinnipeds are relatively small (*i.e.,* 70 m for cetaceans and 20 m [65.6 ft] for pinnipeds for the two 105 in^3 GI airguns, and 40 m for cetaceans and 10 m [32.8 ft] for pinnipeds for the two 45 in^3 GI airguns). Extending the monitoring period for a relatively small EZ would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the EZ for the full source level and would not further minimize the potential for take.

• Because a significant part of their movement is vertical (deep-diving), it is unlikely that a submerged mysticete or large odontocete would move in the same direction and speed (roughly 5 knots) with the vessel for 30 minutes. If a mysticete or large odontocete's maximum underwater dive time is 45 minutes, then there is only a one in three chance that the last random surfacing could occur within the 70 or 40 m EZ.

• The PSOs are constantly monitoring the horizon and the EZs during the 30 minute period. On average, PSOs can observe to the horizon (10 km; 5.4 nmi) from the height of the *Melville's* observation deck and should be able to say with a reasonable degree of confidence whether a marine mammal would be encountered within this distance before resuming the two GI airgun operations at full power.

Next, NMFS intends to clarify the monitoring period associated with an extended shut-down (*i.e.,* the 15 minute pause due to equipment failure or routine maintenance). During active seismic operations, there are occasions when the *Melville* crew will need to temporarily shut-down the airguns due to equipment failure or for maintenance. Thus, an extended shut-down is not related to PSO detecting a marine mammal within, approaching, or entering the relevant EZs. However, the PSOs are still actively monitoring the relevant EZs for cetaceans and pinnipeds.

In conclusion, NMFS has designed monitoring and mitigation measures to comply with the requirement that incidental take authorizations must include means of effecting the least practicable impact on marine mammal species and their habitat. 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 SIO has requested take, 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.

In the case of an extended shut-down, due to equipment failure or routine maintenance, the *Melville's* crew will turn on the airguns and follow the mitigation and monitoring procedures for a ramp-up after a period of 15 minutes. Again, the PSOs will monitor the full EZs for marine mammals and will implement a shut-down, if necessary. After considering this comment and evaluating the monitoring and mitigation requirements to be included in the IHA, NMFS has determined that SIO's approach and corresponding monitoring and mitigation measures will effect the least practicable impact on affected marine mammal species or stocks.

Comment 4: The Commission recommends that NMFS work with the NSF to analyze the data collected during ramp-up procedures to help determine the effectiveness of those procedures as a mitigation measure for geophysical surveys.

Response: NMFS acknowledges the Commission's request for an analysis of ramp-ups and will work with NSF and SIO to help identify the effectiveness of the mitigation measure for seismic surveys. The IHA requires that PSOs on the *Melville* 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 the 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 shut-down), Beaufort wind force and sea state, visibility, and sun glare.

One of the primary purposes of monitoring is to result in ''increased knowledge of the species'' and the effectiveness of required 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 requires NSF and SIO to gather all data that could potentially provide information regarding the effectiveness of ramp-up as a mitigation measure in its monitoring report. However, considering the low numbers of marine mammal sightings and low number 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 PSOs detect animals during ramp-up.

Description of the Marine Mammals in the Specified Geographic Area of the Specified Activity

Thirty-two marine mammal species could occur in the south-eastern Pacific Ocean survey area. Twenty-eight cetacean species (22 odontocetes and 6 mysticetes) and four pinniped species could occur in the south-eastern Pacific Ocean study area. Several of these species are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), including the humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whale.

An additional 12 cetacean species, although present in the wider south-eastern Pacific Ocean, likely would not be found in the proposed seismic survey area because their ranges in the survey area are extralimital, or they are typically found in coastal water. Southern right whales (*Eubalaena australis*) are listed as endangered under the ESA. Sightings are seen on rare occasions off the coasts of Peru and Chile (Aguayo *et al.,* 1992; Santillan *et al.,* 2004), although females with calves have been observed between June and October. Given the size of this population, estimated at 50 individuals, in Chile and Peru (IWC, 2007; ICW, 2007b) and the rarity of the species in the survey area, it is unlikely that individuals from this subpopulation will be encountered. Pygmy right whales (*Caperea marginata*) are rarely seen at sea, but are known from stranding records off Chile (Cabrera *et al.,* 2005). Little is known about Arnoux's beaked whale (*Berardius arnuxii*) as they are rarely seen, but typically they are found between the Antarctic continent and 34° South. The

northernmost limit of their range overlaps with the survey area, but no records of their occurrence exist within the survey area. The spade toothed beaked whale (*Mesoplodon traversii*) and Shepherd's beaked whale (*Tasmacetus shepherdi*) are uncommon species, but individuals have been described from stranding records in the Juan Fernandez Archipelago in Chile (Reyes *et al.,* 1996) approximately 700 km (378 nmi) west of the survey site. The ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*), pygmy beaked whale (*Mesoplodon peruvianus*), and the long-beaked common dolphin (*Delphinus capensis*) are likely extralimital with distributions mostly north of the survey area. The Commerson's dolphin (*Cephalorhynchus commersonii*), hourglass dolphin (*Lagenorhynchus cruciger*), and southern bottlenose whale (*Hyperoodon planifrons*) are also extralimital in the survey area, but have a northernmost extent that is south of the survey area.

No cetacean distribution and abundance studies have been conducted in the survey area. The closest distribution studies have been in the Eastern Tropical Pacific (ETP) and Patagonia, in southern Chile. Several other studies of marine mammal distribution and abundance have been conducted in the wider ETP. The most extensive regional distribution and abundance data come primarily from multi-year vessel surveys conducted by NMFS's Southwest Fisheries Science Center (SWFSC). The surveys were conducted during July to December in an area generally extending from 30° North to 18° South from the coastline to 153° West (Wade and Gerrodette, 1993; Ferguson and Barlow, 2001; Gerrodette *et al.,* 2008; and Jackson *et al.,* 2008).

The marine mammals that occur in the survey area belong to three taxonomic groups: odontocetes (toothed whales and dolphins), mysticetes (baleen whales), and pinnipeds (seals, sea lions, and walrus). Cetaceans and pinnipeds are the subject of the IHA application to NMFS.

Table 1 (below) presents information on the abundance, distribution, population status, conservation status, and density of the marine mammals that may occur in the survey area during May, 2012.

TABLE 1—THE HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE SEISMIC SURVEY AREA IN THE SOUTH-EASTERN PACIFIC OCEAN

[See text and Tables 2 to 3 in SIO's application for further details]

Species	Habitat	Abundance	ESA [1]	MMPA [2]	Density (#/1,000 km^2) [3]
Mysticetes					
Humpback whale (*Megaptera novaeangliae*).	Mainly nearshore waters and banks.	[6] 2,900 (SE Pacific)	EN	D	[4] 0.8
Minke whale (*Balaenoptera acutorostrata*).	Coastal	[7] 338,000	NL	NC	[4] 0.8
Bryde's whale (*Balaenoptera edeni*)	Pelagic and coastal.	130,008	NL	NC	0.96
Sei whale (*Balaenoptera borealis*)	Mostly pelagic	[8] 11,000	EN	D	[5] 0.01
Fin whale (*Balaenoptera physalus*)	Slope, mostly pelagic.	[9] 15,178	EN	D	[5] 0.01
Blue whale (*Balaenoptera musculus*)	Pelagic and coastal.	[10] 1,415	EN	D	2.44
Odontocetes					
Sperm whale (*Physeter macrocephalus*).	Usually deep pelagic, steep topography.	[11] 26,053	EN	D	3.95
Pygmy sperm whale (*Kogia breviceps*).	Deep waters off shelf.	[12] 150,000	NL	NC	0.03
Dwarf sperm whale (*Kogia sima*)	Deep waters off shelf.	[12] 150,000	NL	NC	0.03
Cuvier's beaked whale (*Ziphius cavirostris*).	Slope and pelagic	[13] 20,000	NL	NC	0.80
Blainville's beaked whale (*Mesoplodon densirostris*).	Slope and pelagic	[14] 25,300	NL	NC	0.80
Gray's beaked whale (*Mesoplodon grayi*).	Slope and pelagic	NA	NL	NC	NA
Hector's beaked whale (*Mesoplodon hectori*).	Slope and pelagic	NA	NL	NC	NA
Strap-toothed beaked whale (*Mesoplodon layardii*).	Slope and pelagic	NA	NL	NC	NA
Unidentified Mesoplodon spp.	Slope and pelagic	NA	NL	NC	0.36
Rough-toothed dolphin (*Steno bredanensis*).	Mainly pelagic	107,633	NL	NC	4.19
Bottlenose dolphin (*Tursiops truncatus*).	Coastal, shelf, pelagic.	335,834	NL	NC; D—Western North Atlantic coastal.	17.06
Spinner dolphin (*Stenella longirostris*)	Coastal and pelagic.	1,797,716	NL	NC	35.70
Striped dolphin (*Stenella coeruleoalba*).	Off continental shelf.	964,362	NL	NC; D—Eastern	67.80

TABLE 1—THE HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE SEISMIC SURVEY AREA IN THE SOUTH-EASTERN PACIFIC OCEAN—Continued

[See text and Tables 2 to 3 in SIO's application for further details]

Species	Habitat	Abundance	ESA [1]	MMPA [2]	Density (#/1,000 km^2) [3]
Short-beaked common dolphin (*Delphinus delphis*).	Shelf, pelagic, high relief.	3,127,203	NL	NC	110.90
Risso's dolphin (*Grampus griseus*)	Shelf, slope, seamounts.	110,457	NL	NC	10.21
False killer whale (*Pseudorca crassidens*).	Pelagic	398,009	NL; Proposed EN—insular Hawaiian.	NC	0.39
Killer whale (*Orcinus orca*)	Widely distributed	[15] 8,500	NL; EN—Southern resident.	NC; D—Southern resident, AT1 transient.	0.85
Long-finned pilot whale (*Globicephala melas*).	Shelf and pelagic	[16] 200,000	NL	NC	11.88
Peale's dolphin (*Lagenorhynchus australis*).	Coastal and shelf	NA	NL	NC	[4] 0.8
Dusky dolphin (*Lagenorhynchus obscures*).	Shelf and slope	[17] 7,252	NL	NC	37
Southern right whale dolphin (*Lissodelphis peronni*).	Pelagic	NA	NL	NC	[5] 0.01
Chilean dolphin (*Cephalorhynchus eutropia*).	Coastal and shelf	[18] < 10,000	NL	NC	11.11
Burmeister's porpoise (*Phocoena spinipinnis*).	Coastal	NA	NL	NC	[5] 0.01
Pinnipeds					
South American fur seal (*Otaria flavescens*).	Coastal and shelf	[19] 30,000	NL	NC	NA
Juan Fernandez fur seal (*Arctocephalus philippii*).	Coastal and shelf	[20] 12,000	NL	NC	NA
South American sea lion (*Arctocephalus australis*).	Coastal and shelf	[21] 150,000	NL	NC	NA
Southern elephant seal (*Mirounga leonina*).	Coastal and pelagic.	[22] 650,000	NL	NC	NA

N.A. = Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, NC = Not Classified.
[3] Densities of other species (*e.g.,* pinnipeds) presumably would b lower than the lowest density in Table 3 of the application.
[4] Densities assigned an arbitrary density similar to densities reported for species that are uncommon in the survey area.
[5] Densities assigned an arbitrarily low number for rare species with unconfirmed sightings in the survey area.
[6] Southeast Pacific (Felix *et al.,* 2005)
[7] Estimated from Antarctic and common minke whales in South Pacific (Reilly, 2011).
[8] Based on 2007 projection for southern hemisphere (IWC, 1996).
[9] Based on 2007 projection for southern hemisphere (Reilly, 2011).
[10] ETP (Wade and Gerrodette, 1993) excluded nursing area south of study area estimated at approximately 267 animals.
[11] Eastern temperate North Pacific (Whitehead, 2002).
[12] This abundance estimate is for *Kogia sima* and *Kogia breviceps* in ETP (Ferguson and Barlow, 2001).
[13] ETP (Wade and Gerrodette, 1993).
[14] This estimate includes all species of the genus *Mesoplodon* in the ETP (Ferguson and Barlow, 2001).
[15] ETP (Ford, 2002).
[16] Southern hemisphere population (Waring *et al.,* 1997).
[17] Patagonian coast population (Dans *et al.,* 1997).
[18] South-Eastern Pacific (Reeves *et al.,* 2008).
[19] Chile (Arias, Shreiber, and Rivas, 1998).
[20] Juan Fernandez Archipelago population (Aurioles and Trillmich, 2008).
[21] Peru and Chile (Campagna, 2008a).
[22] Southern hemisphere (Campagna, 2009).

Refer to Section III and IV of SIO's application for detailed information regarding the abundance and distribution, population status, and life history and behavior of these species and their occurrence in the project area. The application also presents how SIO calculated the estimated densities for the marine mammals in the survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the IHA.

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 hearing 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 proposed 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 14744, March 13, 2012) included a discussion of the effects of sounds from airguns on mysticetes, odontocetes, and pinnipeds including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. NMFS refers the reader to SIO's application and 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, Fish, Fisheries, and Invertebrates

NMFS included a detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish, fisheries, and invertebrates in the notice of the proposed IHA (77 FR 14744, March 13, 2012). The seismic survey will not result in any permanent impact on habitats used by the marine mammals in the proposed survey area, including the food sources they use (*i.e.* fish and invertebrates), and there will be no physical damage to any habitat. 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 was considered in further detail in the notice of the proposed IHA (77 FR 14744, March 13, 2012), as behavioral modification. The main impact associated with the activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

Recent work by Andre *et al.* (2011) purports to present the first morphological and ultrastructural evidence of massive acoustic trauma (*i.e.,* permanent and substantial alterations of statocyst sensory hair cells) in four cephalopod species subjected to low-frequency sound. The cephalopods, primarily cuttlefish, were exposed to continuous 40 to 400 Hz sinusoidal wave sweeps (100% duty cycle and 1 s sweep period) for two hours while captive in relatively small tanks (one 2,000 liter [L, 2 m^3] and one 200 L [0.2 m^3] tank). The received SPL was reported as 157±5 dB re 1 μPa, with peak levels at 175 dB re 1 μPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

Mitigation

In order to issue an 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.

SIO has based development and evaluation of effectiveness of the mitigation measures, to be implemented under the IHA for the seismic survey, on the following:

(1) Protocols used during previous SIO 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).

Planning Phase—The PIs worked with SIO and NSF to identify potential time periods to carry out the survey taking into consideration key factors such as environmental conditions (*i.e.,* the seasonal presence of marine mammals), weather conditions, equipment, and optimal timing for other proposed seismic surveys using the *Melville.* Most marine mammal species are expected to occur in the area year-round, so altering the timing of the proposed survey likely would result in no net benefits for those species. Baleen whales are most common south of the survey area between February and June, whereas odontocetes were most commonly observed between October and November. After considering what energy source level was necessary to achieve the research goals, the PIs determined the use of the two GI airgun array with a maximum total volume of 210 in^3 would be required; however, a lower energy source with a total volume of 90 in^3 may be used. Given the research goals, location of the survey and associated deep water, this energy source level was viewed appropriate. The location of the survey was informed and adjusted based on the latest scientific information on the epicenter of the February 27, 2010 earthquake; survey location is critical for collecting the data for the overall research activity and meeting research objectives.

To reduce the potential for disturbance of marine mammals from acoustic stimuli associated with the specified activities, the IHA requires SIO and/or its designees shall implement the following mitigation measures:

(1) Exclusion zones;

(2) Speed or course alteration;

(3) Shut-down procedures; and

(4) Ramp-up procedures.

Exclusion Zones—Received sound levels have been modeled by L–DEO for a number of airgun configurations, including two 45 or two 105 in^3 GI airguns, in relation to distance and direction from the airguns (see Figure 2a and 2b of the IHA application). The models do not allow for bottom interactions, and are most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the source where sound levels are predicted to be 190, 180, and 160 dB re 1 μPa (rms) in deep water were determined (see Table 2 below).

Empirical data concerning the 190, 180, and 160 dB (rms) distances were acquired for various airgun arrays based on measurements during the acoustic verification studies conducted by L–DEO in the northern GOM in 2003 (Tolstoy *et al.,* 2004) and 2007 to 2008 (Tolstoy *et al.,* 2009). Results of the 36 airgun array are not relevant for the two GI airguns to be used in the survey. The empirical data for the 6, 10, 12, and 20 airgun arrays indicate that, for deep water, the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.,* 2004). Measurements were not made for the two GI airgun array in deep water, however, SIO proposes to use the EZ predicted by L–DEO's model for the GI airgun operations in deep water, although they are likely conservative give the empirical results for the other arrays.

The 180 and 190 dB radii are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish the EZs. If the PSO detects marine mammal(s) within or about to enter the appropriate EZ, the airguns will be shut-down immediately.

Table 2 summarizes the predicted distances at which sound levels (160, 180, and 190 dB [rms]) are expected to

be received from the two GI airgun array operating in deep water depths.

TABLE 2—DISTANCES TO WHICH SOUND LEVELS ≥190, 180, AND 160 dB RE 1 μPA (RMS) COULD BE RECEIVED IN DEEP WATER DURING THE SEISMIC SURVEY IN THE SOUTH-EASTERN PACIFIC OCEAN, MAY 2012

[Distances are based on model results provided by L–DEO]

Source and Volume	Tow depth (m)	Water depth (m)	Predicted RMS radii distances (m)		
			190 dB	180 dB	160 dB
Two GI airguns (105 in^3) (210 in^3 total)	2	Deep (>1,000)	20	70	670
Two GI airguns (45 in^3) (90 in^3 total)	2	Deep (>1,000)	10	40	350

Speed or Course Alteration—If a marine mammal is detected outside the EZ and, based on its position and the relative motion, is likely to enter the EZ, the vessel's speed and/or direct course could be changed. This would be done if operationally practicable while minimizing the effect on the planned science objectives. The activities and movements of the marine mammal (relative to the seismic vessel) will then be closely monitored to determine whether the animal is approaching the applicable EZ. If the animal appears likely to enter the EZ, further mitigative actions will be taken, *i.e.,* either further course alterations or a shut-down of the seismic source. Typically, during seismic operations, the source vessel is unable to change speed or course and one or more alternative mitigation measures will need to be implemented.

Shut-down Procedures—SIO will shut down the operating airgun(s) if a marine mammal is seen outside the EZ for the airgun(s), and if the vessel's speed and/or course cannot be changed to avoid having the animal enter the EZ, the seismic source will be shut-down before the animal is within the EZ. If a marine mammal is already within the EZ when first detected, the seismic source will be shut-down immediately.

Following a shut-down, SIO will not resume airgun activity until the marine mammal has cleared the EZ. SIO will consider the animal to have cleared the EZ if:

- A PSO has visually observed the animal leave the EZ, or
- A PSO 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, killer, and beaked whales).

Ramp-up Procedures—SIO will follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a shut-down has exceeded that period. For the present cruise, this period will be approximately 15 minutes under the IHA. SIO has used similar periods (approximately 15 minutes) during previous SIO surveys.

Ramp-up will begin with a single GI airgun (45 or 105 in^3). The second GI airgun (45 or 105 in^3) will be added after five minutes. During ramp-up, the PSOs will monitor the EZ, and if marine mammals are sighted, SIO will implement a shut-down as though both GI airguns were operational.

If the complete EZ has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, SIO will not commence the ramp-up. If one airgun has operated, 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 if they choose. A ramp-up from a shut-down may occur at night, but only where the EZ is small enough to be visible. SIO 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 mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's 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's evaluation of the applicant's measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the mitigation measures included in the IHA provide the means of effecting the least practicable 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

SIO will sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA. SIO's Monitoring Plan is described below this section. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. SIO 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

SIO's PSOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during

daytime airgun operations and during any ramp-ups at night. PSOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the ramp-up of airgun operations after an extended shut-down (*i.e.,* greater than approximately 15 minutes for this proposed cruise). When feasible, PSOs 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 PSO observations, the airguns will be shut-down 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 in the south-eastern Pacific Ocean, three PSOs will be based aboard the *Melville*. SIO will appoint the PSOs with NMFS's concurrence. At least one PSO will monitor the EZs during seismic operations. Observations will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. PSO(s) will be on duty in shifts of duration no longer than 4 hr. The vessel crew will also be instructed to assist in detecting marine mammals.

The *Melville* is a suitable platform for marine mammal observations of protected species. The primary observer platform is located one deck below and forward of the bridge (02 level, 12.46 m [40.9 ft] above the waterline), affording relatively unobstructed 180° forward view. A pair of Big-eye binoculars is mounted in this location. The open deck continues along both the port and starboard sides, and opens up to an aft deck stretching across the full width of the vessel. PSOs have views in a full 360° by walking along this deck. In extremely inclement weather, the PSOs move on to the bridge (03 level, 15.5 m [50.6 ft] above the water line). There they will have a 360° view through the windows.

During daytime, the PSOs will scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7 x 50 Fujinon), Big-eye binoculars (25 x 150), optical range finders and with the naked eye. During darkness, night vision devices (NVDs) will be available, when required. The PSOs will be in wireless communication with the vessel's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or seismic source shut-down. When marine mammals are detected within or about to enter the designated EZ, the airguns will immediately be shut-down. The PSO(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, killer, and beaked whales).

PSO Data and Documentation

PSOs 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 shut-down of the airguns when a marine mammal is within or near the EZ. Observations will also be made during daytime periods when the *Melville* is underway without seismic operations (*i.e.,* transits to, from, and through the study area) to collect baseline biological data.

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, Beaufort 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 as well as information regarding shut-downs of the seismic source, will be recorded in a standardized format. The data accuracy will be verified by the PSOs at sea, and preliminary reports will be prepared during the field program and summaries forwarded to the operating institution's shore facility and to NSF weekly or more frequently.

Vessel-based observations by the PSO will provide the following information:

1. The basis for real-time mitigation (airgun 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 in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals 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.

SIO 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 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 potential ''takes'' of marine mammals by harassment or in other ways. After the report is considered final, it will be publicly available on the NMFS and NSF Web sites.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), SIO will immediately cease the specified activities and immediately report the incident to the 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 *Howard.Goldstein@noaa.gov,* and the NMFS Southwest Regional Stranding Coordinators (*Joe.Cordaro@noaa.gov* and *Sarah.Wilkin@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 SIO to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. SIO may not resume their activities until notified by NMFS via letter or email, or telephone.

In the event that SIO 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), SIO will immediately report the incident to the 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 *Howard.Goldstein@noaa.gov,* and the NMFS Southwest Regional Office (562–980–4017) and/or by email to the Southwest Regional Stranding Coordinators (*Joe.Cordaro@noaa.gov* and *Sarah.Wilkin@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with SIO to determine whether modifications in the activities are appropriate.

In the event that SIO 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 the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), SIO will report the incident to the 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 *Howard.Goldstein@noaa.gov,* and the NMFS Southwest Regional Office (562–980–4017), and/or by email to the Southwest Regional Stranding Coordinators (*Joe.Cordaro@noaa.gov* and *Sarah.Wilkin@noaa.gov*), within 24 hours of discovery. SIO will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

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 harassment is anticipated and authorized as a result of the marine seismic survey in the south-eastern 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 NMFS has issued the IHA. Take by injury, serious injury, or mortality is thus neither anticipated nor authorized. NMFS has determined that the required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe SIO'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 seismic program. The estimates are based on a consideration of the number of marine mammals that could be disturbed appreciably by operations with the two GI airgun array to be used during approximately 1,810 km (977.3 nmi) (includes primary and secondary lines and an additional 25 percent contingency) of survey lines in the south-eastern Pacific Ocean.

SIO 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, SIO provides no additional allowance for animals that could be affected by sound sources other than airguns.

Extensive systematic ship-based surveys have been conducted by NMFS SWFSC for marine mammals in the ETP. SIO used densities from five sources:

(1) SWFSC has recently developed habitat modeling as a method to estimate cetacean densities on a finer spatial scale than traditional line-transect analyses by using a continuous function of habitat variables, *e.g.,* sea surface temperature, depth, distance from shore, and prey density (Barlow *et al.,* 2009). For the ETP, the models are based on data from 12 SWFSC ship-based cetacean and ecosystem assessment surveys conducted during July to December from 1986 to 2006. The models have been incorporated into a web-based Geographic Information System (GIS) developed by Duke University's Department of Defense Strategic Environmental Research and Development Program (SERDP) team in close collaboration with the SWFSC SERDP team (Read *et al.,* 2009). For 11 cetacean species in the model, SIO used the GIS to obtain mean densities near the survey area, *i.e.,* in a rectangle bounded by 4° to 12° South and 75° to 85° West, which was the south-eastern extent of the model;

(2) For species sighted in SWFSC surveys whose sample sizes were too small to model density, SIO used densities from the surveys conducted during summer and fall 1986 to 1996, as summarized by Ferguson and Barlow (2001). Densities were calculated from Ferguson and Barlow (2003) for 5° x 5° blocks that include the proposed survey areas and corridors: Blocks 139, 159, 160, 200, 201, 202, 212, 213, and 219. Those blocks included 27,275 km (14727.3 nmi) of survey effort in Beaufort sea states 0 to 5, and 2,564 km (1,384.5 nmi) of survey effort in Beaufort sea states 0 to 2. Densities were obtained for an additional five species that were sighted in one or more of those blocks;

(3) For dusky dolphins, SIO used the mean densities reported for Area A from aerial surveys in North and Central Patagonia (Shiavini *et al.,* 1999), corrected for $f(0)$, but not $g(0)$. Since the closest density estimates were taken south of the survey area, where dusky dolphin abundance is higher, SIO used 10 percent of the reported density to account for the decreased abundance of dusky dolphins in the proposed survey area;

(4) For Chilean dolphins, SIO used the estimated density of Chilean

dolphins in Patagonia from Heinrich (2006). The extralimital, offshore distribution of Chilean dolphins in the survey area was corrected for by taking 1 percent of the densities reported by Heinrich (2006);

(5) For blue whales, SIO used the densities reported by Galletti-Vernazzani and Cabrera (2009) from aerial surveys in Patagonia in March 2007 and April in 2009 that took place south of the survey site (39° South to 44° South). The density estimates were corrected for $f(0)$ and g(0). Given the higher abundance of blue whales south of the survey site, SIO corrected the reported density for the survey area by reducing the density by 50 percent.

For two species for which there are only unconfirmed sightings in the region, the sei and fin whale, arbitrary low densities (equal to the density of the species with the lowest calculated density) were assigned. The same arbitrary low density was assigned to southern right whale dolphins and Burmeister's porpoise, where no confirmed sightings were made within the survey region. In addition, there were no density estimates available for humpback whales, minke whales, and Peale's dolphins, but confirmed sightings have been made near the survey area. SIO arbitrarily assigned a density estimate of 0.8 animals/1,000 km², which was similar to the densities reported for uncommon species in the area.

Oceanographic conditions, including occasional El Nino and La Nina events, influence the distribution and numbers of marine mammals present in the ETP and SEP, resulting in considerable year-to-year variation in the distribution and abundance of many marine mammal species (*e.g.,* Escorza-Trevino, 2009). Thus, for some species the densities derived from recent surveys may not be representative of densities that will be encountered during the seismic survey.

SIO used estimated densities (see Table 3 of the application) for each cetacean species likely to occur in the study area, *i.e.,* species for which SIO obtained or assigned densities. The densities had been corrected, by the authors, for both trackline detectability and availability bias. Trackline detection probability bias is associated with diminishing sightability with increasing lateral distance from the trackline, and is measured by $f(0)$. Availability bias refers to the fact that there is less-than-100% probability of sighting an animal that is present along the survey trackline $f(0)$, and it is measured by g(0). Corrections for $f(0)$ and g(0) were made where mentioned above. The densities are given in Table 3 of SIO's IHA application.

SIO's estimates of exposures to various sound levels assume that the surveys will be fully completed; in fact, the ensonified areas calculated using the planned number of line-km have been increased by 25 percent to accommodate turns, lines that may need to be repeated, equipment testing, etc. As is typical during offshore 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 EZs will result in the shut-down of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to sound levels of 160 dB re 1 μPa (rms) are precautionary and probably overestimate the actual numbers of marine mammals that might be involved. These estimates also assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

SIO 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 (rms) 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, along with the expected density of marine mammals in the area. The seismic lines are not in close proximity, which minimizes the number of times an individual marine mammal may be exposed during the survey; the area including the overlap is only 1.2 times the area excluding overlap.

The numbers of different individuals potentially exposed to greater than or equal to 160 dB (rms) were calculated by multiplying the expected species density times the anticipated area to be ensonified during airgun operations. 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 of the IHA application) around each seismic line, and then calculating the total area within the buffers. Areas where overlap occurred (because of crossing lines) were included only once when estimating the number of individuals exposed.

Applying the approach described above, approximately 1,448.4 km² (422.3 nmi²) would be within the 160 dB isopleth on one or more occasions during the survey (including primary and secondary lines). The total ensonified area used to calculate estimated numbers exposed was approximately 1,810.5 km² [527.9 nmi²] and includes the additional 25 percent increase in the calculated area for contingency. Because this approach does not allow for turnover in the marine mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated, although the conservative (*i.e.,* probably overestimated) line-kilometer distances used to calculate the area may offset this. Also, the approach assumes that no cetaceans will move away from or toward the trackline as the *Melville* approaches in response to increasing sound levels prior to the time the levels reach 160 dB. Another way of interpreting the estimates that follow is that they represent the number of individuals that are expected (in the absence of a seismic program) to occur in the waters that will be exposed to greater than or equal to 160 dB re 1 μPa (rms).

Table 3 (Table 3 of the IHA application) shows the estimates of the number of different individual marine mammals that potentially could be exposed to greater than or equal to 160 dB re 1 μPa (rms) during the seismic survey if no animals moved away from the survey vessel. The requested take authorization is given in Table 3 (below; the far right column of Table 3 of the IHA application). For ESA listed species, the requested take authorization has been increased to the mean group size in southern Chile where available (Viddi *et al.,* 2010) or the ETP (Wade and Gerodette, 1993), where the calculated number of individuals exposed was between 0.05 and the mean group size (*i.e.,* for sei, fin, humpback, and sperm whales). For species not listed under the ESA that could occur in the study area, the requested take authorization has been increased to the mean group size in the ETP (Wade and Gerodette, 1993) or southern Chile (Viddi *et al.,* 2010); Zamorano-Abramson *et al.,* 2010) in cases where the calculated number of individuals exposed was between one and the mean group size. For delphinids where typically large group sizes are encountered, the requested take authorization was increased to the mean group size in southern Chile (Aguauo *et al.,* 1998; Viddi *et al.,* 2010; Zamarano-Abramson *et al.,* 2010) if the calculated number was greater than one, but less than the mean group size.

The best 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 (rms) during the survey is 561 (see Table 3 of the IHA application). That total includes: 1 humpback, 1 minke, 2 Bryde's, 4 blue, and 7 sperm whales, 1 Cuvier's, 1 Blainville's, and 1 unidentified *Mesoplodon* beaked whale, 15 rough-toothed, 72 bottlenose, 134 spinner, 123 striped, 254 short-beaked common, 4 Peale's, 67 dusky, and 4 Chilean dolphins, and 1 false killer, 2 killer, and 22 long-finned pilot whales, which would represent less than 1% of the regional populations for any of the respective species. Most (96.4%) of the cetaceans potentially exposed are delphinids; rough-toothed, short-beaked common, striped, spinner, bottlenose, Risso's, and dusky dolphins and long-finned pilot whales are estimated to be the most common species in the study area. Due to the extralimital distribution of pinnipeds in the study area, no pinnipeds are expected to be encountered during the survey. The authorized incidental take numbers of humpback (3), minke (2), sperm (8), Cuvier's (2), Blainville's (2), *Mesoplodon* spp. (2), false killer (10), and killer (10) whales, as well as rough-toothed (15), bottlenose (72), spinner (134), Risso's (254), and Peale's (4) dolphins has been requested from the calculated potential takes to account for mean group size (Jefferson *et al.,* 2008).

TABLE 3—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO DIFFERENT SOUND LEVELS ≥160 dB DURING SIO'S SEISMIC SURVEY IN THE SOUTH-EASTERN PACIFIC OCEAN DURING MAY 2012

Species	Estimated number of individuals exposed to sound levels ≥160 dB re 1 μPa [1]	Authorized take requested	Incidental take authorized	Approximate percent of regional population (for incidental take authorized) [2]
Mysticetes				
Humpback whale	1	*3	3	0.1
Minke whale	1	*2	2	<0.01
Bryde's whale	2	2	2	<0.01
Sei whale	0	0	0	NA
Fin whale	0	0	0	NA
Blue whale	4	4	4	0.3
Odontocetes				
Sperm whale	7	*8	8	0.03
Pygmy sperm whale	0	0	0	NA
Dwarf sperm whale	0	0	0	NA
Cuvier's beaked whale	1	1	2	0.01
Blainville's beaked whale	1	1	2	<0.01
Gray's beaked whale	0	0	0	NA
Hector's beaked whale	0	0	0	NA
Strap-toothed beaked whale	0	0	0	NA
Unidentified *Mesoplodon* spp.	1	1	2	NA
Rough-toothed dolphin	8	*15	15	0.01
Bottlenose dolphin	31	*72	72	0.02
Spinner dolphin	65	*134	134	<0.01
Striped dolphin	123	123	123	0.01
Short-beaked common dolphin	201	*254	254	0.01
Risso's dolphin	18	18	18	0.02
False killer whale	1	1	10	<0.01
Killer whale	2	2	10	0.12
Long-finned pilot whale	22	22	22	0.01
Peale's dolphin	1	*4	4	NA
Dusky dolphin	67	67	67	0.92
Southern right whale dolphin	0	0	0	NA
Chilean dolphin	4	4	4	0.4
Burmeister's porpoise	0	0	0	NA
Pinnipeds				
South American fur seal	0	0	0	NA
Juan Fernandez fur seal	0	0	0	NA
South American sea lion	0	0	0	NA
Southern elephant seal	0	0	0	NA

[1] Estimates are based on densities from Table 1 (Table 3 of the IHA application) and ensonified areas (including 25% contingency) for 160 dB of 1,810.5 km^2.

[2] Regional population size estimates are from Table 2 (see Table 2 of the IHA application); NA means not available.

* Requested authorized take was increased to mean group size for delphinids if calculated numbers were between 1 and mean group size, and increased to the mean group size if calculated vales were greater than 0.05 for endangered species.

N.A. Not available or not assessed.

Encouraging and Coordinating Research

SIO and NSF will coordinate the planned marine mammal monitoring program associated with the seismic survey in the south-eastern Pacific Ocean with any parties that may have or express an interest in the seismic survey area. SIO and NSF have coordinated, and will continue to coordinate, with other applicable Federal agencies as required, and will comply with their requirements. Pursuant to IHA requirements, SIO will submit a monitoring report to NMFS 90 days after the survey. PSO data collected during the survey will be submitted to OBIS Seamap and will be made available on the NSF Web site for interested parties and researchers.

Negligible Impact and Small Numbers Analysis and 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 evaluated factors such as:

(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);

(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, and 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 (*i.e.,* the manner and degree in which the measure is likely to reduce adverse impacts to marine mammals, the likely effectiveness of the measures, and the practicability of implementation).

For reasons stated previously in this document, and in the notice of the proposed IHA (77 FR 14744, March 13, 2012), the specified activities associated with the marine seismic survey are not likely to cause 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 above);

(3) The fact that pinnipeds would have to be closer than 10 m (32.8 ft) (for the 45 in^3) or 20 m (65.6 ft) (for the 105 in^3) in deep water when the two GI airgun array is in use at 2 m (6.6 ft) tow depth from the vessel to be exposed to levels of sound believed to have even a minimal chance of causing PTS;

(4) The fact that cetaceans would have to be closer than 40 m (131.2 ft) (for the 45 in^3) or 70 m (229.7 ft) (for the 105 in^3)in deep water when the two GI airgun array is in 2 m tow depth from the vessel to be exposed to levels of sound believed to have even a minimal chance of causing PTS; and

(5) The likelihood that marine mammal detection ability by trained PSOs is high at close proximity to the vessel.

No injuries, serious injuries, or mortalities are anticipated to occur as a result of SIO's planned marine seismic survey, and none are authorized by NMFS. Only short-term, behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the survey activities. Table 3 in this document outlines the number of Level B harassment takes that are anticipated as a result of the activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see Potential Effects on Marine Mammals section above) 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 hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While seismic operations are anticipated to occur on consecutive days, the entire duration of the survey is not expected to last more than 15 days and the *Melville* will be continuously moving along planned tracklines. Therefore, the seismic survey will be increasing sound levels in the marine environment surrounding the vessel for several weeks in the study area.

Of the 32 marine mammal species under NMFS jurisdiction that are known to or likely to occur in the study area, five are listed as endangered under the ESA: humpback, sei, fin, blue, and sperm whale. These species are also considered depleted under the MMPA. There is generally insufficient data to determine population trends for the other depleted species in the study area. To protect these animals (and other marine mammals in the study area), SIO 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.

As mentioned previously, NMFS estimates that 20 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each less than one percent) relative to the regional population size. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 1 of this document.

NMFS's practice has been to apply the 160 dB re 1 μPa (rms) received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. 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]).

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a marine seismic survey in the south-eastern Pacific Ocean, 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 3 (above) for the requested authorized take numbers of cetaceans and pinnipeds.

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 within these areas and the short and sporadic 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 SIO'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) 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 (offshore waters of the south-eastern Pacific Ocean off of Chile) that implicate MMPA section 101(a)(5)(D).

Endangered Species Act

Of the species of marine mammals that may occur in the survey area, several are listed as endangered under the ESA, including the humpback, sei, fin, blue, and sperm whale. Under section 7 of the ESA, NSF initiated and engaged in formal consultation with the NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this seismic survey. NMFS's Office of Protected Resources, Permits and Conservation Division, also initiated and engaged in formal consultation under section 7 of the ESA with NMFS's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. These two consultations were consolidated and addressed in a single BiOp addressing the direct and indirect effects of these interdependent actions. In May, 2012, NMFS issued a BiOp and concluded that the action and issuance of the IHA are not likely to jeopardize the continued existence of cetaceans, pinnipeds, and sea turtles and included an Incidental Take Statement (ITS) incorporating the requirements of the IHA as Terms and Conditions. Compliance with those Relevant Terms and Conditions of the ITS is likewise a mandatory requirement of the IHA. The BiOp also concluded that designated critical habitat of these species does not occur in the action area and would not be affected by the survey.

National Environmental Policy Act (NEPA)

To meet NMFS's NEPA requirements for the issuance of an IHA to SIO, NMFS prepared an ''Environmental Assessment on the Issuance of an Incidental Harassment Authorization to the Scripps Institution of Oceanography to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the South-Eastern Pacific Ocean, May, 2012.'' This EA incorporates the NSF's ''National Environmental Policy Act Analysis Pursuant to Executive Order 12114 of a Marine Geophysical Survey by the R/V *Melville* in the South-Eastern Pacific Ocean, May 2012'' and an associated report (Report) prepared by LGL for NSF and SIO titled ''Final Environmental Analysis of a Marine Geophysical Survey by the R/V *Melville* in the South-Eastern Pacific Ocean off Chile, May 2012,'' by reference pursuant to 40 CFR 1502.21 and NOAA Administrative Order (NAO) 216–6 § 5.09(d). NMFS has fully evaluated the potential direct, indirect, and cumulative effects on the human environment prior to making a final decision on the IHA application and deciding whether or not to issue a Finding of No Significant Impact (FONSI). After considering the final EA, the information in the IHA application, BiOp, and the **Federal Register** notice, as well as public comments, NMFS has determined that the issuance of the IHA is not likely to result in significant impacts on the human environment and has prepared a FONSI. An Environmental Impact Statement is not required and will not be prepared for the action. Authorization

NMFS has issued an IHA to SIO for the take, by Level B harassment, of small numbers of marine mammals incidental to conducting a marine seismic survey in the south-eastern Pacific Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 2, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–11207 Filed 5–8–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–15]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–15 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 4, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

APR 30 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-15, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services estimated to cost $10.0 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 12–15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Japan.

(ii) Total Estimated Value:

Major Defense Equipment *	$4.1 billion.
Other	5.9 billion.
Total	10.0 billion.

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* MDE includes: An initial 4 F–35 Joint Strike Fighter Conventional Take-Off and Landing (CTOL) aircraft with an option to purchase an additional 38 F–35 CTOL aircraft. All aircraft will be configured with the Pratt and Whitney F–135 engines, and 5 spare Pratt and Whitney F–135 engines. Other Aircraft Equipment includes: Electronic Warfare Systems, Command, Control, Communication, Computers and Intelligence/Communication, Navigational and Identifications (C4I/CNI), Autonomic Logistics Global Support System (ALGS), Autonomic Logistics Information System (ALIS), Flight Mission Trainer, Weapons Employment Capability, and other Subsystems, Features, and Capabilities, F–35 unique infrared flares, reprogramming center, and F–35 Performance Based Logistics. Also included: Software development/integration, flight test instrumentation, aircraft ferry and tanker support, spare

and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Air Force (SBC).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 30 April 2012.

Policy Justification

Japan—F–35 Joint Strike Fighter Aircraft

The Government of Japan has requested a possible sale of an initial 4 F–35 Joint Strike Fighter Conventional Take-Off and Landing (CTOL) aircraft with an option to purchase an additional 38 F–35 CTOL aircraft. All aircraft will be configured with the Pratt and Whitney F–135 engines, and 5 spare Pratt and Whitney F–135 engines. Other Aircraft Equipment includes: Electronic Warfare Systems, Command, Control, Communication, Computers and Intelligence/Communication, Navigational and Identifications (C4I/CNI), Autonomic Logistics Global Support System (ALGS), Autonomic Logistics Information System (ALIS), Flight Mission Trainer, Weapons Employment Capability, and other Subsystems, Features, and Capabilities, F–35 unique infrared flares, reprogramming center, and F–35 Performance Based Logistics. Also included: Software development/integration, flight test instrumentation, aircraft ferry and tanker support, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost is $10.0 billion.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of this region. The U.S. Government shares bases and facilities in Japan. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

The proposed sale of aircraft and support will augment Japan's operational aircraft inventory and enhance its air-to-air and air-to-ground self-defense capability. The Japan Air Self-Defense Force's F–4 aircraft will be decommissioned as F–35's are added to the inventory. Japan will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Lockheed Martin Aeronautics Company in Fort Worth, Texas, and Pratt and Whitney Military Engines in East Hartford, Connecticut. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple trips to Japan involving U.S. Government and contractor representatives for technical reviews/support, programs management, and training over a period of 15 years. U.S. contractor representatives will be required in Japan to conduct Contractor Engineering Technical Services (CETS) and Autonomic Logistics and Global Support (ALGS) for after-aircraft delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. The F–35 Conventional Take-Off and Landing (CTOL) Block 3 aircraft is classified Secret, except as noted below. It contains current technology representing the F–35 low observable airframe/outer mold line, Pratt and Whitney engine, radar, integrated core processor central computer, mission systems/electronic warfare suite, a multiple sensor suite, operational flight and maintenance trainers, technical data/documentation, and associated software. As the aircraft and its subsystems are under development, many specific identifying equipment/system nomenclatures have not been assigned to date. Sensitive and classified elements of the F–35 CTOL Block 3 aircraft include hardware, accessories, components, and associated software for the following major subsystems:

a. The Propulsion system is classified Secret and contains state-of-the art technology in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. The single 40,000-lb thrust class engine is designed for low observability and has been integrated into the aircraft system and assures highly reliable, affordable performance. The engine is designed to be utilized in all F–35 variants, providing unmatched commonality and supportability throughout the worldwide base of F–35 users. The Conventional Takeoff and Landing (CTOL) propulsion configuration consists of a main engine, diverterless supersonic inlet, and a Low Observable Axisymmetric Nozzle (LOAN).

b. The AN/APG–81 Active Electronically Scanned Array (AESA) provides mission systems with air-to-air and air-to-ground tracks which the mission system uses as a component to sensor fusion. The AESA allows the radar to direct RF energy in a way that does not expose the F–35, allowing it to maintain low observability in high-threat environments. The radar subsystem supports integrated system performance for air-to-air missions by providing search, track, identification, and AIM–120 missile data link functionality. The radar also provides synthetic aperture radar mapping for locating surface targets and weather mapping for weather avoidance. The radar functions are tightly integrated, interleaved, and managed by an interface to sensor management functions within mission software. The hardware and software are classified Secret.

c. The Electro Optical Targeting System (EOTS) contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. The EOTS subsystem to the sensor suite provides long-range detection; infrared targeting and tracking systems to support weapon employment. It incorporates a missile-quality Infrared Search and Track (IRST) capability, a Forward-Looking Infrared (FLIR) sensor for precision tracking, and Bomb Damage Indication (BDI) capability. EOTS replaces multiple separate internal or podded systems typically found on legacy aircraft. The functionality of the EOTS employs the following modes: Targeting FLIR; Laser Range-Finding and Target Designation; EODAS and EOTS Performance.

d. The Electro-Optical Distributed Aperture System (EODAS) is a subsystem to the sensor suite and provides full spherical coverage for air-to-air and air-to-ground detection and Navigation Forward Looking Infrared

(NFLIR) imaging. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. The NFLIR capability provides infrared (IR) imagery directly to the pilot's Helmet-Mounted Display for navigation in total darkness, including takeoff and landing, and provides a passive IR input to the F–35's sensor fusion algorithms. The all-aspect missile warning function provides time-critical warnings of incoming missiles and cues other subsystems to provide effective countermeasure employment. EODAS also provides an IRST function that can create and maintain Situational Awareness-quality tracks (SAIRST). EODAS is a mid-wave Infrared (IR) system consisting of six identical sensors distributed around the F–35 aircraft. Each sensor has a corresponding airframe window panel integrated with the aircraft structure to meet aerodynamic and stealth requirements.

e. The Electronic Warfare (EW) system contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. Sensitive elements include: Apertures; radio frequency (RF) and infrared (IR) countermeasures; and Electronic Countermeasures (ECM) techniques and features. The reprogrammable, integrated system provides radar warning and electronic support measures (ESM) along with a fully integrated countermeasures (CM) system. The EW system is the primary subsystem used to enhance situational awareness, targeting support and self defense through the search, intercept, location and identification of in-band emitters and to automatically counter IR and RF threats. The IR and RF countermeasures are classified Secret. This system uses low signature-embedded apertures, located in the aircraft control surface edges, to provide direction finding and identification of surface and airborne emitters and the geo-location of surface emitters. The system is classified Secret.

f. The Command, Control, Communications, Computers and Intelligence/Communications, Navigation, and Identification (C4I/CNI) system provides the pilot with unmatched connectivity to flight members, coalition forces, and the battlefield. It is an integrated subsystem designed to provide a broad spectrum of secure, anti-jam, covert voice and data communications, precision radio navigation and landing capability, self-identification, beyond visual range target identification, and connectivity with off-board sources of information. The functionality is tightly integrated within the mission system for enhanced efficiency and effectiveness in the areas of communications, navigation, identification, and sensor fusion. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. The CNI function includes both Secret and Unclassified elements. Sensitive elements of the CNI subsystems include:

(1) The VHF/UHF Voice and Data (Plain and Secure) Communication functionality includes air-to-air UHF/VHF voice and data, both clear and secure, to provide communications with other friendly and coalition aircraft, air-to-ground UHF voice to provide communications with ground sites, and intercommunication voice and tone alerts to provide communications between the avionics system and the pilot. UHF/VHF downlink of air vehicle status and maintenance information is provided to notify the ground crews of the amounts and types of stores, fuel, and other supplies or equipment needed to quickly turn the aircraft for the next mission. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(2) The Tactical Air Navigation (TACAN) functionality provides operational modes to identify ground station and to provide bearing-to-station, slant range-to-ground station, bearing-to-airborne station and slant range to the nearest airborne station or aircraft. TACAN is not unique to the F–35 aircraft but is standard on most USAF aircraft. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(3) The Identification Friend or Foe Interrogator and Transponder Identification functionality consists of integrated Mark XII Identification Friend or Foe (IFF) transponder capability to provide identification of other friendly forces. The CNI system supports sensor fusion by supplying data from IFF interrogations and off-board sources through the intra-flight data link. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(4) The Global Positioning System Navigation functionality includes the Global Positioning System (GPS) aided inertial navigation to provide high-quality positional navigation, and the Instrument Landing System (ILS)/Tactical Air Control and Navigation (TACAN) to provide navigation and landing cues within controlled airspace. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(5) The Multi-Function Advanced Data Link (MADL) is used specifically for communications between F–35 aircraft and has a very low probability of intercept, contributing to covert operations. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(6) The Inertial Navigation System is an all-attitude, Ring Laser Gyro-based navigation system providing outputs of linear and angular acceleration, velocity, body angular rates, position, attitude (roll, pitch, and platform azimuth), magnetic and true heading, altitude, and time tags. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(7) The Radar Altimeter functionality is a module provided in the CNI system rack 3A and uses separate transmit and receive antennas. It measures and reports altitude, and altitude rate of change. Control data is transferred over to a configurable avionics interface card which translates the information to the F–35 aircraft computers. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(8) The Instrument Landing System (ILS) measures, and reports azimuth course and alignment, elevation course alignment, and distance to the runway. Data from the ILS is used to drive visual flight instrumentation. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(9) The Tactical Data Links system is a secure broadcast Tactical Digital Information Link (TADIL) used for real-

time voice/data exchange for command and control, relative navigation, and Precise Position Location Identification (PPLI), providing Link-16 type capabilities. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

g. The F–35 Autonomic Logistics and Global Support (ALGS) includes both Secret and Unclassified elements. It provides a fully integrated logistics management solution. ALGS integrates a number of functional areas, including supply chain management, repair, support equipment, engine support, and training. The ALGS infrastructure employs a state-of-the-art information system that provides real-time, decision-worthy information for sustainment decisions by flight line personnel. Prognostic health monitoring technology is integrated with the air system and is crucial to the predictive maintenance of vital components.

h. The F–35 Autonomic Logistics Information System (ALIS) includes both Secret and Unclassified elements. The ALIS provides an intelligent information infrastructure that binds all of the key concepts of ALGS into an effective support system. ALIS establishes the appropriate interfaces among the F–35 Air Vehicle, the warfighter, the training system, government information technology (IT) systems, JSF operations, and supporting commercial enterprise systems. Additionally, ALIS provides a comprehensive tool for data collection and analysis, decision support, and action tracking.

i. The F–35 Training System includes both Secret and unclassified elements. The Training System includes several types of training devices, to provide for integrated training of both pilots and maintainers. The pilot training devices include a Full Mission Simulator (FMS) and Deployable Mission Rehearsal Trainer (DMRT). The maintainer training devices include an Aircraft Systems Maintenance Trainer (ASMT), Ejection System Maintenance Trainer (ESMT), and Weapons Loading Trainer (WLT). The F–35 Training System can be integrated, where both pilots and maintainers learn in the same Integrated Training Center (ITC). Alternatively, the pilots and maintainers can train in separate facilities (Pilot Training Center and Maintenance Training Center).

j. Weapons employment capability is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is classified Secret. Sensitive elements include co-operative targeting.

k. Other Subsystems, Features, and Capabilities:

(1) The Low Observable Air Frame is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is Secret. Sensitive elements include: The Radar Cross Section and its corresponding plots, construction materials and fabrication.

(2) The Integrated Core Processor (ICP) Central Computer is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is classified (Secret. Sensitive elements include: F–35 Integrated Core Processor utilizing Commercial Off the Shelf (COTS) Hardware and Module Design to maximize growth and allow for efficient Management of DMS and Technology Insertion), if additional processing is needed, a second ICP will be installed in the space reserved for that purpose, more than doubling the current throughput and memory capacity.

(3) The F–35 Helmet Mounted Display System (HMDS) is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is Secret. Sensitive elements include: HMDS consists of the Display Management Computer-Helmet, a helmet shell/display module, a quick disconnect integrated as part of the ejection seat, helmet trackers and tracker processing, day- and night-vision camera functions, and dedicated system/graphics processing. The HMDS provides a fully sunlight readable, bi-ocular display presentation of aircraft information projected onto the pilot's helmet visor. The use of a night vision camera integrated into the helmet eliminates the need for separate Night Vision Goggles (NVG). The camera video is integrated with EO and IR imaging inputs and displayed on the pilot's visor to provide a comprehensive night operational capability.

(4) The Pilot Life Support System is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is Secret. Sensitive elements include: A measure of Pilot Chemical, Biological, and Radiological Protection through use of On Board Oxygen Generating System (OBOGS); and an escape system that provides additional protection to the pilot. OBOGS takes the Power and Thermal Management System (PTMS) air and enriches it by removing gases (mainly nitrogen) by adsorption, thereby increasing the concentration of oxygen in the product gas and supplying breathable air to the pilot.

(5) The Off-Board Mission Support System is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is Secret. Sensitive elements include: Mission planning, mission briefing, maintenance/intelligence/tactical debriefing, sensor/algorithm planning, EW system reprogramming, data debrief, etc.

1. Publications: Manuals are considered Secret, special access required, as they contain information on aircraft/system performance and inherent vulnerabilities

2. The JSF Reprogramming Center is classified Secret and contains technology representing the latest state-of-the-art in several areas. This hardware/software facility provides a means to update JSF electronic warfare databases. Sensitive elements include: EW software databases and tools to modify these databases.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–11154 Filed 5–8–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–16]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the

requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–16 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 4, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

APR 30 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-16, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Singapore for defense articles and services estimated to cost $435 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 12–16

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Singapore.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$19 million.
Other	416 million.

Total ..... 435 million.

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Follow-on support and services for Singapore's Continental United States (CONUS) detachment PEACE CARVIN V (F–15SG) based at Mountain Home Air Force Base (AFB) for a five-year period. MDE includes: 40 GBU–10 PAVEWAY II Laser Guided Bomb Units, 40 MXU–651/B Air Foil Groups, 84 GBU–12 PAVEWAY II Laser Guided Bomb Units, 84 MXU–650/Bs Air Foil Groups, 124 MAU–169L/Bs Guidance Control Units, and 3 P5 Combat Training System Pods. Also included: Commercial vehicles, publications and technical documentation, tactics manuals and academic instruction, clothing and individual equipment, execution and support of CONUS exercise deployments, airlift and aerial refueling, support equipment, spare and repair parts, repair and return, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (NDA).

(v) *Prior Related Cases, if any:* FMS case NAS–$187M–25Mar08, FMS case SAA–$192M–24Feb06, FMS case SAC–$98M–30Oct09.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed To Be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed To Be Sold:* None.

(viii) *Date Report Delivered to Congress:* 30 April 2012.

Policy Justification

Singapore—F–15SG Pilot Training

The Government of Singapore has requested a possible sale of follow-on support and services for Singapore's Continental United States (CONUS) detachment PEACE CARVIN V (F–15SG) based at Mountain Home Air Force Base (AFB) for a five-year period. MDE includes: 40 GBU–10 PAVEWAY II Laser Guided Bomb Units, 40 MXU–651/B Air Foil Groups, 84 GBU–12 PAVEWAY II Laser Guided Bomb Units, 84 MXU–650/Bs Air Foil Groups, 124 MAU–169L/Bs Guidance Control Units, and 3 P5 Combat Training System Pods. Also included: Commercial vehicles, publications and technical documentation, tactics manuals and academic instruction, clothing and individual equipment, execution and support of CONUS exercise deployments, airlift and aerial refueling, support equipment, spare and repair parts, repair and return, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $435 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for economic progress in Southeast Asia.

Singapore needs this training and munitions to support its F–15 aircraft. This program will enable Singapore to develop mission-ready and experienced pilots to support its current and future F–15 aircraft inventory. The well-established pilot proficiency training program at Mountain Home Air Force Base will support professional interaction and enhance operational interoperability with U.S. forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

There is no prime contractor involved in this proposed sale. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–16

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The GBU–10/12 PAVEWAY II is a laser guidance kit and tail assembly for general purpose bombs. The laser seeker allows the user to select a unique code for use in the multi-laser environment and reduce the probability of interference among multiple weapons. The hardware is Unclassified and the ballistics is Confidential.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2012–11156 Filed 5–8–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Threat Reduction Advisory Committee

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(d), the Department of Defense gives notice that it is renewing the charter for the Threat Reduction Advisory Committee (hereafter referred to as ''the Committee'').

The Committee is a discretionary federal advisory committee that shall provide the Secretary of Defense, through the Under Secretary of Defense (Acquisition, Technology, and Logistics) and the Assistant Secretary of Defense (Nuclear, Chemical and Biological Defense Programs), independent advice and recommendations on:

a. Reducing the threat to the United States, its military forces, and its allies and partners posed by nuclear, biological, chemical, conventional and special weapons;

b. Combating weapons of mass destruction to include non-proliferation, counterproliferation, and consequence management;

c. Nuclear deterrence transformation, nuclear material lockdown and accountability;

d. Nuclear weapons effects;

e. The nexus of counterproliferation and counter WMD terrorism; and

f. Other Acquisition, Technology, and Logistics; Nuclear, Chemical and Biological Defense; and Defense Threat Reduction Agency mission-related matters.

The Committee shall be composed of not more than 30 committee members who are eminent authorities in the fields of national defense, geopolitical and national security affairs, weapons of mass destruction, nuclear physics, chemistry, and biology.

The Committee members are appointed by the Secretary of Defense, and their appointments will be renewed on an annual basis. The Committee members who are not full-time or permanent part-time federal officers or

employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employees.

Committee members shall, with the exception of travel and per diem for official travel, serve without compensation, unless authorized by the Secretary of Defense.

The Under Secretary of Defense (Acquisition, Technology, and Logistics) and the Assistant Secretary of Defense (Nuclear, Chemical and Biological Defense Programs) shall select the Committee's Chairperson and Vice Chairperson from the Committee membership at large.

The Secretary of Defense may approve the appointment of Committee members for one to four year terms of service; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees.

Each Committee member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

With DoD approval, the Committee shall be authorized to establish subcommittees and panels, as required and consistent with its mission. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense or the advisory committee's sponsor.

Such subcommittees or panels shall not work independently of the chartered Committee, and shall report their findings and advice solely to the Committee for full deliberation and discussion. Subcommittees or working groups have no authority to make decisions and recommendation verbally or in writing on behalf of the chartered Committee, nor can they report directly or release documents to the Agency or any Federal officers or employees not Committee Members.

All subcommittee members shall be appointed in the same manner as the Committee members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Committee member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years; however, no member shall serve more than two consecutive terms of service on the subcommittee.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official Committee related travel, subcommittee members shall serve without compensation. All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act, governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Committee shall meet at the call of the Committee's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Committee meetings is four per year.

In addition, the Designated Federal Officer is required to be in attendance at all committee and subcommittee meetings; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

The Designated Federal Officer, or the Alternate Designated Federal Officer, shall call all of the Committee's meetings; prepare and approve all meeting agendas; adjourn any meeting when the Designated Federal Officer, or the Alternate Designated Federal Officer, determines adjournment to be in the public interest or required by governing regulations or DoD policies/procedures; and chair meetings when directed to do so by the official to whom the Committee reports.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Threat Reduction Advisory Committee membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Threat Reduction Advisory Committee. All written statements shall be submitted to the Designated Federal Officer for the Threat Reduction Advisory Committee, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Threat Reduction Advisory Committee's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Threat Reduction Advisory Committee. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: May 4, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–11142 Filed 5–8–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice; correction.

SUMMARY: The notice of an open meeting scheduled for June 27–28, 2012 published in the **Federal Register** on April 4, 2012 (77 FR 20369) has a new email address for submitting comments. Written statements should be no longer than two type-written pages and sent via fax to (703) 614–8920 or emailed to *scott.p.caldwell.civ@mail.mil* by 5 p.m. EST on Wednesday, June 20th, 2012, for consideration at this meeting.

FOR FURTHER INFORMATION CONTACT: WHINSEC Board of Visitors Secretariat at (703) 614–8721.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–11158 Filed 5–8–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following

Federal advisory committee meeting will take place:

Name of Committee: Board of Visitors, U.S. Army War College Subcommittee.

Date of Meeting: May 31, 2012.

Place of Meeting: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, PA 17013.

Time of Meeting: 8:30 a.m.–13:30 p.m.

Proposed Agenda: The purpose of the meeting is to obtain, review, and evaluate information related to the continued academic growth and development of the United States Army War College. General deliberations leading to provisional findings will be referred to the Army Education Advisory Committee for deliberation by the Committee under the open-meeting rules.

FOR FURTHER INFORMATION CONTACT: To request advance approval or obtain further information, contact Colonel Donald H. Myers, (717) 245–3907 or *donald.myers@us.army.mil.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Interested persons may submit a written statement for consideration by the U.S. Army War College Subcommittee. Written statements should be no longer than two type-written pages and must address: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals submitting a written statement must submit their statement to the Alternate Designated Federal Officer at the following address: ATTN: Alternate Designated Federal Officer, Dept, of Academic Affairs, 122 Forbes Avenue, Carlisle, PA 17013. At any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the U.S. Army War College Subcommittee until its next open meeting.

The Alternate Designated Federal Officer will review all timely submissions with the U.S. Army War College Subcommittee Chairperson, and ensure they are provided to members of the U.S. Army War College Subcommittee before the meeting that is the subject of this notice. After reviewing the written comments, the Chairperson and the Alternate Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Alternate Designated Federal Officer, in consultation with the U.S. Army War College Subcommittee Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the U.S. Army War College Subcommittee.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–11159 Filed 5–8–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[ZRIN 0710–ZA06]

Publication of the Final National Wetland Plant List

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Final Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps), as part of an interagency effort with the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS) and the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), is announcing the availability of the final 2012 National Wetland Plant List (NWPL). The NWPL is used to determine whether the hydrophytic vegetation parameter is met when conducting wetland determinations under the Clean Water Act and the Wetland Conservation Provisions of the Food Security Act. Other applications of the list include wetland restoration, establishment, and enhancement projects. The list will become effective on June 1, 2012 and will be used in any wetland delineation performed after this date. Delineations received prior to this date may still use the 1988 list, or you may chose to use the 2012 list. Prior to the effective date, please reference which list was used on any wetland delineation/determination forms.

DATES: *Effective Date:* June 1, 2012.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–CO–R (Attn: Karen Mulligan), 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Karen Mulligan, Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, Washington, DC 20314–1000, by phone at 202–761–4664 or by email at *karen.mulligan@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The NWPL has undergone significant revisions since its inception in 1988. The latest review process began in 2008 and concluded with twelve rounds of review by regional and national panels and external botanical experts voting on the wetland indicator statuses and nomenclature changes of over 8,200 plants. Over 130,000 comments and votes have been received and reviewed, and a final list has been compiled.

In response to the January 6, 2011, **Federal Register** 76 CFR part 777, the Corps received 35 written comments (6 percent supported the proposal, 11 percent offered no objections or no comments on the proposal, 35 percent expressed opposition to the proposal, and 48 percent raised technical issues). In addition, 16,642 votes on 5,315 species were made by 377 individuals and were recorded on the NWPL Web site. These 377 people also placed 1,159 technical comments on the Web site. These represent about 15% of the total comments and votes received during the entire review process.

The wetland plant list used for Clean Water Act purposes was first published by the FWS in 1988 and contained 6,728 species. The latest list contains 8,200 species, an increase of 1,472 species, or 22 percent. The majority of the increase in the number of species is a result of new taxonomic interpretations. The new list also includes changes in plant indicator status (OBL, FACW, FAC, and FACU designations) from 1988 for 807 species, or 12 percent of the list (not including the new species added to the list). Because of changes in geographic boundaries between the former FWS 88 List and the updated list, these numbers are reasonable estimates but are not exact. The specific break-out of changes were: 35 percent (282 species) were rated wetter, 36 percent (290 species) were rated drier and the remaining 30 percent (235 species) were changes to the former FAC-group. The updating procedures designated a more stringent review of the former 1988 FAC-species. Of these former FAC-species, half were rated FACU and the other half was rated as FAC by a panel of 30 external professional botanists across all regions. Thus, the overall distribution of changes was nearly an equal split between species that received wetter ratings and those that received drier ratings.

The response to the technical comments can be found at: *http://wetland_plants.usace.army.mil/.* Policy-level comments are summarized below.

Many of the comments received related to the effects that changing plant indicator statuses would have on jurisdictional statuses and wetland delineations. Several commenters raised the concern that changing all FAC-plants to FAC, coupled with the Wetland Supplemental Manual changes, statistically swings the vegetation criterion to a wetter regime. The reason for dropping +/– suffixes from the wetland ratings for the NWPL relates to the accuracy of the wetland ratings for all species. Without real frequency data, it is difficult to adequately place species into one of the five wetland indicator status groups with any certainty. Adding finer-scale +/– ratings implies there are data to support their assignments, which is generally not the case. Therefore, to improve the accuracy of the overall list, the National Panel decided to drop the +/– suffixes. The indicator statuses of 431 former FAC-species nationally were reviewed by external botanists in the third round of voting. The new draft ratings for these species are almost equally split between the FAC and the FACU categories (Lichvar and Gillrich 2011).

A number of commenters suggested using frequency results from wetland delineation forms and/or point intercept data when applying plant indicator status(es). As defined by the FWS in the 1988 list, the indicator status rating has always been assigned to represent a plant species' occurrence in wetlands throughout its range, including all occurrences in both uplands and wetlands. Delineation data represent only a single landscape position (the wetland boundary), so wetland boundary delineation data would not be adequate for assessing a species' frequency in wetlands across its range or in all its landscape occurrences. Without frequency data for assessing wetland ratings, general field observations are not scientifically repeatable nor are they the best method for assigning frequency categories. See Lichvar and Gillrich (2011) for a discussion of wetland ratings that can occur in the absence of properly collected frequency data.

One commenter stated that redefining the plant indicator statuses as proposed is technically indefensible and that the new definitions of the categories constitute a double standard. The purpose for redefining the plant indicator statuses was twofold. First, the use of the probability-of-occurrence categories (*e.g.* <1%, 1–33%, 34–66%, 67–99% and >99%) in wetlands implies that there are data to support the ratings, which is generally not true. These categories were based on best professional judgment, which, although useful in many circumstances, was not appropriate for determining precise percentages. Second, the ratings were changed to written definitions so that the percentage categories could be reserved specifically for field-based statistical studies to challenge a species' rating. The new definitions are OBL: Plants that always occur in standing water or in saturated soils; FACW: Plants that nearly always occur in areas of prolonged flooding or require standing water or saturated soils but may, on rare occasions, occur in nonwetlands; FAC: Plants that occur in a variety of habitats, including wetland and mesic to xeric nonwetland habitats but often occur in standing water or saturated soils; FACU: Plants that typically occur in xeric or mesic nonwetland habitats but may frequently occur in standing water or saturated soils; UPL: Plants that almost never occur in water or saturated soils (Lichvar and Gillrich 2011). The opportunity to submit the results of a challenge study will be offered to all once the list is final. This is discussed further in comments below. The new format of written definitions was intended to allow the plant indicator statuses to be applied equally and consistently in the updating process. The numerical frequency categories are now specifically reserved for challenge studies, which will be used for select species as the need arises.

Technical Challenges and Process Concerns

Several commenters expressed concern that the use of an on-line voting process to solicit input on indicator status ratings raises questions about how votes would be used in the update process, and some felt that the process was fatally flawed. ''Voting'' online was the most efficient way to obtain technical input from wetland professionals about their field observations pertaining to species wetland ratings. Online ''voting'' is essentially the same procedure as was used previously by the FWS when they held week-long in-person regional panel meetings where each agency voted in person. We disagree that the process for this effort was fatally flawed. Input received during the public comment period was used in several ways. First, if the input received matched the draft consensus rating by the regional panels, the vote and the commenter's name were recorded and shown on the Web site. Second, if the input was different from the draft rating, then those species were sent back to the panels for further evaluation. Third, in the case of 220 species, the input received during the comment period resulted in a revised wetland rating. The ''voting'' process helped ensure the process was transparent in that the public was afforded an opportunity to provide input into the review process. The voting process during the public notice period required that participants register prior to voting, by providing a name, email address, and institutional affiliation. There were 235 new individuals who made 4,352 comments in the form of votes online. The registration data showed that the largest group of online commenters were environmental consultants (107). There were 13 commenters for whom an affiliation could not be determined.

Several commenters suggested that the Corps develop scientifically defensible sampling and testing protocols for determining the reliability of a species' wetland indicator status. The Corps and the National Panel are collaborating with the National Technical Committee for Wetland Vegetation (NTCWV) to develop and review reasonable, scientifically valid study methods for measuring the frequency of occurrences in a wetland for problematic species. Once the final NWPL is announced, the peer-reviewed study protocols will be in place and available for challenges for any species. This challenge study procedure will use field sampling data and statistical methods, and it will be limited in geographic scope. This protocol allows for challenges that are affordable, yet scientifically sound and peer reviewed.

One commenter requested that the challenge study protocol should be subject to full and open evaluation now, not at some future date. Furthermore, ''limited but strategic field data'' can produce any results that the investigators desire, and, as demonstrated by the lack of openness in this notice, will likely not be open to public scrutiny. The methodology for the ''challenge study'' is currently being developed by the National Panel in collaboration with the other Federal agencies and the NTCWV. The NTCWV is working closely with the director of the NWPL to design a reasonable, cost-effective, scientifically sound method for landscape studies of frequency. The results of this effort will be published in a peer-review scientific journal, which will allow professional public review of the science. Once testing procedures are in place, any problematic species will be evaluated as needed using the new challenge study protocols.

A number of comments were submitted regarding the 1987 Wetland Delineation Manual and/or one of the

regional supplements to the manual and the water table technical standard. These comments were outside the scope of this **Federal Register** notice action and are not discussed further here.

Several people indicated that the Web site was slow and/or difficult to use. The **Federal Register** notice included specific steps for accessing the Web site. Slow local Internet access may have resulted in difficulties for some individuals. Since this is a Department of Defense Web site, security protocol designed to safeguard the voting process and prevent fraud may also have created the perception of a ''slow'' Web site. The option of providing written comments was provided and utilized by many interested parties.

Another commenter suggested that the NWPL should address native vs. non-native species as it relates to indicator status ratings. Such a differentiation is unnecessary because the indicator status of a species does not change based on whether the plant is native or non-native.

One commenter suggested that there should be private-sector wetland professionals on the regional or national review panels. This individual also suggested applying the challenge protocol to all species now. Having private-sector personnel on the regional panels would be a legal issue. Under the Federal Advisory Committee Act, individuals from the private-sector can be part of Federal committees, but only for short durations. Since the update process has taken several years and will continue as a ongoing procedure, such an involvement would be considered long term. The request to have all ratings reviewed and confirmed using field data is not financially or logistically possible. As the commenter points out, frequency testing is the only real way to generate data that can accurately evaluate the frequency of occurrence in wetlands. However, performing such a study for each plant on the entire list is not practical. Instead, the National Panel will start with those species that people feel are problematic and will offer a reasonable study design for executing the challenge. The results of these challenge studies will provide insight for the entire list.

Some commenters could not find specific plant species on the NWPL. The Species Search function allowed all species on the NWPL to be located. Some commenters may have had difficulty because the scientific names of many species have changed since 1988. The NWPL uses nomenclature (scientific names) according to Kartesz (2009). It is estimated that there were 1600 scientific name changes between the 1988 list and the current NWPL (Lichvar and Kartesz 2009). Also, the National Panel removed crop species and obligate epiphytes (defined by Lichvar and Fertig 2011) from the NWPL in Round 4 of the update.

The Corps believes we have adequately reviewed the comments and allowed for public and agency input for the proposal. Comments can be viewed at *http://wetland_plants.usace.army.mil/*.

The updating and maintenance of the NWPL will continue annually. Updates will include changes in nomenclature and taxonomy obtained from Biota of North America (BONAP), newly proposed species, changes as needed based on the results from challenges made to species wetland ratings, dataset analyses for regional and national-scale evaluations of wetland ratings, re-evaluations of wetland ratings based on GIS and floristic provinces analyses, considerations of any new subregions, and several continuous quality control steps. These types of updates and maintenance steps will follow the same protocols used in the development of the 2012 NWPL update. Coordination will occur between the national and regional panels, the public and others, and the National Technical Committee for Wetland Vegetation as needed.

The Corps, in cooperation with the USEPA, USFWS and NRCS is publishing final indicator statuses for the 2012 NWPL.

The final NWPL is available at *http://wetland_plants.usace.army.mil/* and can be downloaded from this site. This completes the review of the NWPL. Final indicator statuses have been set and all comments received have been evaluated. The decision document for this action is available through Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street NW., Washington, DC 20314–1000.

Proposal: Publication of the final 2012 National Wetland Plant List.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31855) regarding plain language, this preamble is written using plain language. The use of ''we'' in this notice refers to the Corps. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

The action will not substantially change paperwork burdens on the regulated public because the use of 2012 NWPL will merely be substituted for the existing 1988 list currently used in the application process in jurisdictional determinations. Further, the NWPL can be viewed on-line or merged into existing documents (*e.g.* pick lists for delineations/determination forms, and subsequent updates will be made electronically.

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 Office of Management and Budget (OMB) control number. For the Corps Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements for permit applications is maintained by the Corps of Engineers (OMB approval number 0710–0003, which expires on August 31, 2012).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we determined that this is not a ''significant regulatory action'' and therefore, it is not subject to review under requirements of the Executive Order.

Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The action does not have federalism implications. We do not believe that the action has substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The action does not impose any additional substantive obligations on State or local governments. Therefore, Executive Order 13132 does not apply to this action.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any

other statute unless the agency certifies that the rule 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.

For purposes of assessing the impacts of the proposed authorization on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the action on small entities, we certify that the updates to the NWPL will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law.

Moreover, Section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year, because the approval of the NWPL is a technical list that provides the latest scientifically updated information on wetland plant indicator statuses. Therefore, this action is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that the action contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the action is not subject to the requirements of Section 203 of UMRA.

Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The approval of the NWPL is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, this action does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The phrase ''policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' The action does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, Executive Order 13175 does not apply to this action.

Environmental Documentation

A decision document has been prepared for this action after all comments received were evaluated. The decision document is available through Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street NW., Washington, DC 20314–1000.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register.** The proposed update to the NWPL is not a ''major rule'' as defined by 5 U.S.C. 804(2), therefore does not apply.

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

Updating the NWPL will not negatively impact human health or the environment of any community, and therefore will not cause any disproportionately high and adverse human health or environmental impacts

to minority or low-income communities. The purpose of the updates to the NWPL are to provide the latest scientific information on the indicator statuses of wetland plants.

Executive Order 13211

The approval of the NWPL is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 13563

Executive Order 13563 for ''Improving Regulation and Regulatory Review'' states, ''[o]ur regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.'' and directs federal agencies to review existing significant regulations and identify those that can be made more effective or less burdensome in achieving regulatory objectives. We have determined that the updates to the NWPL do not constitute a ''significant regulatory action'' nor is it a regulation or rule and therefore, it is not subject to review under requirements of the Executive Order.

Authority

We utilize the NWPL to conduct wetland determinations under the authority of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*).

Dated: May 3, 2012.

Richard C. Lockwood,

Acting Chief, Operations and Regulatory Community of Practice.

[FR Doc. 2012–11176 Filed 5–8–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Ronald E. McNair Postbaccalaureate Achievement Program

AGENCY: Office of Postsecondary Education; Department of Education.

ACTION: Notice.

Overview Information

Ronald E. McNair Postbaccalaureate Achievement Program; Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.217A.

DATES:

Applications Available: May 9, 2012.

Deadline for Transmittal of Applications: June 8, 2012.

Deadline for Intergovernmental Review: August 7, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Ronald E. McNair Postbaccalaureate Achievement Program (McNair Program) is one of the seven programs known as the Federal TRIO Programs, which provide postsecondary educational support for qualified individuals from disadvantaged backgrounds. The McNair Program is a discretionary grant program that awards grants to institutions of higher education for projects designed to provide disadvantaged college students with effective preparation for doctoral study.

The President has set a clear goal for our education system: By 2020, the United States will once again lead the world in college attainment. The Department views the McNair Program as a critical component in the effort to improve the quality of student outcomes so that more students are well prepared for college and careers. To more strategically align the McNair Program with overarching reform strategies for postsecondary completion and graduate school enrollment, the Department is announcing three competitive preference priorities for this competition.

Priorities: There are three competitive preference priorities: Competitive Preference Priority 1—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education; Competitive Preference Priority 2—Improving Productivity; and Competitive Preference Priority 3—Building Evidence of Effectiveness. These three priorities are from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional six points to an application that meets Competitive Preference Priority 1, up to an additional four points to an application that meets Competitive Preference Priority 2, and up to an additional four points to an application that meets Competitive Preference Priority 3, depending on how well the application meets these priorities. The maximum competitive preference points an application can receive under this competition is 12.

Note: Applicants must include in the one-page abstract submitted with the application a statement indicating which competitive preference priorities they have addressed. The priorities addressed in the application must also be listed on the McNair Program Profile Sheet.

These priorities are:

Competitive Preference Priority 1—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education (Up to 6 Additional Points)

Background

The inclusion of Competitive Preference Priority 1 will encourage applicants to increase the number of individuals in the McNair Program's target population that have access to rigorous STEM programs at the postsecondary level and are prepared for graduate study and careers in STEM. The McNair Program's target population includes groups underrepresented in graduate education, as defined in the McNair Program regulations; low-income individuals who are first generation college students; and groups underrepresented in STEM as documented by standard statistical references or other national survey data submitted to and accepted by the Secretary.

Data from the National Center for Education Statistics show that 35 percent of all academic programs offered at McNair grantee institutions are in the STEM fields, compared to just 32 percent of academic programs offered nationally at 4-year institutions. Additionally, 99 percent of McNair grantee institutions offer at least one academic program in the STEM fields. The Department believes that McNair projects are positioned to promote and increase the number of students in the STEM fields.

Definition: This definition is from the McNair Program regulations, 34 CFR 647.7(b), and applies to Competitive Preference Priority 1.

''Groups underrepresented in graduate education'' means Black (non-Hispanic), Hispanic, American Indian, Alaskan Native (as defined in section 7306 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)), Native Hawaiians (as defined in section 7207 of the ESEA), and Native

American Pacific Islanders (as defined in section 320 of the Higher Education Act of 1965, as amended).

Priority

Projects that are designed to address one or more of the following priority areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM. (2 points)

(b) Increasing the number and proportion of students prepared for postsecondary or graduate study and careers in STEM. (2 points)

(c) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are provided with access to rigorous and engaging coursework in STEM or who are prepared for postsecondary or graduate study and careers in STEM. (2 points)

Note: Applicants addressing this priority might want to describe the percentage of students they are proposing to serve that would be in the STEM fields.

Competitive Preference Priority 2—Improving Productivity (Up to 4 Additional Points)

Background

The Department is using Competitive Preference Priority 2 because it believes that it is more important than ever to support projects that are designed to significantly increase efficiency in the use of resources while improving student outcomes. A key performance measure for the McNair Program is the efficiency measure-cost per successful outcome, where a successful outcome is defined by the number of students enrolling and persisting in graduate education. Applicants proposing projects designed to decrease their cost per participant while improving student outcomes will be more likely to perform well on this efficiency measure.

Priority

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Note: The types of projects identified above are suggestions for ways to improve productivity. The Department recognizes that some of these examples, such as modification of teacher compensation systems, may not be relevant for the context of this notice. Accordingly, grantees might want to consider responding to this notice in a way that improves productivity in a relevant, higher education context. Other strategies for improving productivity could include modification of the summer research experience, methods of supplementing grant funds with other funds, and employing graduate mentors versus faculty mentors during the first year of research.

Note: Although not required, the Secretary encourages applicants addressing this priority to explain how they will serve the same or an increased number of students at a lower cost per participant. The Department is interested in seeing strong plans that propose to serve an increasing number of students at a lower cost per participant.

Competitive Preference Priority 3—Building Evidence of Effectiveness (Up to 4 Additional Points)

Background: The McNair Program is an important investment aimed at increasing the number of low-income, first generation students that complete undergraduate education and enter and complete graduate school. But this investment is insufficient to provide these services to all students who would benefit from the program. Accordingly, the Department is interested in projects that propose ways to increase the evidence base around strategies or activities that may help students from low-income and first-generation backgrounds complete undergraduate education and enter and complete graduate programs, particularly in the STEM fields.

Priority: Projects that propose evaluation plans that are likely to produce valid and reliable evidence in the following priority area:

Identifying and improving practices, strategies, and policies that may contribute to improving outcomes. Under this priority, at a minimum, the outcome of interest is to be measured multiple times before and after the treatment for project participants and, where feasible, for a comparison group of non-participants.

Note: Applicants addressing this priority might want to consider how their plans for evaluation would be able to provide more information about what practices, strategies, and policies may help more low-income, first-generation students complete undergraduate education in STEM fields and enter and complete graduate programs in the STEM fields.

Note: To help build evidence of effectiveness, applicants might want to consider tracking outcomes and results for a group of students not served by the McNair Program in order to establish a comparison group. This would enable McNair projects to better measure the success of students selected for participation in their projects.

Definition: This definition is from the notice of final supplemental priorities and definitions, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637), and applies to Competitive Preference Priority 2.

''Open educational resources (OER)'' means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Program Authority: 20 U.S.C. 1070a–11 and 20 U.S.C. 1070a–15.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for 75.215 through 75.221), 77, 79, 80, 82, 84, 86, 97, 98 and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 647. (d) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $30,588,259.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $220,000 to $368,000.

Estimated Average Size of Awards: $240,852.

Maximum Award

For an applicant not currently receiving a McNair Program grant: $220,000 to serve a minimum of 25 eligible participants.

For an applicant currently receiving a McNair Program grant but applying to serve a different campus: $220,000 to serve a minimum of 25 eligible participants.

For an applicant currently receiving a McNair Program grant and not applying

to serve a different campus, the maximum award is the amount equal to the applicant's grant award amount for FY 2007, the first year of the previous cycle, to continue to serve at least the same number of participants that was approved for the current project to the extent that continued service to the same number of participants does not result in a per participant cost of more than $8,800.

Note: For an applicant who is currently receiving a McNair Program grant and is serving more than 25 participants, the applicant is encouraged to continue to serve its current number of participants. However, if the applicant proposes to reduce the number of participants to be served, the applicant must propose to serve at least 25 participants at a cost that does not exceed $8,800 per participant.

For any project that proposes to serve less than the minimum number of 25 participants, the maximum award amount that may be requested is an amount equal to $8,800 per participant.

Pursuant to 34 CFR 647.32(a), we will reject any application that proposes a budget exceeding the maximum amount described in this section for a single budget period of 12 months to serve fewer than 25 participants. Pursuant to 34 CFR 647.32(a), we will also reject any application that proposes a budget to serve fewer than 25 participants.

Estimated Number of Awards: 127.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education and combinations of those institutions.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* An applicant may submit more than one application for a McNair grant as long as each application describes a project that serves a different campus or a designated different population (34 CFR 647.10(a)). The McNair Program regulations define ''different campus'' as ''a site of an institution of higher education that—(1) Is geographically apart from the main campus of the institution; (2) Is permanent in nature; and (3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.'' 34 CFR 647.7(b). The Secretary is not designating any additional populations for which an applicant may submit a separate application under this competition (34 CFR 647.10(b)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet by downloading the package from the program Web site at: *http://www2.ed.gov/programs/triomcnair/index.html.*

You can also request a copy of the application package from: Eileen Bland, McNair Program, U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by email: *TRIO@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:*

Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to no more than 50 pages. However, any application addressing the competitive preference priorities may include up to four additional pages for each priority addressed (a total of 12 pages if all three priorities are addressed) in a separate section of the application submission to discuss how the application meets the competitive preference priority or priorities. These additional pages cannot be used for or transferred to the project narrative. Partial pages will count as a full page toward the page limit. For purpose of determining compliance with the page limit, each page on which there are words will be counted as one full page. Applicants must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, figures, and graphs.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance Face Sheet (SF 424); Part II, the budget information summary form (ED Form 524); the McNair Program Profile; the one-page Project Abstract narrative; and the assurances and certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices, these items will be counted as part of Part III, the application narrative, for purposes of the page-limit requirement. You must include your complete response to the selection criteria, which also includes the budget narrative, in Part III, the application narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 9, 2012.

Deadline for Transmittal of Applications: June 8, 2012.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 7, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 647.31. We reference additional regulations

outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the McNair Program, CFDA number 84.217A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the McNair Program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.217, not 84.217A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) format only. If you upload a file type other than a PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with

the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Eileen Bland, U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. FAX: (202) 502–7857.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and three copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.217A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.217A), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program competition are from 34 CFR 647.21 and are listed in the application package.

2. *Review and Selection Process:* A panel of non-Federal readers will review each application in accordance with the selection criteria and the competitive preference priorities, pursuant to 34 CFR 647.20. The individual scores of the readers will be added and the sum divided by the number of readers to determine the reader score received in the review process.

In accordance with 34 CFR 647.22, the Secretary will evaluate the prior experience of applicants that received a McNair Program project grant for project years 2008–09, 2009–10 and 2010–11. Based on that evaluation, the Secretary may add prior experience points to the application's averaged reader score to determine the total score for each application. The Secretary makes new grants in rank order on the basis of the total scores of the reader scores and prior experience points awarded to each application.

Pursuant to 34 CFR 647.20(c), if there are insufficient funds for all applications with the same total scores, the Secretary will choose among the tied applications so as to serve geographical areas that have been underserved by the McNair Program. The Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial

assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or, is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The success of the McNair Program will be measured by the McNair Program participants' success in completing research and participation in scholarly activities, enrollment in a graduate program, continued enrollment in graduate study, and the attainment of a doctoral degree. All McNair Program grantees will be required to submit an annual performance report.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

For Further Information Contact: Eileen Bland, U.S. Department of Education, 1990 K Street NW., Room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by email: *TRIO@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to one of the program contact persons listed under *For Further Information Contact* in section VII of this notice.

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 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 this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 4, 2012.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–11252 Filed 5–8–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Promise Neighborhoods Program—Implementation Grant Competition, Correction

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice; correction.

Overview Information: Applications for New Awards; Promise Neighborhoods Program—Implementation Grant Competition, Correction. Catalog of Federal Domestic Assistance (CFDA) Number: 84.215N (Implementation grants).

SUMMARY: On April 20, 2012, the Office of Innovation and Improvement in the U.S. Department of Education published in the **Federal Register** (77 FR 23675) a notice inviting applications for new awards for fiscal year (FY) 2012 for the Promise Neighborhoods implementation grant competition (2012 Implementation Grant NIA). This notice corrects an error in the deadline for transmittal of applications.

DATES: *Deadline for Transmittal of Applications:* July 27, 2012.

SUPPLEMENTARY INFORMATION:

Correction

In section IV, Application and Submission Information, the 2012 Implementation Grant NIA indicates that the deadline for transmittal of applications is June 19, 2012, which is incorrect. We correct this NIA as follows:

On page 23686, second column, we correct the Deadline for Transmittal of Applications date to read ''July 27, 2012.''

Program Authority: 20 U.S.C. 7243–7243b.

VIII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Adrienne Hawkins, U.S. Department of Education, 400 Maryland Avenue SW., room 4W256, Washington, DC 20202. Telephone: (202) 453–5638 or by email: *PromiseNeighborhoods@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text

telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov/.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 4, 2012.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2012–11254 Filed 5–8–12; 8:45 am]

BILLING CODE 4000–01–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: EG12–63–000.
Applicants: Topaz Solar Farms LLC.
Description: Notice of Self-Certification of EWG Status of Topaz Solar Farms LLC.
Filed Date: 5/1/12.
Accession Number: 20120501–5254.
Comments Due: 5 p.m. ET 5/22/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–718–001.
Applicants: New York Independent System Operator, Inc., PJM Interconnection, L.L.C.
Description: FID M2M Compliance 3–15–12 Order to be effective 1/15/2013.
Filed Date: 5/1/12.
Accession Number: 20120501–5368.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1189–002.
Applicants: DeWind Novus, LLC.
Description: Notice of Non-Material Change in Status of DeWind Novus, LLC.
Filed Date: 5/1/12.
Accession Number: 20120501–5446.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1502–001.
Applicants: Ironwood Windpower, LLC.
Description: Amended MBR Tariff to be effective 6/15/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5208.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1504–001.
Applicants: Cimarron Windpower II, LLC.
Description: Supplement to MBR Filing to be effective N/A.
Filed Date: 5/1/12.
Accession Number: 20120501–5205.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1684–000.
Applicants: International Transmission Company.
Description: Filing of a CIAC Agreement to be effective 5/2/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5245.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1685–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Revised Wholesale Power Contracts Filing to be effective 5/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5259.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1686–000.
Applicants: California Power Exchange Corporation.
Description: California Power Exchange FERC Rate Schedule No. 1 for Rate Period 21 to be effective 7/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5282.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1687–000.
Applicants: International Transmission Company.
Description: Filing of Notice of Succession to be effective 7/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5319.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1688–000.
Applicants: Appalachian Power Company.
Description: Buckeye PJM Services Agreement RS204 to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5345.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1689–000.
Applicants: Ohio Power Company.
Description: Buckeye PJM Svcs Agr Concurrence RS201 to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5346.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1690–000.
Applicants: Indiana Michigan Power Company.
Description: Buckeye PJM Svcs Agr Concurrence—RS202 to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5347.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1691–000.
Applicants: Kentucky Power Company.
Description: Buckeye PJM Services Agr RS203—Concurrence to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5348.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1692–000.
Applicants: Galaxy Energy, LLC.
Description: Galaxy Energy LLC Market Based Rate Tariff to be effective 6/4/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5349.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1693–000.
Applicants: PJM Interconnection, L.L.C.
Description: Removal of Section 8 of OATT Att K Appendix & OA Schedule 1 re Order in ER12–718 to be effective 1/15/2013.
Filed Date: 5/1/12.
Accession Number: 20120501–5351.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1694–000.
Applicants: Entergy Arkansas, Inc.
Description: Attachment K to be effective 7/9/2010 under ER12–1694 Filing Type: 80.
Filed Date: 5/1/12.
Accession Number: 20120501–5384.
Comments Due: 5 p.m. ET 5/22/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 2, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11167 Filed 5–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–60–000.
Applicants: Minonk Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Minonk Wind, LLC.
Filed Date: 4/19/12.
Accession Number: 20120419–5196.
Comments Due: 5 p.m. ET 5/10/12.

Docket Numbers: EG12–61–000.
Applicants: Senate Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Senate Wind, LLC.
Filed Date: 4/19/12.
Accession Number: 20120419–5200.
Comments Due: 5 p.m. ET 5/10/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2156–002.
Applicants: Consumers Energy Company.
Description: Consumers Energy Company Supplement to Prior Refund Report Filings.
Filed Date: 4/19/12.
Accession Number: 20120419–5255.
Comments Due: 5 p.m. ET 5/10/12.

Docket Numbers: ER12–1574–000.
Applicants: Kentucky Utilities Company.
Description: Benham Notice of Termination to be effective 8/16/2012.
Filed Date: 4/19/12.
Accession Number: 20120419–5158.
Comments Due: 5 p.m. ET 6/4/12.

Docket Numbers: ER12–1575–000.
Applicants: State Line Energy, L.L.C.
Description: Cancellation of MBR Tariff for State Line Energy to be effective 4/19/2012.
Filed Date: 4/19/12.
Accession Number: 20120419–5187.
Comments Due: 5 p.m. ET 5/10/12.

Docket Numbers: ER12–1576–000.
Applicants: Florida Power & Light Company.
Description: FPL Revisions to Schedules 4 and 9 of the OATT to be effective 7/1/2012.
Filed Date: 4/19/12.
Accession Number: 20120419–5218.
Comments Due: 5 p.m. ET 5/10/12.

Docket Numbers: ER12–1577–000.
Applicants: Midwest Independent Transmission System.
Description: 09–19–12 MEP Filing to be effective 7/1/2012.
Filed Date: 4/19/12.
Accession Number: 20120419–5229.
Comments Due: 5 p.m. ET 5/10/12.

Docket Numbers: ER12–1578–000.
Applicants: Northern Indiana Public Service Company.
Description: CIAC under Wabash Valley Power Association Interconnection Agreement to be effective 4/20/2012.
Filed Date: 4/19/12.
Accession Number: 20120419–5233.
Comments Due: 5 p.m. ET 5/10/12.

Docket Numbers: ER12–1579–000.
Applicants: State Line Energy, L.L.C.
Description: Notice of Cancellation of Reactive Supply Schedule of State Line Energy, L.L.C.
Filed Date: 4/19/12.
Accession Number: 20120419–5254.
Comments Due: 5 p.m. ET 5/10/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 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 20, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11171 Filed 5–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1695–000.
Applicants: Liberty Electric Power, LLC.
Description: Compliance to be effective 5/3/2012.
Filed Date: 5/2/12.
Accession Number: 20120502–5080.
Comments Due: 5 p.m. ET 5/23/12.

Docket Numbers: ER12–1696–000.
Applicants: Michigan Electric Transmission Company.
Description: Filing of Certificate of Concurrence to be effective 4/27/2012.
Filed Date: 5/2/12.
Accession Number: 20120502–5088.
Comments Due: 5 p.m. ET 5/23/12.

Docket Numbers: ER12–1697–000.
Applicants: Louisville Gas and Electric Company.
Description: Att M LGIA LGIP Rev to be effective 5/3/2012.
Filed Date: 5/2/12.
Accession Number: 20120502–5089.
Comments Due: 5 p.m. ET 5/23/12.

Docket Numbers: ER12–1698–000.
Applicants: New Mexico Renewable Energy Transmission Authority, Power Network New Mexico, LLC.
Description: Application for Authorization to Sell Transmission Rights at Negotiated Rates, Approval of Capacity Allocation, and Request for Waivers of Power Network New Mexico, LLC, *et al.*
Filed Date: 5/2/12.
Accession Number: 20120502–5101.
Comments Due: 5 p.m. ET 5/23/12.

Docket Numbers: ER12–1699–000.
Applicants: Public Service Company of New Mexico, Power Network New Mexico, LLC, New Mexico Renewable Energy Transmission Authority.
Description: Request for Limited Waiver of Public Service Company of New Mexico, *et al.*
Filed Date: 5/2/12.
Accession Number: 20120502–5106.
Comments Due: 5 p.m. ET 5/23/12.

Docket Numbers: ER12–1700–000.
Applicants: PJM Interconnection, L.L.C.
Description: Amendments to Schedule 12—Appendix re RTEP approved by PJM Board April 2, 2012 to be effective 7/31/2012.
Filed Date: 5/2/12.
Accession Number: 20120502–5115.
Comments Due: 5 p.m. ET 5/23/12.

Docket Numbers: ER12–1701–000.
Applicants: PacifiCorp.
Description: WAPA NITSA Rev 4 to be effective 5/1/2012.
Filed Date: 5/2/12.
Accession Number: 20120502–5140.
Comments Due: 5 p.m. ET 5/23/12.

Docket Numbers: ER12–1702–000.
Applicants: Sunoco Power Marketing, LLC.
Description: Baseline Tariff Filing to be effective 7/2/2012.
Filed Date: 5/2/12.
Accession Number: 20120502–5142.
Comments Due: 5 p.m. ET 5/23/12.

Docket Numbers: ER12–1703–000.
Applicants: Puget Sound Energy, Inc.
Description: Electric Transmission Reassignment (delete cap) to be effective 4/25/2012.
Filed Date: 5/2/12.
Accession Number: 20120502–5159.
Comments Due: 5 p.m. ET 5/23/12.

Docket Numbers: ER12–1704–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company's Annual Filing of Revised Costs and Accruals for Post-Employment Benefits Other than Pensions (''PBOP'').
Filed Date: 5/2/12.
Accession Number: 20120502–5160.
Comments Due: 5 p.m. ET 5/23/12.

Docket Numbers: ER12–1705–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to the OATT & OA re the elimination of LMP–G&T to be effective 7/1/2012.
Filed Date: 5/2/12.
Accession Number: 20120502–5165.
Comments Due: 5 p.m. ET 5/23/12.

Docket Numbers: ER12–652–001.
Applicants: EWO Marketing, LLC.
Description: EWOM Cmpl ER12–652 to be effective 11/30/2011.
Filed Date: 5/2/12.
Accession Number: 20120502–5164.
Comments Due: 5 p.m. ET 5/23/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–30–002.
Applicants: System Energy Resources, Inc.
Description: System Energy Resources, Inc. submits request to amend the November 11, 2011 order under ES11–30.
Filed Date: 5/1/12.
Accession Number: 20120501–5458.
Comments Due: 5 p.m. ET 5/22/12.

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: May 2, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11168 Filed 5–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1580–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3279; Queue No. X1–046 to be effective 3/29/2012.
Filed Date: 4/20/12.
Accession Number: 20120420–5023.
Comments Due: 5 p.m. ET 5/11/12.

Docket Numbers: ER12–1582–000.
Applicants: Carolina Power & Light Company.
Description: Revised Rate Schedule No. 173 of Carolina Power and Light Company to be effective 5/1/2012.
Filed Date: 4/20/12.
Accession Number: 20120420–5043.
Comments Due: 5 p.m. ET 5/11/12.

Docket Numbers: ER12–1583–000.
Applicants: Southwestern Public Service Company.
Description: 4–20–12_RS132 SPS–GSEC_PSA Cancel to be effective 4/20/2012.
Filed Date: 4/20/12.
Accession Number: 20120420–5044.
Comments Due: 5 p.m. ET 5/11/12.

Docket Numbers: ER12–1584–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc.'s Notice of Cancellation of Large Generator Interconnection Agreement.
Filed Date: 4/20/12.
Accession Number: 20120420–5113.
Comments Due: 5 p.m. ET 5/11/12.

Docket Numbers: ER12–1585–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc.'s Notice of Cancellation of Large Generator Interconnection Agreement.
Filed Date: 4/20/12.
Accession Number: 20120420–5114.
Comments Due: 5 p.m. ET 5/11/12.

Docket Numbers: ER12–1586–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Rate Schedule 13—Western Area Power Administration Joint Operating Agreement to be effective 4/30/2012.
Filed Date: 4/20/12.
Accession Number: 20120420–5143.
Comments Due: 5 p.m. ET 5/11/12.

Docket Numbers: ER12–1587–000.
Applicants: Northeastern Power Company.
Description: Northeastern Power Company submits tariff filing per 35.12: NEPCO Reactive Power Rate Schedule to be effective 4/20/2012.
Filed Date: 4/20/12.
Accession Number: 20120420–5163.
Comments Due: 5 p.m. ET 5/11/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–35–000.
Applicants: Consumers Energy Company.
Description: Application for Authority to Issue Long Term Securities of Consumers Energy Company.
Filed Date: 4/20/12.
Accession Number: 20120420–5183.
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 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 20, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11172 Filed 5–8–12; 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: EC12–95–000.
Applicants: ITC Midwest LLC.
Description: Application for Approval of Acquisition of Transmission Assets Pursuant to Section 203 of the Federal Power Act of ITC Midwest LLC.
Filed Date: 4/30/12.
Accession Number: 20120430–5696.
Comments Due: 5 p.m. ET 5/21/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1556–005.
Applicants: Longview Power.
Description: Notice of Change in Status of Longview Power, LLC.
Filed Date: 4/30/12.
Accession Number: 20120430–5705.
Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: ER10–3254–001.
Applicants: Cooperative Energy Incorporated (An Electric Membership Corporation).
Description: Cooperative Energy Inc. Second Amendment to Updated Market Power Analysis.
Filed Date: 4/27/12.
Accession Number: 20120427–5422.
Comments Due: 5 p.m. ET 5/18/12.

Docket Numbers: ER12–162–002; ER11–3876–004; ER11–2044–005; ER10–2611–003.
Applicants: MidAmerican Energy Company, Cordova Energy Company LLC, Saranac Power Partners, L.P., Bishop Hill Energy II LLC.
Description: Bishop Hill Energy II LLC, Cordova Energy Company LLC, MidAmerican Energy Company, and Saranac Power Partners, L.P. (Applicants) notice of change in status filing.
Filed Date: 4/30/12.
Accession Number: 20120430–5706.
Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: ER12–1666–000.
Applicants: Longview Power, LLC.
Description: Category 2 and MISO Ancillary Services Filing to be effective 3/29/2012.
Filed Date: 4/30/12.
Accession Number: 20120430–5476.
Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: ER12–1667–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 4–30–12 Attachment O to be effective 5/1/2012.
Filed Date: 4/30/12.
Accession Number: 20120430–5486.
Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: ER12–1668–000.
Applicants: Entergy Arkansas, Inc.
Description: MJMEUC PtP SA #543 to be effective 4/1/2012.
Filed Date: 4/30/12
Accession Number: 20120430–5495.
Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: ER12–1669–000.
Applicants: Westar Energy, Inc.
Description: KEPCo, Revision to Attachment F to be effective 7/1/2011.
Filed Date: 4/30/12.
Accession Number: 20120430–5500.
Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: ER12–1670–000.
Applicants: Delaware City Refining Company LLC.
Description: Notice of Change in Status to be effective 6/29/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5001.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1671–000.
Applicants: Southwest Power Pool, Inc.
Description: 2416 Midwest Energy/ITC Interconnection Agreement to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5003.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1672–000.
Applicants: PBF Power Marketing LLC.
Description: Change of Status to be effective 6/29/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5008.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1673–000.
Applicants: Westar Energy, Inc.
Description: Kansas Power Pool Confirmation Letter Re-dispatch Services to be effective 6/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5010.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1674–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc.'s Notice of Cancellation of Generator Interconnection Agreement.
Filed Date: 4/30/12.
Accession Number: 20120430–5656.
Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: ER12–1675–000.
Applicants: Flanders Energy LLC.
Description: Baseline New to be effective 5/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5083.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1676–000.
Applicants: PacifiCorp.
Description: Notice of Termination of PacifiCorp Rate Schedule No. 246.
Filed Date: 4/30/12.
Accession Number: 20120430–5676.
Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: ER12–1677–000.
Applicants: Southwest Power Pool, Inc.
Description: 2198R1 Kansas Power Pool NITSA NOA to be effective 4/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5114.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1678–000.
Applicants: ISO New England Inc.
Description: Forward Capacity Auction Results Filing of ISO New England Inc.
Filed Date: 4/30/12.
Accession Number: 20120430–5697.
Comments Due: 5 p.m. ET 6/14/12.

Docket Numbers: ER12–1679–000.
Applicants: Northern States Power Company, a Wisconsin corporation.
Description: 2012_5_1_NSPW BNGR Const Intercon Fac Agrmt-115 to be effective 6/29/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5127.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1680–000.
Applicants: Minonk Wind, LLC.
Description: Market-Based Rate Tariff to be effective 6/30/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5136.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1681–000.
Applicants: Clean Currents LLC.
Description: Clean Currents LLC Notice of Cancellation of MBR Authority to be effective 5/2/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5210.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1682–000.
Applicants: Public Service Company of Colorado.
Description: 2012–5–1_SPS Line Losses Filing to be effective 7/1/2012.
Filed Date: 5/1/12.
Accession Number: 20120501–5224.
Comments Due: 5 p.m. ET 5/22/12.

Docket Numbers: ER12–1683–000.
Applicants: Pacific Gas and Electric Company.
Description: Amendment to BART Network Integration Transmission

Service Agreement (Lodi) to be effective 7/1/2012.

Filed Date: 5/1/12.

Accession Number: 20120501–5237.

Comments Due: 5 p.m. ET 5/22/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–39–000.

Applicants: System Energy Resources, Inc.

Description: Application of System Energy Resources, Inc., for Section 204 Authorization.

Filed Date: 4/30/12.

Accession Number: 20120430–5707.

Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: ES12–40–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: Application under FPA Section 204 of Michigan Electric Transmission Company, LLC.

Filed Date: 4/30/12.

Accession Number: 20120430–5714.

Comments Due: 5 p.m. ET 5/21/12.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA12–1–000.

Applicants: Alabama Electric Marketing, LLC, Big Sandy Peaker Plant, LLC, California Electric Marketing, LLC, Crete Energy Venture, LLC, CSOLAR IV South, LLC, High Desert Power Project, LLC, Kiowa Power Partners, LLC, Lincoln Generating Facility, LLC, New Covert Generating Company, LLC, New Mexico Electric Marketing, LLC, Rolling Hills Generating, L.L.C., Tenaska Alabama Partners, L.P., Tenaska Alabama II Partners, L.P., Tenaska Frontier Partners, Ltd., Tenaska Gateway Partners, Ltd., Tenaska Georgia Partners, L.P., Tenaska Power Management, LLC, Tenaska Power Services Co., Tenaska Virginia Partners, L.P., Tenaska Washington Partners, L.P., Texas Electric Marketing, LLC, TPF Generation Holdings, LLC, and Wolf Hills Energy, LLC.

Description: Quarterly Land Acquisition Report of Alabama Electric Marketing, LLC, Bib Sandy Peaker Plant, LLC, California Electric Marketing, LLC, Crete Energy Venture, LLC, *et al.*

Filed Date: 4/30/12.

Accession Number: 20120430–5584.

Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: LA12–1–000.

Applicants: APDC, Inc., Atlantic Power Energy Services (US) LLC, Auburndale Power Partners, L.P., Cadillac Renewable Energy, LLC, Chambers Cogeneration, Limited Partnership, Delta Person Limited Partnership, Frederickson Power L.P. Lake Cogen, Ltd., Manchief Power Company LLC, Morris Cogeneration, LLC, Orlando CoGen Limited, L.P., Pasco Cogen, Ltd., SelkirkCogen Partners, L.P. Burley Butte Wind Park, LLC, Camp Reed Wind Park, LLC, Golden Valley Wind Park, LLC, Milner Dam Wind Park, LLC, Oregon Trail Wind Park, LLC, Payne's Ferry Wind Park, LLC, Pilgrim Stage Station Wind Park, LLC, Salmon Falls Wind Park, LLC, Thousand Springs Wind Park, LLC, Tuana Gulch Wind Park, LLC, and Yahoo Creek Wind Park, LLC.

Description: Quarterly Report of Acquisition of Sites of APDC, Inc., *et al.*

Filed Date: 4/30/12.

Accession Number: 20120430–5626.

Comments Due: 5 p.m. ET 5/21/12.

Docket Numbers: LA12–1–000.

Applicants: Florida Power & Light Company, NextEra Energy Resources, LLC, Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Backbone Mountain Windpower LLC, Badger Windpower, LLC, Baldwin Wind, LLC, Bayswater Peaking Facility, LLC, Blackwell Wind, LLC, Butler Ridge Wind Energy Center, LLC, Crystal Lake Wind, LLC, Crystal Lake Wind II, LLC, Crystal Lake Wind III, LLC, Day County Wind, LLC, Diablo Winds, LLC, Elk City Wind, LLC, Elk City II Wind, LLC, ESI Vansycle Partners, L.P., Florida Power & Light Co., FPL Energy Burleigh County Wind, LLC, FPL Energy Cabazon Wind, LLC, FPL Energy Cape, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Green Power Wind, LLC, FPL Energy Hancock County Wind, LLC, FPL Energy Illinois Wind, LLC, FPL, Energy Maine Hydro LLC, FPL Energy Marcus Hook, L.P., FPL Energy MH50 L.P., FPL Energy Montezuma Wind, LLC, FPL Energy Mower County, LLC, FPL Energy New Mexico Wind, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, FPL Energy Sooner Wind, LLC, FPL Energy South Dakota Wind, LLC, FPL Energy Stateline II, Inc., FPL Energy Vansycle, LLC, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, FPL Energy Wyoming, LLC, Garden Wind, LLC, Gray County Wind Energy, LLC, Hatch Solar Energy Center I, LLC, Hawkeye Power Partners, LLC, High Majestic Wind Energy Center, LLC, High Winds, LLC, High Majestic Wind II, LLC, Jamaica Bay Peaking Facility, LLC, Lake Benton Power Partners II, LLC, Langdon Wind, LLC, Logan Wind Energy LLC, Meyersdale Windpower LLC, Mill Run Windpower, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind Interconnection Services, LLC, NEPM II, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Montezuma II Wind, LLC, NextEra Energy Power Marketing, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Seabrook, LLC, NextEra Energy Services Massachusetts, LLC, Northeast Energy Associates, A Limited Partnership, North Jersey Energy Associates, A Limited Partnership, Northern Colorado Wind Energy, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Paradise Solar Urban Renewal, L.L.C., Peetz Table Wind Energy, LLC, Pennsylvania Windfarms, Inc., Perrin Ranch Wind, LLC, Red Mesa Wind, LLC, Sky River LLC, Somerset Windpower, LLC, Story Wind, LLC, Docket No. Vasco Winds, LLC, Victory Garden Phase IV, LLC, Waymart Wind Farm, L.P., Wessington Wind Energy Center, LLC, White Oak Energy LLC, Wilton Wind II, LLC, Windpower Partners 1993, L.P.

Description: First Quarter 2012 Site Control Quarterly Filing of the NextEra Energy Companies.

Filed Date: 4/30/12.

Accession Number: 20120430–5689.

Comments Due: 5 p.m. ET 5/21/12.

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: May 1, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11173 Filed 5–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1675–000]

Flanders Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Flanders Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 22, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: May 2, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11169 Filed 5–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1707–000]

Liberty Power Wholesale Supply, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Liberty Power Wholesale Supply, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 23, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: May 3, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11166 Filed 5–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1680–000]

Minonk Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Minonk Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 22, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create

and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: May 2, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11170 Filed 5–8–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1660–000]

Tuscola Bay Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Tuscola Bay Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 23, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: May 3, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–11174 Filed 5–8–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0163; FRL–9348–2]

Aldicarb; Cancellation Order for Amendments To Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the amendment to terminate uses, voluntarily requested by the registrant and accepted by the Agency, of products containing aldicarb, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an October 7, 2010 **Federal Register** Notice of Receipt of Request from the registrant, Bayer CropScience to voluntarily amend to terminate uses of the product, TEMIK® Brand 15G, containing aldicarb on citrus and potatoes effective immediately. The registrant also requested that EPA amend to terminate the remaining pesticide uses of this product on cotton, dry beans, peanuts, soybeans, sugar beets, and sweet potatoes, effective as of December 31, 2014. These are not the last products containing aldicarb registered for use in the United States. In the October 7, 2010 notice, EPA indicated that it would issue an order implementing the amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrant withdrew their requests. The Agency received comments on the notice but none merited its further review of the requests. Further, the registrant did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The amendments are effective May 9, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Bartow, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 603–0065; fax number: (703) 308–8090; email address: *bartow.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0163.

Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, by appointment at One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA, between 9 a.m. and 3 p.m., Monday through Friday, excluding legal holidays. To schedule an appointment, call (703) 305–5805.

II. What action is the agency taking?

This notice announces the amendments to delete uses, as requested by a registrant, of a product registered under section 3 of FIFRA. The registration is listed in Table 1 of this unit.

TABLE 1—ALDICARB PRODUCT REGISTRATION AMENDMENTS TO DELETE USES

EPA Registration number	Product name	Uses deleted
264–333	TEMIK® Brand 15G	Citrus, Potatoes, Cotton, Dry Beans, Peanuts, Soybeans, Sugar Beets, and Sweet Potatoes.

Table 2 of this unit includes the name and address of record, as well as the EPA company number for the registrant of the product in Table 1 of this unit. The EPA company number corresponds to the first part of the EPA registration number of the product listed above.

TABLE 2—REGISTRANT OF THE AMENDED PRODUCT

EPA Company number	Company name and address
264	Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.

III. Summary of Public Comments Received and Agency Response to Comments

The Agency received comments relating to alternatives and benefits of aldicarb use. The Agency does not believe that the comments submitted during the comment period merit further review or a denial of the requests for voluntary use deletion.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendments to terminate uses of the aldicarb registration identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registration identified in Table 1 of Unit II are amended to terminate the affected uses. The effective date of the citrus and potatoes cancellations that are the subject of this notice is May 9, 2012. The effective date of the cotton, dry bean, peanut, soybean, sugar beet, and sweet potato cancellations that are subject of this notice is December 31, 2014. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on October 7, 2010 (75 FR 62129) (FRL–8848–1). The comment period closed on November 8, 2010.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the product subject to this order is as follows.

Per a Memorandum of Agreement (MOA) between the Environmental Protection Agency and Bayer CropScience dated August 16, 2010, Bayer may only sell existing stocks of any aldicarb end-use product labeled for use on citrus and potatoes for export consistent with the requirements of FIFRA section 17 or for purposes of proper disposal. Existing stocks of aldicarb end-use product (TEMIK® Brand 15G) that are labeled for use on citrus and potatoes may no longer be sold by retailers or used on citrus and potatoes as of May 9, 2012.

Bayer may only sell or distribute TEMIK® Brand 15G end-use products permitting use on cotton, dry beans, peanut, soybean, sugar beets, and sweet potatoes until December 31, 2014. After that date, Bayer may only distribute such products intended for export consistent with the requirements of FIFRA section 17 or for purposes of proper disposal.

Sale and distribution of TEMIK® Brand 15G labeled for use on cotton, dry beans, peanut, soybean, sugar beets, and sweet potatoes by any other party is permitted until December 31, 2016, and thereafter, only for purposes of proper disposal or export consistent with the requirements of FIFRA section 17.

Existing stocks of TEMIK® Brand 15G labeled for use on cotton, dry beans, peanut, soybean, sugar beets, and sweet potatoes may be used until August 31, 2018, provided that such use is in all respects consistent with the previously-approved label and labeling accompanying the product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 2, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–11072 Filed 5–8–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011117–049.

Title: United States/Australasia Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; ANL Singapore Pte Ltd.; CMA–CGM; Compagnie Maritime Marfret S.A.; Hamburg-Süd; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Mediterranean Shipping Company S.A. as party to the agreement.

Agreement No.: 011275–032.

Title: Australia and New Zealand-United States Discussion Agreement.

Parties: ANL Singapore Pte Ltd.; CMA CGM, S.A.; Hamburg-Süd KG; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor LLP; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would add Mediterranean Shipping Company S.A. as party to the Agreement.

Agreement No.: 012135–002.

Title: EUKOR Car Carriers, Inc./FOML Space Charter.

Parties: EUKOR Car Carriers, Inc. and FESCO Ocean Management Limited.

Filing Parties: Neal M Mayer, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue NW., 10th Floor; Washington, DC 20036

Synopsis: The amendment revises the geographic scope of the agreement to include ports on the U.S. West Coast and ports in the Russian Far East.

Agreement No.: 012143–001.

Title: COSCON/PIL Space Charter and Sailing Agreement.

Parties: COSCO Container Lines Company, Ltd. and Pacific International Lines (PTE) Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West Fifth Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The amendment extends the term of the agreement through January 2013.

Agreement No.: 012168.

Title: CSCL/UASC Vessel Sharing Agreement—Asia and U.S. East Coast Service.

Parties: China Shipping Container Lines Co. Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (collectively known as China Shipping); and United Arab Shipping Company S.A.G.

Filing Party: Tara L. Leiter, Esquire; Blank Rome LLP; 600 New Hampshire Avenue NW., Washington, DC 20037.

Synopsis: The agreement authorizes China Shipping and UASC to share space on vessels in the trade between the U.S. East Coast and China.

Agreement No.: 012169.

Title: Crowley/ELJSA Space Charter Agreement.

Parties: Crowley Latin America Services, LLC and Evergreen Line Joint Service Agreement.

Filing Party: Wayne R. Rohde, Esquire; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement authorizes Crowley to charter space to Evergreen in the trade between the U.S. East Coast and Panama and Costa Rica.

Agreement No.: 201213.

Title: Marine Terminal Services Agreement Between Port of Houston Authority and Cosco Container Lines Americas, Inc.

Parties: Port of Houston Authority and Cosco Container Lines Americas, Inc.

Filing Party: Linda Henry, Esq., Port of Houston Authority, P.O. Box 2562; Houston, TX 77252.

Synopsis: The agreement sets forth certain discounted rates and charges applicable to Bayport Container Lines Americas, Inc.'s container vessels calling at PHA's Barbours Cut and Bayport Container Terminals in the Port of Houston.

Agreement No.: 201214.

Title: Marine Terminal Services Agreement Between Port of Houston Authority and Hanjin Shipping Company, Ltd.

Parties: Port of Houston Authority and Hanjin Shipping Company, Ltd.

Filing Party: Linda Henry, Esq., Port of Houston Authority, P.O. Box 2562; Houston, TX 77252.

Synopsis: The agreement sets forth certain discounted rates and charges applicable to Bayport Container Lines Americas, Inc.'s container vessels calling at PHA's Barbours Cut and Bayport Container Terminals in the Port of Houston.

By Order of the Federal Maritime Commission.

Dated: May 4, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–11199 Filed 5–8–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-ScottRodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED

April 1, 2012 thru April 30, 2012

04/02/2012		
20120647	G	SS&C Technologies Holdings, Inc.; GlobeOp Financial Services S.A.; SS&C Technologies Holdings, Inc.
20120651	G	Sentinel Capital Partners IV, L.P.; Colson Trust; Sentinel Capital Partners IV, L.P.
20120652	G	Pegasus Partners V, L.P.; John N. Kucera and Vianne L. Kucera; Pegasus Partners V, L.P.
20120658	G	Oak Hill Capital Partners III, L.P.; Monitor Clipper Equity Partners II, L.P.; Oak Hill Capital Partners III, L.P.
20120668	G	TIBCO Software, Inc.; LogLogic, Inc.; TIBCO Software, Inc.
04/04/2012		
20120597	G	Dover Corporation; Impresa Fund III, Limited Partnership; Dover Corporation.

EARLY TERMINATIONS GRANTED—Continued

April 1, 2012 thru April 30, 2012

20120661	G	Summit Partners Private Equity Fund VII–A, L.P.; Audax Private Equity Fund II, L.P.; Summit Partners Private Equity Fund VH–A, L.P.
20120664	G	Dell Inc.; Thoma Bravo Fund IX, L.P.; Dell Inc.
20120666	G	Michael O. Johnson; Herbalife Ltd.; Michael O. Johnson.
20120670	G	General Atlantic Partners 90, L.P.; C&J Energy Services, Inc.; General Atlantic Partners 90, L.P.
04/06/2012		
20120640	G	Oliver Holdings, Inc.; Mason Wells Buyout Fund II, Limited Partnership; Oliver Holdings, Inc.
20120667	G	Temasek Holdings (Private) Limited; Amobee, Inc.; Temasek Holdings (Private) Limited.
20120675	G	FIF HE Holdings LLC; Lehman Brothers Holdings Inc. Plan Trust; FIF HE Holdings LLC.
20120680	G	JFE Holdings, Inc.; JFE Shoji Holdings, Inc.; JFE Holdings, Inc.
20120681	G	The Williams Companies, Inc.; Caiman Energy, LLC; The Williams Companies, Inc.
20120683	G	Insight Equity II LP; Flanders Corporation; Insight Equity II LP.
20120685	G	On Assignment, Inc.; Apex Systems, Inc.; On Assignment, Inc.
20120687	G	Guggenheim Baseball Management, L.P.; LA Holdco LLC; Guggenheim Baseball Management, L.P.
04/09/2012		
20120691	G	CCMP Capital Investors II, L.P.; Avenue Special Situations Fund V, L.P.; CCMP Capital Investors H, L.P.
20120695	G	TorQuest Partners Fund II, L.P.; Brentwood Associates Private Equity III, L.P.; TorQuest Partners Fund II, L.P.
20120702	G	VEPF IV MV II, L.P.; Misys plc; VEPF IV MV II, L.P.
20120704	G	Court Square Capital Partners II, L.P.; Platte River Ventures I, L.P.; Court Square Capital Partners II, L.P.
04/10/2012		
20120622	G	UnitedHealth Group Incorporated; The Medica Group Preferred Holding Company; UnitedHealth Group Incorporated.
20120624	G	Algonquin Power and Utilities Corp.; Gamesa Corporation Technologia S.A.; Algonquin Power and Utilities Corp.
20120689	G	Marian Health System, Inc.; Michael B. Garrett; Marian Health System, Inc.
20120690	G	Marian Health System, Inc.; Michael R. Prescott; Marian Health System, Inc.
20120694	G	AmerisourceBergen Corporation; James R. Berger; AmerisourceBergen Corporation.
20120701	G	Terra Firma Capital Partners III, L.P.; Terra-Gen Power Holdings, LLC; Terra Firma Capital Partners III, L.P.
04/13/2012		
20120684	G	EnPro Industries, Inc.; Precision Holding LLC; EnPro Industries, Inc.
20120707	G	Covidien plc; superDimension Ltd.; Covidien plc.
20120710	G	Justice Holdings Limited; 3G Special Situations Fund II, L.P.; Justice Holdings Limited.
20120711	G	CIVC Partners Fund IV, L.P.; Clearview Capital Fund II L.P.; CIVC Partners Fund IV, L.P.
20120717	G	Blackfriars Corp.; John L. Walter; Blackfriars Corp.
04/16/2012		
20120669	G	Warburg Pincus Private Equity IX, L.P.; Builders FirstSource, Inc.; Warburg Pincus Private Equity IX, L.P.
20120719	G	Mr. Tarang Jain; Visteon Corporation; Mr. Tarang Jain.
20120724	G	Fidelity National Financial, Inc.; Fidelity Newport Holdings, LLC; Fidelity National Financial, Inc.
04/17/2012		
20120720	G	JFL Equity Investors III, LP.; Cobham plc; JFL Equity Investors III, LP.
04/18/2012		
20120654	G	Baxter International, Inc.; SIGMA International General Medical Apparatus, LLC; Baxter International, Inc.
20120708	G	Carl C. Icahn; CVR Energy, Inc.; Carl C. Icahn.
04/19/2012		
20120712	G	NEC Corporation; Convergys Corporation; NEC Corporation.
20120716	G	Communications Infrastructure Investments, LLC; AboveNet, Inc.; Communications Infrastructure Investments, LLC.
04/20/2012		
20120673	G	National Oilwell Varco, Inc.; Larry Lindholm; National Oilwell Varco, Inc.
20120674	G	National Oilwell Varco, Inc.; Mark Williamson; National Oilwell Varco, Inc.
20120688	G	Vincent C. Smith; Quest Software, Inc.; Vincent C. Smith.
20120722	G	Cerberus Institutional Partners V, L.P.; AT&T Inc.; Cerberus Institutional Partners V, L.P.
20120728	G	AEA Investors Small Business Fund II LP; Dayton Parts Holdings, LLC; AEA Investors Small Business Fund II LP.
20120736	G	Madison Dearborn Capital Partners V–A, L.P.; NEW Asurion Corporation; Madison Dearborn Capital Partners V–A, L.P.
20120737	G	Madison Dearborn Capital Partners V–C, L.P.; NEW Asurion Corporation; Madison Dearborn Capital Partners V–C, L.P.
20120740	G	Berkshire Fund VIII, L.P.; NEW Asurion Corporation; BerkshireFund VIII, L.P.

EARLY TERMINATIONS GRANTED—Continued

April 1, 2012 thru April 30, 2012

04/23/2012		
20120678	G	TPG Partners VI, L.P.; eBay Inc.; TPG Partners VI, L.P.
20120699	G	WP Prism Inc.; ISTA Pharmaceuticals, Inc.; WP Prism Inc.
20120700	G	Monitise plc; Clairmail, Inc.; Monitise plc.
20120703	G	Wabash National Corporation; Walker Group Resources LLC; Wabash National Corporation.
20120744	G	Oclaro, Inc.; Opnext, Inc.; Oclaro, Inc.
04/24/2012		
20120682	G	Covidien plc; Yasuhiko Sata; Covidien plc.
20120731	G	Lear Corporation; GMI Holding Corporation; Lear Corporation.
20120746	G	Penn Virginia Resources Partners, L.P.; Trevor D. Rees-Jones; Penn Virginia Resources Partners, L.P.
04/25/2012		
20120615	G	Marathon Petroleum Corporation; Stephanie E. White; Marathon Petroleum Corporation.
20120616	G	Marathon Petroleum Corporation; Keith S. White; Marathon Petroleum Corporation.
20120677	G	South Jersey Health System, Inc.; Underwood-Memorial Health Systems, Inc.; South Jersey Health System, Inc.
20120749	G	Tyco Flow Control International Ltd.; Pentair, Inc.; Tyco Flow Control International Ltd.
04/26/2012		
20120696	G	Temple University Health System, Inc.; The American Oncologic Hospital; Temple University Health System, Inc.
20120730	G	Blackbaud, Inc.; Convio, Inc.; Blackbaud, Inc.
20120755	G	DaVita Inc.; Brenda Spira; DaVita Inc.
04/27/2012		
20120706	G	University of Rochester; F.F. Thompson Health System, Inc.; University of Rochester.
20120734	G	Galaxie Corporation; Prospect Capital Corporation; Galaxie Corporation.
20120735	G	Prospect Capital Corporation; Galaxie Corporation; Prospect Capital Corporation.
20120738	G	Welsh, Carson, Anderson & Stowe XI. L.P.; NEW Asurion Corporation; Welsh, Carson, Anderson & Stowe XI, L.P.
20120745	G	John D. Grier; Royal Dutch Shell plc; John D. Grier.
20120751	G	SAP AG; Richard W. Padula; SAP AG.
20120753	G	Merck & Co., Inc.; Endocyte, Inc.; Merck & Co., Inc.
20120759	G	Gores Capital Partners III, L.P.; TE Connectivity Ltd.; Gores Capital Partners III, L.P.
04/30/2012		
20120595	G	ABB Ltd; Thomas & Betts Corporation; ABB Ltd.
20120760	G	Steel Partners Holdings LP; Steel Excel Inc.; Steel Partners Holdings LP.
201200768	G	Genstar Capital Partners VI, L.P.; eResearch Technology, Inc.; Genstar Capital Partners VI, L.P.

FOR FURTHER INFORMATION CONTACT:

Renee Chapman, Contact Representative,

Or

Theresa Kingsberry, Legal Assistant,

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–11037 Filed 5–8–12; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0449]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Sun Protection Factor Labeling and Testing Requirements and Drug Facts Labeling for Over-the-Counter Sunscreen Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Fax written comments on the collection of information by June 8, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910—New and title ''SPF Labeling and Testing Requirements and Drug Facts Labeling for Over-the-Counter Sunscreen Drug Products.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and

Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

SPF Labeling and Testing Requirements for Over-the-Counter Sunscreen Products Containing Specified Active Ingredients and Marketed Without Approved Applications, and Drug Facts Labeling for All Over-the-Counter Sunscreen Products—21 CFR 201.327(a)(1) and (i), 21 CFR 201.66(c) and (d)

In the **Federal Register** of June 17, 2011 (76 FR 35620), FDA published a final rule establishing labeling and effectiveness testing requirements for certain over-the-counter (OTC) sunscreen products containing specified active ingredients and marketed without approved applications (2011 sunscreen final rule; § 201.327 (21 CFR 201.327)). The rule also lifts the delay of implementation date of the Drugs Facts regulation (21 CFR 201.66) for all OTC sunscreens. This rule is not yet in effect. It is intended to be effective June 18, 2012.

SPF Labeling and Testing for OTC Sunscreens Containing Specified Active Ingredients and Marketed Without Approved Applications

Section 201.327(a)(1) requires the principal display panel (PDP) labeling of a sunscreen covered by the rule to include the sun protection factor (SPF) value determined by conducting the SPF test outlined in § 201.327(i). Therefore, this provision will result in an information collection with a third-party disclosure burden for manufacturers of OTC sunscreens covered by the rule. Products need only complete the testing and labeling required by the rule one time, and then continue to utilize the resultant labeling (third party disclosure) going forward, without additional burden.

In the **Federal Register** of June 17, 2011 (76 FR 35665), we announced the availability of a draft guidance and stated that we do not intend to initiate enforcement action before June 17, 2013, if an OTC sunscreen subject to § 201.327 that was initially marketed prior to June 17, 2011, the date of publication of the final rule, continues to include an SPF value in its labeling that was determined prior to that date according to either the SPF test method described in the May 21, 1999, final rule (64 FR 27666 at 27689 through 27693) or the SPF test method described in the August 27, 2007, proposed rule (72 FR 49070 at 49114 through 49119). We believe that the majority of currently marketed OTC sunscreen formulations will meet this standard and, therefore, may defer their conduct of new SPF testing. However, this one-time testing will nonetheless need to be conducted within the first 3 years after publication of the 2011 final rule for all OTC sunscreens covered by that rule. We therefore do not anticipate that the draft guidance will alter the annualized burden associated with § 201.327(a)(1) and (i) as estimated here. We provide a separate PRA analysis in the notice of availability for the draft guidance to address the information collections provisions that result from it.

Our estimate of third-party disclosure burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. We have estimated that there are approximately 100 manufacturers of OTC sunscreen drug products. We estimate that these 100 manufacturers are currently producing as many as 2,350 OTC sunscreen formulations and that these formulations are available in approximately 3,600 stock keeping units (SKUs) (see 2010 sunscreen final rule—indicating recent data supports estimate of up to 2,348 formulations and 3,591 SKUs).[1]

Our estimates on the conduct of SPF testing are based on the estimated number of formulations because, if the same formulation is sold under different SKUs, the formulation will only have to be retested one time in order to develop the labeling for multiple marketed SKUs. However, our estimates on labeling are based on the number of SKUs because, although each SKU will not need to be tested to establish its SPF value, the labeling of each SKU has to be considered.

To determine the SPF value required in § 201.327(a)(1), manufacturers will have to conduct SPF tests according to § 201.327(i). We estimate that all 100 manufacturers will have to retest currently marketed sunscreen formulations. We estimate that there are approximately 2,350 existing sunscreen formulations that will require retesting. We further estimate that it will take 24 hours (i.e., three 8-hour days) to complete SPF testing for each of the formulations. This estimate assumes SPF testing of a high SPF sunscreen that includes 80 minutes of water resistance testing, which reflects products requiring the most time to test. Therefore, a total of 56,400 hours will be required as the one-time burden to retest existing sunscreen products in accordance with § 201.327(i) to provide the SPF value required to be disclosed to the public in labeling under § 201.327(a)(1). In accordance with FDA's enforcement policy guidance, retesting of currently marketed sunscreen products should be completed within 2 years after the date of publication of the final rule, so if this one-time burden is annualized across that time period, the result is a burden of 28,200 hours in each of the first 2 years to complete retesting of existing sunscreen products.

Once manufacturers have tested their products to determine the SPF value, to comply with the third party disclosure (labeling) requirements in § 201.327(a)(1), the manufacturers will need to insert the SPF value after the term ''SPF'' in either the statement ''SPF'' or ''Broad Spectrum SPF,'' as applicable. We estimate that each of the 100 manufacturers will spend no more than 0.5 hours per SKU to prepare, complete, and review the labeling for each of 3,600 currently marketed SKUs. Therefore, we estimate that a total of no more than 1,800 hours will be required as a one time burden to relabel currently marketed OTC sunscreens containing specified ingredients and marketed without approved applications (3,600 SKUs times 0.5 hours per SKU). In accordance with FDA's enforcement policy guidance, relabeling of currently marketed sunscreen products should be completed within 2 years after the date of publication of the final rule, so if this one-time burden is annualized across that time period, the result is a burden of 900 hours in each of the first 2 years to complete relabeling of existing sunscreen products.

In addition, new products may also be introduced each year, and these products will have to be tested and labeled with the SPF value determined in the test. We estimate that as many as 60 new OTC sunscreen products (SKUs) may be introduced each year. As discussed in this document, there are currently approximately 1.53 SKUs marketed for every sunscreen spray formulation (3,600 SKUs divided by 2,350 formulations). Therefore, we estimate that the 60 new sunscreen SKUs will represent 39 new formulations annually. We expect the burden of testing the 39 new formulations marketed each year will require 936 hours per year (39

[1] Document No. FDA–1978–N–0018–0693 in Docket No. FDA–1978–N–0018.

formulations times 24 hours testing per formulation). We estimate that labeling of the 60 new SKUs marketed each year will require 30 hours per year (60 SKUs times 0.5 hours per SKU).

The sunscreen 2011 final rule published on June 17, 2011. In accordance with 5 CFR 1320.8(d), FDA published a 60-day notice for public comment in the **Federal Register** of June 17, 2011, concerning the collection of information imposed by the final rule and allowed 60 days for public comment on the notice (76 FR 35678–35681). FDA created a public docket for submission of these comments (i.e., FDA–2011–N–0449). FDA received three comments to this docket, but only two of them concerned the collection of information in the 2011 sunscreen final rule (i.e., FDA–2011–N–0449–0002, FDA–2011–N–0449–0003).

These comments were submitted by: (1) Consumers Union (see Attachment 2 of the Consumers Union comments), which publishes Consumer Reports and (2) The Personal Care Products Council (PCPC) jointly with The Consumer Healthcare Products Association (CHPA) (see Attachment 3 of the PCPC/CHPA comments), which are trade associations for the OTC personal care products industry and the cosmetics industry in the United States, respectively.

The Consumers Union comment states that the collection of information in the 2011 sunscreen final rule is practical and necessary for FDA's functions. Although the comment disagrees with the 2011 sunscreen final rule's removal of a proposed in vivo ultraviolet A (UVA) protection test, that test has no bearing upon FDA's estimate of the third-party disclosure burden. Therefore, FDA is not making any modifications to our estimates of burden based upon the Consumers Union comment.

The PCPC/CHPA comment states that FDA underestimated the burden to industry, including the third-party disclosure burden. However, ''the burden to industry'' is not the same as ''the third-party disclosure burden.'' This document only addresses the third-party disclosure burden. Table 1 of this document compares PCPC/CHPA's estimates with FDA's estimates.

TABLE 1—COMPARISON OF PCPC/CHPA'S AND FDA'S ESTIMATES

	PCPC/CHPA	FDA
Sunscreen product manufacturers	>364	100.
Existing sunscreen products (SKUs formulations)	4,528; 2,943	3,591; 2,350.
New sunscreen products (SKUs; formulations)	1,262; 824 per year	60; 39 per year.
Hours per response (SPF testing)	170.5 per formulation	24 per formulation.
Hours per response (principal display panel label)	70.5 per SKU	0.5 per SKU.
Hours per response (Drug Facts label)	70.5 per SKU	12 per SKU.

PCPC/CHPA's estimates of the number of sunscreen products and sunscreen product manufacturers are taken from brief letters submitted to PCPC/CHPA from the three market research organizations (Symphony IRI Group, The NPD Group, and Mintel). These letters are included in PCPC/CHPA's comment. PCPC/CHPA's estimated number of *existing* sunscreen products and sunscreen product manufacturers were calculated by adding the estimated numbers from the Symphony IRI Group letter (i.e., 3,289 products, 197 manufacturers) and The NPD Group letter (i.e., 1,239 products, 167 manufacturers). PCPC/CHPA's estimated number of *new* sunscreen products is taken from Mintel's letter (i.e., 1,262 products). However, how the exact numbers were derived from their databases was not provided, nor were any potential references that may have been used for their calculations and estimates. PCPC/CHPA's estimate of the hours required to conduct SPF testing and create principal display panel labels are based upon PCPC/CHPA's survey of its members. FDA describes the bases for its estimates in the 60-day notice concerning the collection of information imposed by the 2011 sunscreen final rule (76 FR 35620 at 35678 through 35681).

In conclusion, FDA does not consider the data submitted sufficient to merit revising its estimates of third-party disclosure burden as described in the following paragraphs. Details on how the survey was conducted and the number of hours required to conduct SPF testing and create principal display panel labels were not provided. In addition, no data was submitted to support their conclusions. The market research organizations letters provided little information about how they derived their data regarding number of products and manufacturers. Market research organizations also explicitly state that there is no guarantee of the accuracy of their numbers. Therefore, FDA cannot assess the quality of the data upon which PCPC/CHPA's estimates were based. FDA discusses its consideration of PCPC/CHPA's estimates in the following paragraphs.

Estimates of sunscreen products and sunscreen product manufacturers. FDA notes that all of PCPC/CHPA's estimates of sunscreen products and sunscreen product manufacturers are higher than FDA's estimates. The disparity between PCPC/CHPA's estimates and FDA's estimates remain unclear due to the lack of information about how their numbers were derived. PCPC/CHPA's estimate of *new* sunscreen products (i.e., 1,262 products per year) is much higher than FDA's estimate (i.e., 60 products per year). PCPC/CHPA states that its estimate of 1,262 new products includes ''new products,'' ''new variety/range extensions,'' ''new formulations,'' ''new packaging,'' and ''relaunches.'' Many of these products may not be considered new products (i.e., new SKUs) by FDA. For example, FDA would consider a minor labeling change on a particular 8 fluid ounce size bottle of a brand-name product to be a replacement of the same SKU, whereas PCPC/CHPA considers the relabeled product to be a ''new product'' due to ''new packaging'' as stated in their submission. Because the submitted data do not allow for verification of PCPC/CHPA's higher estimates and the market research organizations themselves will not guarantee the accuracy of these estimates, FDA is not revising its estimates of sunscreen products and sunscreen product manufacturers.

Estimate of time required for SPF testing. FDA also notes that PCPC/CHPA's estimate of the time required to conduct SPF testing is much higher than FDA's estimate. PCPC/CHPA explains that FDA's estimate failed to consider the time required by good clinical practices (e.g., quality assurance testing, revision control, internal release of samples, documentation release, and shipment authorization). However, PCPC/CHPA does not provide time estimates for these procedures. Also, compliance with good clinical practices is a standard regulatory requirement and

does not constitute an additional burden resulting from the 2011 sunscreen final rule. Regulations controlling paperwork burdens on the public in 5 CFR 1320.3(b)(2) state that the ''time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities will be excluded from the ''burden'' if the Agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.'' PCPC/CHPA also explains that conducting the SPF test for a water-resistant product requires 3 to 4 weeks, instead of FDA's estimate of 24 hours (i.e., 3 days, 8 hours/day). However, PCPC/CHPA does not adequately describe the ''testing timelines'' section for conducting the SPF test. Even consideration of extra time required for data analysis fails to account for the difference between PCPC/CHPA's and FDA's estimate. Therefore, FDA is not revising its estimate of the time required to conduct SPF testing.

Estimate of the time required to create principal display labeling. FDA's estimate of the time required to create principal display panel labeling (e.g., 0.5 hours/SKU) differs from PCPC/CHPA's estimate (70.5 hours/SKU) because the estimates are based upon different tasks. FDA's estimate refers to the time required to insert the SPF value on the principal display panel, whereas PCPC/CHPA's estimate appears to be the time required to create the entire principal display panel and the Drug Facts panel. Only the insertion of the SPF value constitutes a third-party disclosure burden. The remainder of the principal display panel labeling constitutes ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)), and, therefore, is not considered a collection of information. Therefore, FDA is not revising its estimate.

Estimate of the time required to comply with Drug Facts labeling requirements. FDA's estimate of the time required to comply with Drug Facts labeling requirements (12 hours/SKU) differs from PCPC/CHPA's estimate of (70.5 hours/SKU). FDA's estimate is based upon estimated times to comply with Drug Facts requirements that were submitted in public comments for various OTC drug products, including OTC sunscreen products. PCPC/CHPA breaks down its estimate for complying with Drug Facts requirements into 12 sequential steps and provides a one-sentence description of each step. Presumably, the time estimated for each step represents the average reported by PCPC/CHPA's members. Obtaining averages for data has the potential for changing the outcome due to outliers. In addition, the individual estimates from each of PCPC/CHPA's members are not provided in the PCPC/CHPA's comment in order to validate calculations made. Therefore, FDA cannot determine how representative PCPC/CHPA's estimate is of its members or how variable the estimate is between its members. In summary, FDA does not have sufficient data to assess the validity of the estimated times for each of these steps. Therefore, FDA does not consider the currently available data adequate to revise its estimate.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Conduct SPF testing in accordance with § 201.327(i) for existing sunscreen formulations [2]	100	11.75	1,175	24	28,200
Conduct SPF testing in accordance with § 201.327(i) for new sunscreen formulations	20	1.95	39	24	936
Create PDP labeling in accordance with § 201.327(a)(1) for existing sunscreen SKUs [2]	100	180	1,800	0.5	900
Create PDP labeling in accordance with § 201.327(a)(1) for new sunscreen SKUs	20	3	60	0.5	30
Total burden in years one and two					30,066
Total burden in each subsequent year					966

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden for each of first and second years for currently marketed OTC sunscreens.

Drug Facts Labeling for OTC Sunscreens

Because the 2011 sunscreen final rule also lifts the delay of implementation date for Drug Facts regulations (21 CFR 201.66) for OTC sunscreens, the rule will also modify the information collection associated with § 201.66 (currently approved under OMB control number 0910–0340) and result in additional third-party disclosure burden resulting from requiring OTC sunscreen products to comply with Drug Facts regulations. In the **Federal Register** of March 17, 1999 (64 FR 13254), we amended our regulations governing requirements for human drug products to establish standardized format and content requirements for the labeling of all marketed OTC drug products, codified in § 201.66 (the 1999 Drug Facts labeling final rule). Section 201.66 sets requirements for the Drug Facts portion of labels on OTC drug products, requiring such labeling to include uniform headings and subheadings, presented in a standardized order, with minimum standards for type size and other graphical features. In the **Federal Register** of September 3, 2004 (69 FR 53801), we delayed the § 201.66 implementation date for OTC sunscreen products indefinitely, pending future rulemaking to amend the substance of labeling for these products. The 2011 sunscreen final rule lifts this stay for OTC sunscreens. Therefore, currently marketed OTC sunscreen products will incur a one-time burden to comply with the requirements in § 201.66(c) and (d).

We estimate that there are 3,600 currently marketed OTC sunscreen drug product SKUs, and we assume for purposes of this estimate that none of them have yet complied with the 1999 Drug Facts labeling final rule. These 3,600 SKUs will need to implement the new labeling format by the implementation date included in the 2011 sunscreen final rule. We estimate that these 3,600 SKUs are marketed by

100 manufacturers and that approximately 12 hours will be spent on each label. The number of hours per label (response) is based on the most recent estimate used for other OTC drug products to comply with the 1999 Drug Facts labeling final rule, including public comments received on this estimate in 2010 that addressed sunscreens. If an average of 12 hours is spent preparing, completing, and reviewing each of the estimated 3,600 sunscreen SKUs, the total number of hours dedicated to the one-time relabeling of currently marketed OTC sunscreen products, as necessary to comply with § 201.66 would be 43,200 (3,600 SKUs times 12 hours/SKU).

In addition to this one-time burden, we estimate that 60 new sunscreen SKUs marketed each year will have a third-party disclosure burden to comply with Drug Facts regulations equal to 720 hours annually (60 SKUs times 12 hours/SKU). We estimate that these new SKUs will be marketed by 20 manufacturers. We do not expect any OTC sunscreens to apply for exemptions or deferrals of the Drug Facts regulations in § 201.66(e).

FDA estimates the burden of this collection of information as follows:

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Format labeling in accordance with § 201.66(c) and (d) for existing sunscreen SKUs [2]	100	36	3,600	12	43,200
Format labeling in accordance with § 201.66(c) and (d) for new sunscreen SKUs [3]	20	3	60	12	720
Total first year burden					43,920
Total burden for each subsequent year					720

[1] FDA estimates a one-time medium capital cost of 6.1 million dollars will result from preparing labeling content and format for OTC sunscreens in accordance with § 201.66. There are no operating or maintenance costs associated with this collection of information.
[2] First-year burden for currently marketed OTC sunscreens.
[3] Burden for first and second years for currently marketed OTC sunscreens.

With the exception of the PDP statement of SPF value in § 201.327(a)(1), the labeling requirements in § 201.327(a) through (h), which provide other elements of the PDP, as well as specific content for indications, directions, and warnings, are a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)) and, therefore, are not collections of information. These provisions are thus not subject to OMB review under the PRA.

Dated: May 3, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–11067 Filed 5–8–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0427]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Inspection by Accredited Persons Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002.

DATES: Submit either electronic or written comments on the collection of information by July 9, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002—(OMB Control Number 0910–0510)—Extension

The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Pub. L. 107–250) was signed into law on October 26, 2002. Section 201 of MDUFMA adds a new paragraph (g) to section 704 of the Federal, Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 374), directing FDA to accredit third parties (accredited persons) to conduct inspections of eligible manufacturers of class II or class III devices. This is a voluntary program. FDA has a guidance document that provides information for those interested in participating in this program. The guidance is entitled ''Implementation of the Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria.''

FDA based these estimates on conversations with industry, trade association representatives, and internal FDA estimates. Once an organization is accredited, it will not be required to reapply.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Section of the FD&C act/activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
704(g) Request for Accreditation	1	1	1	80	80

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 3, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–11179 Filed 5–8–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0442]

Jerome Lentini; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying Jerome Lentini's request for a hearing and is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Lentini from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Lentini was convicted of a felony under Federal law for conduct relating to the development or approval of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act. Lentini has failed to file with the Agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: The order is effective May 9, 2012.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: G. Matthew Warren, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 32, Rm. 4210, Silver Spring, MD 20993, 301–796–4613.

SUPPLEMENTARY INFORMATION:

I. Background

On December 11, 2006, the United States District Court for the District of Oregon entered a criminal judgment against Lentini pursuant to his guilty plea. Lentini, formerly a medical doctor at ''A Younger You'' clinic, pled guilty to a felony under the FD&C Act, namely misbranding a drug with an intent to defraud or mislead while it was held for sale after shipment in interstate commerce in violation of sections 301(k) and 303(a)(2) of the FD&C Act (21 U.S.C. 331(k) and 333(a)(2)) and 18 U.S.C. 2. The basis for this conviction was Lentini's admission that he misled patients from November 2003 through December 2004, by injecting them with a drug product that he offered for sale as BOTOX/BOTOX Cosmetic (BOTOX). In fact, as defendant Lentini knew, he did not generally use BOTOX on patients but instead used another drug derived from botulinum toxin type A that had not been approved by FDA.

Lentini is subject to debarment based on a finding, under section 306(a)(2) of the FD&C Act (21 U.S.C. 335a(2)), that he was convicted of a felony under Federal law for conduct relating to the development or approval of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act. By letter dated February 7, 2011, FDA notified Lentini of a proposal to permanently debar him from providing services in any capacity to a person having an approved or pending drug product application. In a letter dated February 19, 2011, Lentini requested a hearing on the proposal. In his request for a hearing, Lentini acknowledges his convictions under Federal law, as alleged by FDA, but he argues that he is actually innocent of the offense underlying his felony conviction.

Hearings will not be granted on issues of policy or law, on mere allegations, denials, or general descriptions of positions and contentions, or on data and information insufficient to justify the factual determination urged (see 21 CFR 12.24(b)).

The Chief Scientist and Deputy Commissioner for Science and Public Health has considered Lentini's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing.

II. Arguments

In his request for a hearing, Lentini first argues that he did not misbrand the drug product at issue. Instead, he argues that the manufacturer of the drug product, Toxin Research International, Inc. (TRI), misbranded the product. As stated in the indictment in Lentini's criminal proceedings, however, a drug is misbranded under section 502(i)(3) of the FD&C Act (21 U.S.C. 352(i)(3)) if a drug ''is offered for sale under the name of another drug.'' The specific count to which Lentini pled guilty charged him with ''misbrand[ing] a drug, namely

Botulinum Toxin Type A manufactured by [TRI] and known as 'TRI-toxin,' * * * in that [he] offered the ''TRI-toxin for sale by injection to patients under the name of another drug, [BOTOX].'' In short, Lentini pled guilty to, and was convicted of, misbranding a drug under the FD&C Act.

Section 306(a)(2) of the FD&C Act provides FDA with authority debar an individual who has been convicted of certain Federal felonies. The only relevant factual issue is whether Lentini was, in fact, convicted of a felony under Federal law for conduct relating to the development or approval of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act. Lentini does not dispute that he pled guilty to violating the requirements for drugs under the FD&C Act. Section 306(l) of the FD&C Act includes in its definition of a conviction, a guilty plea. Accordingly, Lentini's arguments regarding the factual circumstances underlying his plea fail to raise a genuine and substantial issue of fact as to whether he was convicted of a felony under Federal law for conduct relating to the development or approval of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act. Whether TRI also misbranded the drug is immaterial to the conduct underlying Lentini's conviction.

Lentini next argues that he entered the guilty plea underlying his felony conviction while under ''extreme duress'' and only because his attorneys advised him that the prosecution would ''find a way to convict him legally or illegally'' and that he should sign the plea agreement ''despite the facts.'' In Lentini's petition to enter a guilty plea in the criminal proceedings, however, he specifically attested that he was voluntarily agreeing to plead guilty because he was guilty of the offense underlying his conviction. He also stated in the petition that he had carefully reviewed every part of the agreement with his attorney and that the attorney counseled and advised him on the nature and elements of the charge to which he was pleading guilty, as well as any possible defenses. Under these circumstances, and in light of the court's acceptance of his guilty plea, Lentini's mere allegation that he was actually innocent of the offense and signed the plea agreement only at the urging of his attorney is insufficient to create a genuine and substantial issue of fact for resolution at a hearing. (See 21 CFR 12.24(b)(1)–(2)). Moreover, the FD&C Act does not permit consideration of factors such as the circumstances of an individual's guilty plea. As stated in this document, section 306(a)(2) the FD&C Act is clear that an individual shall be debarred upon a finding that he has been convicted of a felony under Federal law for conduct relating to the development or approval of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act. Lentini has been convicted of such a felony and is thus subject to debarment. If a court were to reverse Lentini's conviction on the ground that his plea was involuntary, or for any other reason, the order of debarment would be withdrawn pursuant to section 306(d)(3)(B)(i) of the FD&C Act.

III. Findings and Order

Therefore, the Chief Scientist and Deputy Commissioner for Science and Public Health, under section 306(a)(2) of the FD&C Act and under authority delegated to him, finds that Mr. Lentini has been convicted a of a felony under Federal law for conduct relating to the development or approval of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing findings, Lentini is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective May 9, 2012 (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(dd)). Any person with an approved or pending drug product application who knowingly uses the services of Lentini, in any capacity during his period of debarment, will be subject to civil money penalties. If Lentini, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Lentini during his period of debarment.

Any application by Lentini for termination of debarment under section 306(d) of the FD&C Act should be identified with Docket No. FDA–2010–N–0442 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain documents in the Docket at *http://www.regulations.gov*.

Dated: April 16, 2012.

Jesse L. Goodman,

Chief Scientist and Deputy Commissioner for Science and Public Health.

[FR Doc. 2012–11106 Filed 5–8–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0475]

Daphne I. Panagotacos; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying a request for a hearing submitted by Daphne I. Panagotacos and is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Panagotacos for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Panagotacos was convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act and that the type of conduct underlying the conviction undermines the process for the regulation of drugs. In determining the appropriateness and period of Panagotacos's debarment, FDA has considered the relevant factors listed in the FD&C Act. Panagotacos has failed to file with the Agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: The order is effective May 9, 2012.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: G. Matthew Warren, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4210, Silver Spring, MD 20993, 301–796–4613.

SUPPLEMENTARY INFORMATION:

I. Background

On December 18, 2007, the United States District Court for the Central District of California entered judgment against Panagotacos, a physician, who pled guilty to a misdemeanor under the FD&C Act. Specifically, Panagotacos pled guilty to receiving in interstate commerce and delivering a misbranded drug in violation of sections 301(c), 502(f) and 303(a)(1) of the FD&C Act (21 U.S.C. 331(c), 352(f), 333(a)(1)). The basis for this conviction was conduct surrounding her injection of patients with TRI-toxin, an unapproved drug product purported to be botulinum toxin type A and distributed by Toxic Research International, Inc. (TRI), in Arizona. According to the records of the criminal proceedings, from January 2004 until November 2004, Panagotacos ordered 19 vials of TRI-toxin for her practice in California and used the TRI-toxin on herself, her employees, and her patients. As alleged in the criminal information to which she pled guilty, the TRI-toxin was misbranded in that it failed to bear adequate directions for use under section 502(f) of the FD&C Act.

Panagotacos is subject to debarment based on a finding, under section 306(b)(2)(B)(i) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)), (1) that she was convicted of a misdemeanor under Federal law relating to the regulation of a drug product under the FD&C Act and (2) that the type of conduct underlying the conviction undermines the process for the regulation of drugs. By letters dated February 22, 2011, and March 14, 2011, FDA notified Panagotacos of a proposal to debar her for 5 years from providing services in any capacity to a person having an approved or pending drug product application. In a letter dated April 11, 2011, through counsel, Panagotacos requested a hearing on the proposal. In her request for a hearing, Panagotacos acknowledges the fact of her conviction under Federal law, as alleged by FDA. However, she argues that the conduct underlying her conviction does not warrant debarment.

Hearings are granted only if there is a genuine and substantial issue of fact. Hearings will not be granted on issues of policy or law, on mere allegations, denials, or general descriptions of positions and contentions, or on data and information insufficient to justify the factual determination urged (see 21 CFR 12.24(b)).

The Chief Scientist and Deputy Commissioner for Science and Public Health has considered Panagotacos's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing.

II. Arguments

In support of her hearing request, Panagotacos first disputes the finding in the proposal to debar her that her misdemeanor conviction was based on conduct related to the regulation of drug products under the FD&C Act and that the conduct underlying her conviction undermined the process for the regulation of drugs. In support of this argument, Panagotacos asserts that her conviction under the FD&C Act was strict liability and that, based on assurances from TRI, she acted on the good faith belief that that TRI-toxin was a permissible generic form of BOTOX/BOTOX Cosmetic (BOTOX). As noted in this document, however, Panagotacos admitted, during her criminal proceedings, to receiving a misbranded drug in interstate commerce and delivering it to patients in violation of sections 301(c), 502(f) and 303(a)(1) of the FD&C Act.

Her conduct clearly related to the regulation of drug products under the FD&C Act because it was in direct violation of the FD&C Act's requirements for drug products. The conduct also undermined the process for the regulation of drugs in that it permitted an unapproved drug, TRI-toxin, to be administered to patients. With respect to Panagotacos's assertion that her offense was strict liability, section 306(b)(2)(B)(i) of the FD&C Act specifically provides for the debarment of individuals convicted of Federal misdemeanors related to the regulation of drug products under the FD&C Act. Given that a misdemeanor violation of the FD&C Act itself is a strict liability offense for which lack of criminal intent is no defense, criminal intent is not required to subject an individual to debarment under section 306(b)(2)(B)(i). Accordingly, Panagotacos is subject to debarment under section 306(b)(2)(B)(i).

Panagotacos next challenges the manner in which the proposal to debar applied the considerations under section 306(c)(3) of the FD&C Act in determining the appropriateness and period of her debarment. Section 306(c)(3) of the FD&C Act explicitly requires FDA to consider, ''where applicable,'' certain factors ''[i]n determining the appropriateness and the period of debarment'' for any permissive debarment. The proposal to debar Panagotacos set forth four applicable considerations under section 306(c)(3): (1) The nature and seriousness of her offense under section 306(c)(3)(A); (2) the nature and extent of management participation in the offense under section 306(c)(3)(B); (3) the nature and extent of voluntary steps taken to mitigate the impact on the public under section 306(c)(3)(C); and (4) prior convictions involving matters within the jurisdiction of FDA under section 306(c)(3)(F). In the proposal, FDA found that the first two considerations weigh in favor of debarring Panagotacos and noted that the third and fourth considerations would be treated as favorable factors for Panagotacos. In making all of its findings under section 306(c)(3), FDA relied on records from Panagotacos's criminal proceedings.

Panagotacos first challenges the finding in the proposal to debar her that the nature and seriousness of her offense, under section 306(c)(3)(A) of the FD&C Act, weigh in favor of debarment. She argues that ''[t]he nature and seriousness of the offense are in fact a favorable factor based on [her] diligent efforts to ascertain the truth and the plain evidence that she herself was a victim of fraud.'' Panagotacos's characterization of the conduct underlying her conviction is refuted by the criminal record. Her admissions during her criminal proceedings do not demonstrate that the nature and seriousness of her offense is a favorable factor because she made ''diligent efforts to ascertain the truth'' or because TRI made her a ''victim of fraud.''

The charge in the information to which Panagotacos pled guilty alleged that she ordered a misbranded drug from a source outside of her own state and used it on her patients. In a sentencing memorandum submitted to the criminal court on her behalf, Panagotacos also stated that she ''and her staff talked to representatives from TRI and were told that [TRI-toxin] was a safe generic form of [BOTOX] and that FDA approval was pending''. In the same sentencing memorandum, she also admitted to trying TRI-toxin on herself and on her staff and family to determine it was safe and effective before using it on patients. In a letter submitted in support of that memorandum, she further stated that ''the label on the bottle [of TRI-toxin] said that it was for research purposes only.'' In light of Panagotacos's admissions during her criminal proceedings that she knew TRI-toxin was an unapproved drug warranting further testing before she used it on her regular patients, the Chief Scientist and Deputy Commissioner for Science and Public Health finds, consistent with the proposal to debar, that the nature and seriousness of her offense weigh in favor of debarment. Panagotacos's mere assertion that TRI provided different information and convinced her that TRI-toxin was a

permissible generic form of BOTOX does not create a genuine and substantial issue of fact.

In her request for a hearing, Panagotacos further emphasizes that she not only stopped using TRI-toxin upon learning that TRI was being prosecuted for conduct related to its marketing of the drug product, she also took ''the extraordinary step'' of coming ''forward proactively to assist the investigation by providing information'' before she was contacted by investigators. Indeed, the criminal record discloses that she sent a letter to the prosecutor in which she stated that TRI had convinced her to purchase and use TRI-toxin on her patients but that she had stopped using the drug and was returning the product to TRI. She also offered in the letter to provide information to the prosecutor. In the Agency's proposal to debar, however, FDA took into account the circumstances Panagotacos now cites and considered her cooperation with government investigators as a favorable factor under section 306(c)(3)(C) of the FD&C Act. Therefore, her arguments affirming the circumstances and extent of her cooperation do not create a genuine and substantial issue of fact suitable for a hearing.

Panagotacos next challenges the manner in which FDA weighed the four factors that the Agency considered in the proposal to debar. She notes that, although FDA counted two of the four factors in her favor, it appears that the Agency did not take them into account because the proposal to debar found that she should be debarred for the maximum period of 5 years. Consistent with the proposal to debar, however, Panagotacos pled guilty to a misdemeanor under the FD&C Act for conduct related to her knowing purchase and use of an unapproved drug on her patients. She did so as a licensed physician with her own medical practice and thus held a position of authority relative to the offense of which she was convicted. The considerations in sections 306(c)(3)(A) and (B) of the FD&C Act weigh in favor of debarring Panagotacos for a maximum period of 5 years. Although the record establishes that Panagotacos took voluntary steps to mitigate the effect on the public health once she learned that there was a criminal investigation involving the company from which she purchased the unapproved drug (see section 306(c)(3)(C)), and although she appears to have no previous criminal convictions related to matters within the jurisdiction of FDA (see section 306(c)(3)(F)), these considerations do not counter to a sufficient degree the conduct underlying her misdemeanor conviction to warrant decreasing the period of debarment from 5 years.

III. Findings and Order

Therefore, the Chief Scientist and Deputy Commissioner for Science and Public Health, under section 306(b)(2)(B)(i) of the FD&C Act and under authority delegated to him, finds that Panagotacos has been convicted of a misdemeanor under Federal law for conduct relating to the development or approval of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act and that the conduct underlying the conviction undermines the regulation of drugs. The Chief Scientist has considered the relevant factors listed in section 306(c)(3) of the FD&C Act and determined that a debarment of 5 years is appropriate.

As a result of the foregoing findings, Panagotacos is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective May 9, 2012 (see 21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(iii) and 21 U.S.C. 321(dd)). Any person with an approved, or pending, drug product application who knowingly uses the services of Panagotacos, in any capacity during her period of debarment, will be subject to civil money penalties. If Panagotacos, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Panagotacos during her period of debarment.

Any application by Panagotacos for termination of debarment under section 306(d) of the FD&C Act should be identified with Docket No. FDA–2010–N–0475 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain documents in the Docket at *http://www.regulations.gov/.*

Dated: April 16, 2012.

Jesse L. Goodman,

Chief Scientist and Deputy Commissioner for Science and Public Health.

[FR Doc. 2012–11112 Filed 5–8–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Pancreatic Beta Cell Function in women with PCOS.

Date: May 24, 2012.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Tracking Adolescents after Bariatric Surgery.

Date: May 25, 2012.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases

Special Emphasis Panel, NIDDK DEM Fellowship Review.

Date: June 4–5, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, The NIDDK–KUH Fellowship Review Committee.

Date: June 13, 2012.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Fellowships in Digestive Diseases and Nutrition.

Date: June 14, 2012.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street NW., Washington, DC 20007.

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, DDK–C Conflicts.

Date: June 14, 2012.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street NW., Washington, DC 20007.

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 2, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11078 Filed 5–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Hemostasis, Thrombosis and Hematology.

Date: May 30, 2012.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community Influences on Health Behavior.

Date: June 4–5, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Avenue NW., Washington, DC 20001.

Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681, *liangw3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Research Relevant to the Family Smoking Prevention and Tobacco Control.

Date: June 5, 2012.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Avenue NW., Washington, DC 20001.

Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681, *liangw3@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular Aspects of Diabetes and Obesity Study Section.

Date: June 6, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Garofalo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, *garofalors@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology B Study Section.

Date: June 7–8, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Miami, 400 SE. 2nd Avenue, Miami, FL 20892.

Contact Person: Lee Rosen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 3, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11182 Filed 5–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National

Advisory Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: May 20–22, 2012.

Time: 7:00 p.m. to 11:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, Ph.D., Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders and Stroke, NIH, 35 Convent Drive, Room 6A908, Bethesda, MD 20892, (301) 435–2232, *koretskya@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: May 3, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11181 Filed 5–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Biology Integrated Review Group; Intercellular Interactions Study Section.

Date: June 6, 2012.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1191, *ipws@mail.nih.gov*.

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: June 6–7, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mandarin Oriental, 1330 Maryland Avenue SW., Washington, DC 20024.

Contact Person: Vonda K Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7801, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: June 7–8, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Melissa Gerald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: June 7, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

Date: June 7–8, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.

Date: June 7, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: Arnold Revzin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.

Date: June 7–8, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Daniel F McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Vaccines Against Microbial Diseases Study Section.

Date: June 7–8, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 2, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–11178 Filed 5–8–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–918, and Supplement A and B, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–918, Petition for U Nonimmigrant Status; and Supplement A and B.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 9, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief Regulatory Coordinator, Regulatory Coordination Division, Clearance Office, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8518, or via email at *uscisfrcomment@dhs.gov.* When submitting comments by email, add the OMB Control Number 1615–0104 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I–918 and Supplements A and B. Should USCIS decide to revise the Form I–918 and Supplements A and B, it will advise the public when it publishes 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–918, and Supplement A and B.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for U Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–918 and Supplements A and B; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Form I–918: Individuals or households.* This application permits victims of certain qualifying criminal activity and their immediate family members to apply for temporary nonimmigrant status.

Form I–918 Supplement A: Individuals or households. This application permits victims of certain qualifying criminal activity and their immediate family members to apply for temporary nonimmigrant status.

Form I–918 Supplement B: Federal, State, Local governments. Federal, State, or local law enforcement agencies, prosecutors, judges, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity can complete this supplement so it can be filed by the applicant along with form I–918.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–918—16,768 responses at 5 hours per response; Supplement A—10,033 responses at 1.5 hours per response; Supplement B—16,768 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 120,651 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529, telephone number 202–272–1470.

Dated: May 3, 2012.

Laura Dawkins,

Acting Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services.

[FR Doc. 2012–11127 Filed 5–8–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–824; Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Form I–824; Application for Action on an Approved Application.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. An information collection notice was previously published in the **Federal Register** on February 28, 2012 at 77 FR 12072, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with that publication.

The purpose of this information collection notice is to allow for an additional 30 days for public comments. Comments are encouraged and will be accepted until June 8, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, Clearance Office, 20 Massachusetts Avenue NW.,

Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8518 or via email at *uscisrfrcomment@dhs.gov*, to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov*. When submitting comments by email please make sure to add OMB Control Number 1615–0044 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Action on an approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–824; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–824 is used to request a duplicate approval notice, or to notify the U.S. Consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,961 responses at .416 hours (25 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,607 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, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–1470.

Dated: May 3, 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. 2012–11126 Filed 5–8–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: General Declaration

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

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: General Declaration (CBP Form 7507). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 13617) on March 7, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 8, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: General Declaration.

OMB Number: 1651–0002.

Form Number: CBP Form 7507.

Abstract: CBP Form 7507, *General Declaration,* must be filed for all aircraft entering under the provisions of 19 CFR 122.41. This form is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs. CBP Form 7507 collects information about the flight routing, the numbers of passengers embarking and disembarking, a declaration of health for the persons on board, details about disinfecting and sanitizing treatments during the flight, and a declaration attesting to the accuracy and completeness and truthfulness of all other documents that make up the manifest.

CBP Form 7507 is authorized by 19 U.S.C. 1431, 1433, and 1644a; 39 U.S.C. 602(b) and provided for by 19 CFR 122.43, 122.48, 122.54, 122.73, and 122.144. This form is accessible at:

http://forms.cbp.gov/pdf/CBP_Form_7507.pdf

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 7507.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Number of Total Annual Responses: 1,000,000.

Estimated Time per Response: 5 minutes.

Total Annual Burden Hours: 83,000.

Dated: May 3, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–11115 Filed 5–8–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5604–N–08]

Notice of Propose Information Collection for Public Comment; Continuum of Care Homeless Assistance Grant Application—Continuum of Care Application

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone (202) 402–3400, (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov* for a copy of proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1590 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms or information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HEARTH Continuum of Care Program Application.

Description of the need for the information proposed: This submission is to request a reinstatement with revisions of an expired information collection for the reporting burden associated with registration requirements that Continuum of Care Homeless Assistance (CoC) program lead agencies will be expected to complete. This submission is limited to the reporting burden under the CoC program, formerly including the Supportive Housing Program, the Shelter Plus Care program, and the Section 8 and Single Room Occupancy Program, and changed to match the new inclusive program name created through the HEARTH Act. To see the regulations for the new CoC program and applicable supplementary documents, visit HUD's Homeless Resource Exchange ESG page at *http://www.hudhre.info/esg/*. The statutory provisions and the implementing interim regulations that govern the program require new registration requirements.

Agency Form Numbers:

Members of the affected public: State and local governments, public housing authorities, and nonprofit organziations.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

The CoC Application will be completed by all 450 Continuum's of Care, as well as 7,559 project applicants, and will require approximately 314,000 hours to complete. The application process will occur once per year after the release of the annual CoC Notice of Funding Availability.

Status of proposed information collection: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 2, 2012.

Clifford D. Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2012–11177 Filed 5–8–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5604–N–07]

Notice of Proposed Information Collection: Disaster Recovery Grant Reporting (DRGR) System

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: July 9, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: LaRuth Harper, Department of Housing Urban and Development, 451 7th Street SW., Room 7233, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance at (202) 708–3587.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as Amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Disaster Recovery Grant Reporting System.

OMB Control Number: 2506–0165.

Description of the need for the Information and proposed use: The Disaster Recovery Grant Reporting (DRGR) System is a grants management system used by the Office of Community Planning and Development to monitor special appropriation grants under the Community Development Block Grant program. This collection pertains to Community Development Block Grant Disaster Recovery (CDBG–DR) and Neighborhood Stabilization Program (NSP) grant appropriations.

The CDBG program is authorized under Title I of the Housing and Community Development Act of 1974, as amended. Following major disasters, Congress appropriates supplemental CDBG funds for disaster recovery. According to Section 104(e)(1) of the Housing and Community Development Act of 1974, HUD is responsible for reviewing grantees' compliance with applicable requirements and their continuing capacity to carry out their programs. Grant funds are made available to states and units of general local government, Indian tribes, and insular areas, unless provided otherwise by supplemental appropriations statute, based on their unmet disaster recovery needs.

The Neighborhood Stabilization Program (NSP) was established for the purpose of stabilizing communities that have suffered as a result of foreclosures and property abandonment. On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) into law (Pub. L. 111–203). This law provides $1 billion of formula grant funding for the redevelopment of foreclosed and abandoned homes to be allocated under the terms of Title XII, Division A, Section 2 of the American Recovery and Reinvestment Act (Recovery Act) and by the formula factors provided in Title III of Division B of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289) (HERA). In 2008, HERA provided for an initial round of formula funding to regular State and entitlement Community Development Block Grant (CDBG) grantees through the Neighborhood Stabilization Program (NSP1).[1] The Recovery Act provided for a neighborhood stabilization grant competition open to state and local governments, as well as non-profit groups and consortia that may include for-profit entities (NSP2).[2] The Dodd-Frank Act is the third round of Neighborhood Stabilization Funding (NSP3).

Although NSP funds are otherwise to be considered CDBG funds, HERA, the Recovery Act and the Dodd-Frank Act make substantive revisions to the eligibility, use, and method of distribution of NSP3 funds. For NSP1 and NSP3, grantees are required to submit substantial amendments to their consolidated plans to secure funding they are entitled to under the formula grants.

NSP3 Technical Assistance grants were appropriated under Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203). Grantees were selected through a competitive process set forth in the NSP3–TA Notice of Funding Availability (NOFA),[3] with the purpose of assessing the need for technical assistance and targeting technical assistance in order to achieve the highest level of performance and results for the programs administered by HUD's Office of Community Planning and Development. Eligible applicants include states, units of local government, public housing authorities, non-profit organizations, for-profit entities, and joint applicants.

Agency form numbers, if applicable: SF–424 Application for Federal Assistance.

Members of affected public: DRGR is used to monitor CDBG–DR, NSP, and NSP–TA grants. CDBG–DR and NSP grant funds are made available to states and units of general local government, Indian tribes, and insular areas, unless provided otherwise by supplemental appropriations statute. NSP–TA grant funds are awarded on a competitive basis and are open to state and local governments, as well as non-profit groups and consortia that may include for-profit entities.

Estimation of the total numbers of hours needed to prepare the Information collection including number of respondents, frequency of response, and hours of response: Community Development Block Grant Disaster Recovery (CDBG–DR) Grants: The DRGR system has approximately 72 open CDBG disaster recovery grants. HUD requires each grantee to report their performance into the system quarterly. In addition, grantees submit vouchers for drawdown of funds as needed. Some grantees have more than one open grant under different appropriation rules and are required to report on grants separately.

For average sized grantees (< $100m in grant funds), the Department estimates 9 hours for quarterly reporting in DRGR. Larger grantees with funds in excess of $100M+ require a substantially greater number of reporting activities, thus averaging approximately 57 hours per quarter. The estimated annual total number of hours for Disaster Grant reporting is 2,241.

Neighborhood Stabilization Program (NSP) Grants: The system has 577 NSP1 and NSP3 grants in the system. The 270 NSP3 grantees must prepare and submit substantial amendments to their action plans, sign grant agreements, and set up activities in DRGR for a total of 15,323 hours.

The Department estimates that it takes 4 hours per grant for quarterly reporting and 38 hours for voucher submissions. The estimated annual total number of hours for all 577 NSP1 and 3 grantees to report in DRGR is 9,232 hours. Voucher submissions are estimated at 3,899 burden hours per year. Total burden hours including application, grant setup and reporting are estimated at 28,494.

Neighborhood Stabilization Program 3 Technical Assistance (NSP3–TA) Grants: DRGR currently has 10 NSP3–TA grants in the system. The Department estimates 1,848 total hours including 42 applications and grant setup for the 10 selected applicants. Quarterly reporting for the 10 grants is estimated at 3 hours per grant, per response, for an annual total of 160 hours. Total annual voucher submissions are estimated at 68 hours.

[1] In October of 2010, NSP1 and NSP3 were consolidated under the Unified NSP1 and NSP3 Notice (FR 75 64322).

[2] 74 FR 21377.

[3] 77 FR 16848.

Status of the proposed information collection: This notice precedes a continuation of the existing burden hour request.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 2, 2012.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2012–11180 Filed 5–8–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2012–N069; FXRS1265030000S3–123–FF03R06000]

Big Stone National Wildlife Refuge, Big Stone and Lac Qui Parle Counties, MN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and environmental assessment (EA) for Big Stone National Wildlife Refuge (Refuge, NWR) for public review and comment. In this draft CCP/EA we describe how we propose to manage the refuge for the next 15 years.

DATES: To ensure consideration, we must receive your written comments by June 8, 2012. We will hold an open house-style meeting during the comment period to receive comments and provide information on the draft plan. In addition, we will use special mailings, newspaper articles, internet postings, and other media announcements to inform people of opportunities for input.

ADDRESSES: Send your comments or requests for more information by any one of the following methods:

- *Email: r3planning@fws.gov.* Include ''Big Stone Draft CCP/EA'' in the subject line of the message.
- *Fax:* Attention: Alice Hanley, 320–273–2231.
- *U.S. Mail:* Attention: Refuge Manager, Big Stone National Wildlife Refuge, 44843 County Road 19, Odessa, MN 56276.
- *In-Person Drop Off:* You may drop off comments during regular business hours at the above address.

You may also find information about the draft CCP/EA planning process on the planning Web site: *http://www.fws.gov/midwest/Planning/BigStoneNWR/.*

FOR FURTHER INFORMATION CONTACT: Alice Hanley, 320–273–2191.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Big Stone NWR, which we began by publishing a notice of intent in the **Federal Register** (73 FR 76677) on December 17, 2008. For more about the initial process and the history of this refuge, see that notice.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS, including Big Stone NWR, was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Refuge Overview

Big Stone NWR was established in 1975 when lands, purchased by the U.S. Army Corps of Engineers as part of the Big Stone Lake–Whetstone River Project authorized by the Flood Control Act of 1965, were transferred to the Service. Today the Refuge includes 11,586 acres and is managed for fish, wildlife, and their habitats.

CCP Alternatives and Our Preferred Alternative

Priority Issues

During the public scoping process, we, other stakeholders and partners, and the public identified several priority issues, which include habitat management, sedimentation, invasive species, and demand for additional recreation opportunities and visitor services. To address these issues, we developed and evaluated the following six alternatives during the planning process.

Alternative 1: Current Management/No Action

Alternative 1 is the No Action alternative, which means there would be no change from current management practices. Active management of Refuge habitats and visitor services would continue at present levels. Water movement and associated sediment delivery would continue to follow its current route through the Refuge, and the quality of riverine habitat would remain within its present range of conditions. There would be no change to the management capabilities of West Pool. Remnant prairie, restored grasslands, and prairie associated with granite outcrops would continue to be managed at present levels. The amount of partially restored grasslands would increase by 500 acres. The total area of nonnative grassland would decrease to 300 acres. Wildlife observation and photography, environmental education and interpretation, hunting, fishing, trapping, and gathering shed antlers and wild edible plants are recreational opportunities that would occur under this alternative if they meet the Service definition of compatibility. Refuge staff would continue to work with visitors and local communities and provide volunteer opportunities to build support for the Refuge.

Alternative 2

Under this alternative the natural alignment, channel capacity, and meander relationships would be restored to the upper 5 miles of the Minnesota River within the Refuge, and there would be an effort to improve water quality within the Minnesota River and its tributaries. Redistributing the timing and delivery of waters and sediment would improve the ability to increase, distribute, and diversify submerged vegetation within West Pool. Remnant prairie and prairie associated

with granite outcrops would continue to be managed at present levels. The target acreage for restored grassland would be 1,100 acres, and for partially restored grasslands 1,200 acres. The amount of nonnative grassland would decrease by 500 acres. Wildlife observation and photography, environmental education and interpretation, hunting, fishing, trapping, and gathering wild edible plants are recreational opportunities that would occur under this alternative if they meet the Service definition of compatibility. Gathering of shed antlers would be discontinued. There would be increased outreach efforts to inform the public of existing Refuge access and recreational opportunities. Existing hunting opportunities would continue, and there would be added opportunities for youth and for hunters with disabilities. Fishing access and opportunities would increase beyond present levels. Refuge staff would continue to work with visitors and local communities to provide increased volunteer opportunities to build support for the Refuge.

Elements Common to Alternatives 3, 4, 5, and 6

The other four alternatives have a number of elements in common with Alternative 2. They are the same regarding Minnesota River restoration, water quality improvements, changes to West Pool, management of remnant prairie and prairie associated with granite outcrops, the range of recreational opportunities including elimination of shed antler gathering, fishing access and opportunities, and volunteer opportunities. The alternatives also differ in a number ways as indicated below.

Alternative 3

The target acreage for restored grassland would be 1,600 acres, and for partially restored grassland 500 acres. The amount of nonnative grassland would decrease by 300 acres. The amount of visitor access for wildlife observation and photography would increase. Existing hunting opportunities would continue but also be reviewed to determine the need for improvements to access, facilities, or opportunities. There would be additional hunting opportunities for youth and people with disabilities.

Alternative 4

The target acreage for restored grassland would be 1,600 acres, and for partially restored grassland 700 acres. The amount of nonnative grassland would decrease by 500 acres, 200 acres more than under Alternative 3. The amount of visitor access would remain at present levels, but there would be increased outreach efforts to inform the public of existing Refuge access and recreational opportunities. Existing hunting opportunities would continue. The amount of area open to hunting would remain the same, but hunting opportunities, access, and facilities would be reviewed to determine the need for improvements. There would be an emphasis on additional hunting opportunities for youth and people with disabilities.

Alternative 5

The target acreage for restored grassland would be 1,600 acres, and for partially restored grassland 700 acres. The amount of nonnative grassland would decrease by 500 acres. The amount of visitor access for wildlife observation and photography would increase. The amount of area open to hunting or the types of hunting permitted would increase above present levels without the emphasis described for Alternatives 2, 4, and 6.

Alternative 6 (Preferred Alternative)

The target acreage for restored grassland would be 1,600 acres, and for partially restored grassland 700 acres. The amount of nonnative grassland would decrease by 500 acres. The amount of visitor access would remain at present levels, but there would be increased outreach efforts to inform the public of existing Refuge access and recreational opportunities. Existing hunting opportunities would continue but also be reviewed to determine the need for improvements to access, facilities, or opportunities. There would be additional hunting opportunities for youth and people with disabilities.

Public Involvement

We will give the public an opportunity to provide input at a public meeting. You can obtain the schedule from the address or Web site listed in this notice (see **ADDRESSES**). You may also submit comments anytime during the comment period.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Charles M. Wooley,

Acting Regional Director, Midwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012–11187 Filed 5–8–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2012–N018; FF08EVEN00–FXFR1337088SSO0L5–123]

Marine Mammal Protection Act; Stock Assessment Report

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft revised stock assessment report for the southern sea otter in California; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), and its implementing regulations, we, the U.S. Fish and Wildlife Service (Service), have developed a draft revised marine mammal stock assessment report (SAR) for the southern sea otter (*Enhydra lutris nereis*) stock in the State of California. We now make the SAR available for public review and comment.

DATES: We will consider comments that are received or postmarked on or before August 7, 2012.

ADDRESSES: If you wish to review the draft revised SAR for southern sea otter, you may obtain a copy from our Web site at *http://www.fws.gov/ventura*. Alternatively, you may contact the Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone: 805–644–1766). If you wish to comment on the SAR, you may submit your comments in writing by any one of the following methods:

- *U.S. mail:* Field Supervisor, at the above address;
- *Hand delivery:* Ventura Fish and Wildlife Office at the above address;
- *Fax:* (805) 644–3958; or
- *Email: fw8ssostock@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Lilian Carswell, at the above street address, by telephone (805–612–2793), or by email (*Lilian_Carswell@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

Under the MMPA (16 U.S.C. 1361 *et seq.*) and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 18, we regulate the taking, possession, transportation,

purchasing, selling, offering for sale, exporting, and importing of marine mammals. One of the MMPA's goals is to ensure that stocks of marine mammals occurring in waters under U.S. jurisdiction do not experience a level of human-caused mortality and serious injury that is likely to cause the stock to be reduced below its *optimum sustainable population level* (OSP). OSP is defined under the MMPA as ''* * * the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element'' (16 U.S.C. 1362(3)(9)).

To help accomplish the goal of maintaining marine mammal stocks at their OSPs, section 117 of the MMPA requires the Service and the National Marine Fisheries Service (NMFS) to prepare a SAR for each marine mammal stock that occurs in waters under U.S. jurisdiction. A SAR must be based on the best scientific information available; therefore, we prepare it in consultation with established regional scientific review groups. Each SAR must include:

1. A description of the stock and its geographic range;

2. A minimum population estimate, maximum net productivity rate, and current population trend;

3. An estimate of human-caused mortality and serious injury;

4. A description of commercial fishery interactions;

5. A categorization of the status of the stock; and

6. An estimate of the *potential biological removal* (PBR) level.

The MMPA defines the PBR as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its OSP'' (16 U.S.C. 1362(3)(20)). The PBR is the product of the minimum population estimate of the stock (N_{min}); one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (F_r) of between 0.1 and 1.0, which is intended to compensate for uncertainty and unknown estimation errors. This can be written as:

$$PBR = (N_{min})(\tfrac{1}{2} \text{ of the } R_{max})(F_r)$$

Section 117 of the MMPA also requires the Service and NMFS to review the SARs (a) at least annually for stocks that are specified as strategic stocks, (b) at least annually for stocks for which significant new information is available, and (c) at least once every 3 years for all other stocks.

A *strategic stock* is defined in the MMPA as a marine mammal stock ''(a) for which the level of direct human-caused mortality exceeds the PBR level; (b) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) [the ''ESA''], within the foreseeable future; or (c) which is listed as a threatened or endangered species under the ESA, or is designated as depleted under [the MMPA].'' 16 U.S.C. 1362(3)(19).

The southern sea otter SAR was last revised in December 2008. Because the southern sea otter qualifies as a strategic stock due to its listing as a threatened species under the ESA, the Service had reviewed the stock assessment annually since then. In December of 2009 and again in December of 2010, Service reviews concluded that revision was not warranted because the stock had not changed significantly, nor could it be more accurately determined. However, upon review in 2011, the Service determined that revision was warranted due to an increase in the relative number of strandings.

The following table summarizes the information we are now making available in the draft revised southern sea otter SAR, which lists the stock's N_{min}, R_{max}, F_r, PBR, annual estimated human-caused mortality and serious injury, and status. After consideration of any public comments we receive, the Service will revise and finalize the SAR, as appropriate. We will publish a notice of availability and summary of the final SAR, including responses to submitted comments.

SUMMARY: DRAFT REVISED STOCK ASSESSMENT REPORT, SOUTHERN SEA OTTER IN CALIFORNIA

Stock	N_{min}	R_{max}	F_r	PBR	Annual estimated average human-caused mortality and serious injury (5-year average)	Stock status
Southern sea otters	2,762	0.06	0.1	8	Due to lack of observer coverage, a science-based estimate cannot be made.	Strategic.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

References

In accordance with the MMPA, we include in this notice a list of the information sources and public reports upon which we based the SAR.

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Authority

The authority for this action is the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et al.*).

Dated: April 29, 2012.

Gregory E. Siekaniec,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2012–11164 Filed 5–8–12; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–478 and 731–TA–1182 (Final)]

Certain Steel Wheels From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) and (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of certain steel wheels from China, provided for in subheading 8708.70 of the Harmonized Tariff Schedule of the United States, that the U.S. Department of Commerce has determined are subsidized and sold in the United States at less than fair value (''LTFV'').

Background

The Commission instituted these investigations effective March 30, 2011, following receipt of a petition filed with the Commission and Commerce by Accuride Corp. (Evansville, IN) and Hayes Lemmerz International, Inc. (Northville, MI). The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain steel wheels from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 23, 2011 (76 FR 72441). The hearing was held in Washington, DC, on March 8, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 2, 2012. The views of the Commission are contained in USITC Publication 4319 (April 2012), entitled *Certain Steel Wheels from China: Investigation Nos. 701–TA–478 and 731–TA–1182 (Final).*

By order of the Commission.

Issued: May 3, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–11102 Filed 5–8–12; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–753]

Certain Semiconductor Chips and Products Containing Same; Review of a Final Initial Determination; Schedule for Written Submissions; Termination of the Investigation as to Three Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the investigation as to three respondents on the basis of settlement. The Commission has also determined to review in the entirety the final initial determination (''final ID'') issued by the presiding administrative law judge (''ALJ'') on March 2, 2012, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 4, 2011, based on a complaint filed by Rambus Inc. of Sunnyvale, California (''Rambus''), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain semiconductor chips and products containing the same. 76 FR 384 (Jan. 4, 2011). The complaint alleged the infringement of various claims of patents including U.S. Patent Nos. 6,470,405; 6,591,353; 7,287,109 (collectively, ''the Barth patents''); and Nos. 7,602,857; and 7,715,494 (collectively, ''the Dally patents''). The Barth patents share a common specification, as do the Dally patents. The notice of investigation named as respondents Freescale Semiconductor of Austin, Texas (''Freescale''); Broadcom Corp. of Irvine, California (''Broadcom''); LSI Corporation of Milpitas, California (''LSI''); Mediatek Inc. of Hsin-Chu, Taiwan (''Mediatek''); NVIDIA Corp. of Santa Clara, California (''NVIDIA''); STMicroelectronics N.V. of Geneva, Switzerland; and STMicroelectronics Inc. of Carrollton, Texas (collectively, ''STMicro''), as well as approximately twenty customers of one or more of these respondents.

The investigation has since been terminated against many of the respondents on the basis of Rambus's settlements with Broadcom, Freescale, and NVIDIA. Following the ALJ's issuance of the ID, Rambus settled its dispute with Mediatek. On March 16, 2012, Rambus, Mediatek, and Mediatek's customer-respondents Audio Partnership PLC and Oppo Digital, Inc., moved to terminate the investigation as to Mediatek and these two customers. No oppositions were filed. The Commission has determined to grant the motion, terminating the investigation as to these three respondents.

LSI and STMicro are the only two manufacturer respondents remaining. With them as respondents are their customers Asustek Computer, Inc. and Asus Computer International, Inc.; Cisco Systems, Inc. (''Cisco''); Garmin International Inc.; Hewlett-Packard Company; Hitachi Global Storage Technologies; and Seagate Technology.

On March 2, 2012, the ALJ issued the final ID. The ID found no violation of section 337 for several reasons. All of the asserted claims were found to be invalid or obvious in view of the prior art under 35 U.S.C. 102 and 103. The Barth patents were found to be unenforceable under the doctrine of unclean hands by virtue of Rambus's destruction of documents. The ID also found that Rambus had exhausted its rights under the Barth patents as to certain products of one respondent. The ID found that all of the asserted patent claims were infringed, and rejected

numerous affirmative defenses raised by the respondents.

On March 19, 2012, Rambus, the respondents and the Commission investigative attorney (''IA'') each filed a petition for review of the ID. On March 27, 2012, these parties each filed a response to the others' petitions.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in its entirety.

In connection with the Commission's review, the parties are asked to respond only to the questions enumerated below. Except as otherwise expressly indicated, the parties' submissions are to be based on the ALJ's claim constructions. The parties' submissions should be limited to issues they have properly preserved and should be limited to the evidentiary record.

1. Claim Construction (Dally Patents)

a. Why ''output frequency'' requires a construction setting forth a specific data rate per cycle, as opposed to the plain language of the claims, which requires only a particular output frequency, *i.e.,* a number of cycles per second.

b. If ''output frequency'' is construed not to require a particular data rate, the effect of that construction, if any, on the section 102 and 103 determinations on review, as set forth below.

2. Validity

a. The motivation to combine and secondary indicia of nonobviousness, for each section 103 combination upon which one or more parties petitioned for review. (Barth patents and Dally patents)

b. The pertinence, if any, of synchronous versus asynchronous prior art, and the motivation to apply the teachings of asynchronous art to synchronous systems. (Barth patents)

c. Whether the Harriman patent evidences the publication of the NeXTBus. specification, in view of the fact that NeXT is the assignee of the Harriman patent. (Barth patents)

d. Whether the respondents have demonstrated the publication date of the SyncLink specification (RX–4270C). (Barth patents)

3. Infringement

a. The disablement of the Cisco products with a disabled transmitter (Dally patents), *see* Resp. Pet. 48, as compared to the disablement of the SL500 prior art products, *see* Rambus Pet. 17–20.

b. Given that ''in every infringement analysis, *the language of the claims,* as well as the nature of the accused products, dictates whether an infringement has occurred,'' *Fantasy Sports Properties, Inc.* v. *Sportsline.com, Inc.,* 287 F.3d 1108, 1118 (Fed. Cir. 2002) (emphasis added), whether a finding of infringement or noninfringement of the asserted Dally claims should be guided by the claim language at issue in *Fantasy Sports, Silicon Graphics, Inc.* v. *ATI Technologies., Inc.,* 607 F.3d 784, 794 (Fed. Cir. 2010), *ACCO Brands, Inc.* v. *ABA Locks Manufacturer Co.,* 501 F.3d 1307, 1310 (Fed. Cir. 2007), or other Federal Circuit caselaw regarding active or enabled components.

c. The infringement of asserted Dally '494 method claims 39, 40, and 42 in view of the ALJ's discussion at page 77 of the ID regarding enabled features of apparatuses.

d. Certain STMicroelectronics products are claimed to have substantial noninfringing uses by virtue of their compatibility with SDR memory. See Resps. Pet. 25; ID at 67 n.9. Explain with specificity and citations to the evidentiary record what these STMicroelectronics products are and your contention that these products have or lack substantial noninfringing uses.

4. Unclean Hands (Barth Patents)

a. Whether the doctrines of preclusion or *stare decisis* prevent Rambus from challenging the determinations from the 661 investigation as to the date upon which it was obligated to retain documents, or its bad faith.

b. Explain with specificity the factual distinctions between the records of the 661 investigation and this investigation, with respect to prejudice suffered or allegedly suffered by the respondents by reason of Rambus's destruction of documents.

5. Inequitable Conduct (Barth Patents)

In connection with Commission review, the parties are asked to brief the following issues relating to nondisclosure of the SyncLink specification (RX–4270C), and only that specification (*i.e.,* not other SyncLink publications and not RamLink):

a. Whether the respondents have proven materiality of this particular document.

b. Whether the PTO's reexamination of the '109 patent demonstrates that the broadest reasonable construction of the '109 patent's ''signal'' is a construction broader than the '405 and '353 patents' ''strobe signal.''

c. If the broadest reasonable construction of ''signal'' in the '109 patent is ''a signal,'' and not ''a strobe signal,'' whether the SyncLink specification is cumulative with art presented to the PTO.

d. If inequitable conduct were to be found for the '109 patent, whether the '405 and '353 patents are also unenforceable.

6. Domestic Industry

a. Whether, given the particular scope of the licensed field of each Rambus license, Rambus should nonetheless be required to allocate licensing expenses on a patent-by-patent basis.

7. Patent Exhaustion (Barth Patents)

a. Whether the licensed Samsung memory products substantially embody the Barth patents.

b. What evidence, if any, demonstrates that the Samsung memory purchased (by the respondent discussed on the bottom half of page 337 of the ID, see Rambus Pet. 95–97), was ever located in the United States prior to incorporation into products overseas, and whether the respondent took possession of the memory in the United States.

8. Standing (Dally Patents)

a. Whether Rambus is a *bona fide* purchaser pursuant to 35 U.S.C. § 261.

b. Whether UNC's claim of ownership is barred by laches.

The parties have been invited to brief only these discrete issues, as enumerated above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360,

USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions as set forth above. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Friday, May 18, 2012 and responses to the Commission's questions should not exceed 100 pages. Reply submissions must be filed no later than the close of business on Friday, June 1, 2012 and such replies should not exceed 60 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21, 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42–46 and 210.50).

By order of the Commission.
Issued: May 3, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–11175 Filed 5–8–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Under the Clean Water Act Section 309, 33 U.S.C. 1319

Notice is hereby given that on April 26, 2012, a proposed Amended Consent Decree (the ''Consent Decree'') in *United States of America* v. *Trident Seafoods Corporation,* Civil Action No. 11–1616, was lodged with the United States District Court for the Western District of Washington. The case is a civil action under Section 309 of the Clean Water Act, 33 U.S.C. 1319 (''CWA''), for violations of CWA Section 301(a), 33 U.S.C. 1311(a), and violations of the permit conditions and limitations of the National Pollutant Discharge Elimination System (''NPDES'') permits issued to Trident by the EPA under Section 402(a) of the CWA, 33 U.S.C. 1342(a). To resolve Trident's liability, the Amended Consent Decree requires, and Trident has agreed to pay, a civil penalty of $2.5 million and to perform specified injunctive measures to reduce its discharge of seafood processing wastes and to address sea floor waste piles created by its discharges.

On September 28, 2011, a Proposed Consent Decree was lodged with this Court and a **Federal Register** notice was published on October 4, 2011 (76 FR 61384–01, 2011 WL 4542583 (F.R.)). For thirty (30) days after that date, the Department of Justice received comments relating to the Consent Decree. These comments were considered and incorporated into the Amended Consent Decree. This Notice invites public comment on the Amended Consent Decree.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States of America* v. *Trident Seafoods Corporation,* DJ. Ref. 90–5–1–1–2002/2.

During the comment period, the Amended Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*eescdcopy.enrd@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 2012–11108 Filed 5–8–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act and Clean Water Act

Notice is hereby given that on May 3, 2012, a proposed Consent Decree in *United States* v. *Cabot Corporation, et. al.*, Civil Action No. 1:12–cv–01097 was lodged with the United States District Court for the Northern District of Ohio.

The complaint filed by the United States in this action asserts claims under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607(a), and Section 311(f) of the Clean Water Act, as

amended (''CWA''), 33 U.S.C. 1321(f), to recover damages for injuries to natural resources in the lower Ashtabula River and Harbor. The United States' complaint asserts claims against 18 separate parties, based on alleged releases or discharges of hazardous substances from numerous industrial facilities that operated in Ashtabula at various times since the 1940s. Concurrently with the filing of the United States' complaint, the State of Ohio also filed a complaint under CERCLA, the CWA, and other authorities, seeking to recover damages for injuries to resources in the lower Ashtabula River and Harbor. The State's complaint asserts claims against all of the parties named as defendants in the United States' complaint, as well as certain entities that are part of the federal government.

The proposed Consent Decree would resolve all claims assert in the complaints filed by the United States and the State of Ohio, as well as certain potential claims of the private party defendants against the United States. Under the terms of the proposed settlement, Settling Defendants and Settling Federal Agencies will collectively pay more than $2.3 million to federal and state natural resource damages funds as reimbursement for natural resource damage assessment costs previously incurred by federal and state natural resource trustees in connection with the Ashtabula River site. In addition, Settling Defendants will implement a number of natural resource damage restoration projects in accordance with plans approved by federal and state natural resource trustees. Finally, the proposed settlement provides for Settling Defendants to pay a total of $440,000 to the Trustees for future restoration activities, including costs that may be incurred by the Trustees in connection with restoration projects undertaken by the Settling Defendants.

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 v. Cabot Corporation, et al.,* D.J. Ref. 90–11–2–210/1.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decrees 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 number (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy of the Consent Decree from the Consent Decree Library by mail, please enclose a check in the amount of $87.00 (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. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $17.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 2012–11128 Filed 5–8–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Bureau of Labor Statistics Technical Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Technical Advisory Committee will meet on Friday June 15, 2012. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Committee provides advice and makes recommendations to the Bureau of Labor Statistics (BLS) on technical aspects of the collection and formulation of economic measures. The BLS presents issues and then draws on the expertise of Committee members representing specialized fields within the academic disciplines of economics, statistics and survey design.

The meeting will be held in rooms 1 and 2 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

8:30 a.m. Registration.
9 a.m. Opening remarks and introductions; agency updates.
9:15 a.m. Price Indexes for Foreign Inputs.
11:30 a.m. Discussion of future priorities.
11:45 a.m. Lunch.
1 p.m. Discussion of future priorities.
1:30 p.m. Current Employment Statistics Revisions.
3 p.m. Current Employment Statistics Birth/Death Model.
4:30 p.m. Approximate conclusion.

The meeting is open to the public. Any questions concerning the meeting should be directed to Lisa Fieldhouse, Bureau of Labor Statistics Technical Advisory Committee, on 202–691–5025. Individuals who require special accommodations should contact Ms. Fieldhouse at least two days prior to the meeting date.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2012–11103 Filed 5–8–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Veterans' Employment and Training; Veterans Workforce Investment Program

AGENCY: Veterans' Employment and Training Service, Department of Labor.

Announcement Type: New Notice of Availability of Funds and Solicitation for Grant Applications. The full announcement is posted on *www.grants.gov*.

Funding Opportunity Number: SGA 12–02.

DATES: *Key Dates:* The closing date for receipt of applications is June 15, 2012.

Funding Opportunity Description

The U.S. Department of Labor (USDOL), Veterans' Employment and Training Service (VETS), announces a grant competition under the Veterans' Workforce Investment Program (VWIP) for Program Year (PY) 2012, as authorized under Section 168 of the Workforce Investment Act (WIA) of 1998. WIA section 168 amended the training programs made available to veterans (see 29 U.S.C. 2913). WIA section 168 authorizes the Department of Labor to make grants to meet the needs for workforce investment activities of veterans with service-connected disabilities, veterans who have significant barriers to employment, veterans who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized, and recently separated veterans within 48 months of discharge (under conditions other than dishonorable). Veterans who received a ''dishonorable'' discharge are ineligible for VWIP services. Priority of service for veterans

in all Department of Labor funded training programs is established in 38 U.S.C. 4215.

• VWIP grants are intended to address three objectives: (a) To provide services to assist in reintegrating eligible veterans into meaningful employment within the labor force; and (b) to stimulate the development of effective service delivery systems that will address the complex employability problems facing eligible veterans; and (c) to increase the skills and competency level of veteran participants through longer-term training that results, whenever feasible, in industry-recognized credentials for jobs, occupations, and industries that are in demand within a targeted service area.

The full Solicitation for Grant Application is posted on *www.grants.gov* under U.S. Department of Labor/VETS. Applications submitted through *www.grants.gov* or hard copy will be accepted. If you need to speak to a person concerning these grants, you may telephone Cassandra Mitchell at 202–693–4570 (not a toll-free number). If you have issues regarding access to the *www.grants.gov* Web site, you may telephone the Contact Center Phone at 1–800–518–4726.

Signed at Washington, DC, this 2nd day of May 2012.

Cassandra R. Mitchell,

Grant Officer.

[FR Doc. 2012–11116 Filed 5–8–12; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–033)]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, June 4, 2012, 11:00 a.m. to 1:30 p.m., Local Time.

ADDRESSES: This meeting will take place telephonically. Any interested person may call the USA toll free conference call number 888–982–4694, pass code ESS, to participate in this meeting by telephone.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topic:

National Academy of Sciences Earth Science Decadal Survey Midterm Review

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–11061 Filed 5–8–12; 8:45 am]

BILLING CODE 7510–13–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Proposed Collection, Laura Bush 21st Century Librarian Grant Program Evaluation

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice, Proposed Collection, Submission for OMB Review.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202–653–4614. This review 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 requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSEES** section of this notice.

DATES: Comments must be submitted to the office listed in the addressee section below on or before June 6, 2012. The OMB is particularly interested in comments that help the agency to:

• 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 submissions of responses.

ADDRESSES: Send comments to: Matthew Birnbaum, Ph.D., Evaluation and Research Officer, Institute of Museum and Library Services, 1800 M St. NW., Washington, DC 20036. Telephone: 202–653–4647, Fax: 202–653–4611 or by email at *mbirnbaum@imls.gov* or by *teletype* (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency and is the primary source of federal support for the Nation's 123,000 libraries and 17,500 museums. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. IMLS is responsible for identifying national needs for, and trends of, museum and library services funded by IMLS; reporting on the impact and effectiveness of programs conducted with funds made available by IMLS in addressing such needs; and identifying, and disseminating information on, the best practices of such programs. (20 U.S.C. Chapter 72, 9108).

Abstract: The Institute of Museum and Library Services seeks to obtain this information via case study interviews in order to evaluate and make improvements to the Laura Bush 21st Century Librarian (LB21) Grant Program. The information gathered will inform the library and information science field of innovations and best practices and guide IMLS in its future administration of the LB21 grant program.

Current Actions: This notice proposes clearance of the Laura Bush 21st Century Librarian Grant Program Evaluation. The 60-day Notice for ''Laura Bush 21st Century Librarian Grant Program Evaluation'' was

published in the **Federal Register** on November 21, 2011 (FR vol. 76, no. 224, pgs. 72003–72004). No comments were received.

Agency: Institute of Museum and Library Services.

Title: Laura Bush 21st Century Librarian Grant Program Evaluation.

OMB Number: To be determined.

Agency Number: 3137.

Frequency: One time.

Affected Public: Libraries, Educational Institutions, Grant Recipients, and Program Participants.

Number of Respondents: 135.

Estimated Time per Respondent: 1.0 hours.

Total Burden Hours: $3,861.

Total Annualized Capital/Startup Costs: N/A.

Total Annual Costs: N/A.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316.

Dated: May 2, 2012.

Kim Miller,

Management Analyst, Office of Policy, Research and Evaluation.

[FR Doc. 2012–11192 Filed 5–8–12; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of May 7, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of May 7, 2012

Friday, May 11, 2012

8:55 a.m. Affirmation Session (Public Meeting) (Tentative).

a. Final Rule: Requirements for Maintenance of Inspections, Tests, Analyses, and Acceptance Criteria (RIN 3150–AI77) (Tentative).

b. Strata Energy Inc. (Ross In Situ Recovery Uranium Project), Appeal by NRC Staff and Strata Energy of LBP–12–3 (Feb. 10, 2012) (Tentative).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

12:00 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6).

* * * * *

* 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: *www.nrc.gov/about-nrc/policy-making/schedule.html*.

* * * * *

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: May 4, 2012.

Kenneth Hart,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2012–11270 Filed 5–7–12; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Monday, May 7, 2012 at 4:00 p.m.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(2) and (6) and 17 CFR 200.402(a)(2) and (6), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the May 7, 2012 Closed Meeting will be:

A personnel matter

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 7, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–11291 Filed 5–7–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66911; File No. SR–ICEEU–2012–05]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change To Amend the ICE Clear Europe Limited CDS Procedures, Finance Procedures, and Rules With Respect to the Calculation and Payment of Interest on Mark-To-Market Margin on CDS Transactions

May 3, 2012.

I. Introduction

On March 12, 2012, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICEEU–2012–05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change was published for comment in the **Federal Register** on March 26, 2012.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

ICE Clear Europe proposed rule and CDS procedural amendments intended to modify the terms of the calculation and payment of interest on mark-to-market margin for CDS transactions. The amendments will provide further detail for calculation of interest on mark-to-market margin for CDS at the position level, but will not change the overall

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34–66629 (March 20, 2012), 77 FR 17537 (March 26, 2012).

calculation of that interest. The amendments will also move payment of such interest from a monthly to a daily basis.

The proposed rule changes consist of operational changes to the Rules, CDS Procedures and Finance Procedures in relation to the calculation and payment of interest on the mark-to-market margin for CDS transactions on a daily basis. The amendments also clarify, consistent with ICE Clear Europe's current practice, that mark-to-market margin and variation margin may be required to be provided by the clearing member to the clearing house or vice versa. ICE Clear Europe consulted on the proposed rule changes with its CDS Risk Committee, which supports the proposed rule changes.

ICE Clear Europe proposed to update Parts 1 and 3 of its CDS Procedures to state more clearly the daily calculation of interest on mark-to-market margin for CDS transactions and to provide further detail about such calculations. The new definitions of ''Daily Aggregate MTM Interest Amount,'' ''Mark-to-Market Interest,'' and ''Mark-to-Market Margin Balance'' and the provisions of Part 3 of the CDS Procedures reflect these changes. ''Daily Aggregate MTM Interest Amount'' means for any Clearing Member for a currency on any day the sum of the Mark-to-Market Margin Balances in such currency for that day in respect of that Clearing Member. The Daily Aggregate MTM Interest Amount will be determined separately in respect of the Clearing Member's Proprietary Account and any relevant customer account. Where the Daily Aggregate MTM Interest Amount is positive, it will be owed by ICE Clear Europe to the relevant Clearing Member; where it is negative, the relevant Clearing Member will owe the absolute value of the Daily Aggregate MTM Interest Amount to ICE Clear Europe. ''Mark-to-Market Interest'' will mean interest calculated daily in accordance with the market convention for the relevant currency by applying the applicable overnight rate. ''Mark-to-Market Margin Balance'' will mean the sum of all Mark-to-Market Margin delivered up to, but excluding that day, by the relevant Clearing Member in respect of such CDS Contract to ICE Clear Europe less all Mark-to-Market Margin delivered up to, but excluding that day, by ICE Clear Europe in respect of such CDS Contract to such Clearing Member, as determined at the close of business on such day. Pursuant to the amendments to Section 3.1 of the CDS Procedures and 6.11(h)(iv) of the Finance Procedures, interest on Mark-to-Market Margin will be payable on a daily, rather than a monthly basis, although the interest calculation is substantially unchanged.

III. Discussion

Section 19(b)(2)(C) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [4] requires, among other things, that the rules of a clearing agency be designed to promote the safeguarding of securities and funds, which are in the custody or control of the clearing agency or for which it is responsible.

By amending rules and procedures which allow ICE Clear Europe to effectively manage risk, the proposed rule change will assure the safeguarding of securities and funds, which are in the custody or control of ICE Clear Europe or for which it is responsible. As a result, the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–ICEEU–2012–05) be, and hereby is, approved.[7]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–11129 Filed 5–8–12; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78s(b)(2)(C).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66916; File No. SR–ICC–2012–03]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change To Reduce the Current Level of Risk Mutualization Among Clearing Participants and To Modify the Initial Margin Risk Model So That It Is Easier for Clearing Participants To Measure Their Recovery Rate Risk Exposure

May 3, 2012.

I. Introduction

On March 8, 2012, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICC–2012–03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on March 26, 2012.[3] The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

This rule change permits ICC to make two modifications to its risk model for clearing credit default swaps (''CDS'') contracts. For the first modification (''Modification #1''), ICC is reducing the current level of risk mutualization among its clearing participants by modifying its initial margin model to collateralize the loss that would occur from the single name CDS that causes the greatest loss entering a state of default. For the second modification (''Modification #2''), ICC is modifying its initial margin model to make clearing participants' risk requirements more transparent by removing the conditional recovery rate stress-scenarios and adding a new standalone recovery rate sensitivity component that is computed by considering changes in recovery rate assumptions and their impact on the net asset value of the clearing portfolio.

ICC represents that Modification #1 will reduce the level of default resources held in ICC's mutualized guaranty fund and increase the level of default resources held in initial margin. ICC is implementing this by incorporating into its initial margin

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–66631 (March 20, 2012), 77 FR 17536 (March 26, 2012).

model the single name CDS that causes the greatest loss when entering a state of default (*i.e.,* the single name CDS that results in the greatest amount of loss when stress-tested). This change collateralizes the loss that would occur from the single name CDS that causes the greatest loss entering a state of default. Consequently, the amount of uncollateralized loss that would result from the three single name CDS contracts causing the greatest cumulative losses when entering a state of default is reduced, thereby reducing the amount of required guaranty fund contributions from clearing participants. ICC represents that the decrease in the guaranty fund and the increase in initial margin requirements are not symmetrical. Instead, based upon current portfolios, ICC approximates that for every $1 decrease to the guaranty fund there will be a corresponding increase to the initial margin requirements of approximately $5.

ICC represents that Modification #2 will make it easier for clearing participants to evaluate the risk of their CDS clearing portfolio as measured by the impact of changing recovery rate assumptions. ICC is implementing this by removing the conditional recovery rate stress-scenarios and adding a new standalone recovery rate sensitivity component that is computed by considering changes in recovery rate assumptions that impact the net asset value of the CDS clearing portfolio. ICC argues that by making it easier for market participants to measure their risk, Modification #2 is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to it.

III. Discussion

Section 19(b)(2)(C) of the Act [4] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [5] requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.

Modification #1 will require each clearing participant to collateralize its greatest single name CDS exposure that it creates for other clearing participants. As such, Modification #1 will require clearing participants to bear a greater portion of the loss resulting from their default and also increases the amount of risk requirements ICC collects, thereby assuring the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible. Modification #2 will require ICC to separately estimate requirements using various recovery rate assumptions and improve the ability of clearing participants to identify the impact of considering various changes to recovery rate assumptions on the net asset value of their CDS clearing portfolios, thereby removing an impediment to the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [6] and the rules thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–ICC–2012–03) be, and hereby is, approved.[8]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–11131 Filed 5–8–12; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78s(b)(2)(C).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66915; File No. SR–NASDAQ–2012–053]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Investor Support Program Under Rule 7014 and To Amend NASDAQ's Schedule of Execution and Routing Fees and Rebates Under Rule 7018

May 3, 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 25, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify the Investor Support Program under Rule 7014, and to amend NASDAQ's schedule of execution and routing fees and rebates under Rule 7018. NASDAQ will implement the proposed change on May 1, 2012. The text of the proposed rule change is available at *nasdaq.cchwallstreet.com*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify the ISP under Rule 7014, and to amend NASDAQ's schedule of execution and routing fees and rebates under Rule 7018. As a general matter, the changes will result in fee increases and rebate reductions that reflect the persistent reduction in trading volumes in the U.S. capital markets.

Investor Support Program

The ISP enables NASDAQ members to earn a monthly fee credit for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities (''targeted liquidity''). The goal of the ISP is to incentivize members to provide such targeted liquidity to the NASDAQ Market Center.[3] The Exchange noted in its original filing to institute the ISP[4] that maintaining and increasing the proportion of orders in exchange-listed securities executed on a registered exchange (rather than relying on any of the available off-exchange execution methods) would help raise investors' confidence in the fairness of their transactions and would benefit all investors by deepening NASDAQ's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Participants in the ISP are required to designate specific NASDAQ order entry ports for use under the ISP and to meet specified criteria focused on market participation, liquidity provision, and high rates of order execution. Currently, a member that participates in the ISP receives a credit of $0.0001, $0.0003, or $0.0004 per share with respect to the number of shares of displayed liquidity provided by the member that execute at $1 or more per share.[5] The precise credit rate is determined by factors designed to measure the degree of the member's participation in the Nasdaq Market Center and the percentage of orders that it enters that execute—its ''ISP Execution Ratio''—which is seen as indicative of retail or institutional participation. While making only minimal changes to the existing criteria for participation in the ISP, NASDAQ will reduce the credits paid under the program to $0.00005, $0.000275, and $0.000375 respectively. In addition, in one of existing tiers for the ISP, the percentage of liquidity that a member is required to provide through ISP-designated ports will increase from 25% to 30%. With these changes, the requirements for existing ISP tiers, and the associated credits, will be as follows:

As provided in Rule 7014(c)(1), NASDAQ will pay a credit of $0.00005 per share[6] with respect to all of a member's displayed liquidity-providing orders that execute at a price of $1 or more per share during the month if the following conditions are met:

(1) The member's Participation Ratio[7] for the month is equal to or greater than its Baseline Participation Ratio.[8] The requirement reflects the expectation that a member participating in the program must maintain or increase its participation in NASDAQ as compared with an historical baseline.

(2) The member's ''ISP Execution Ratio'' for the month must be less than 10. The ISP Execution Ratio is defined as ''the ratio of (A) the total number of liquidity-providing orders entered by a member through its ISP-designated ports during the specified time period to (B) the number of liquidity-providing orders entered by such member through its ISP-designated ports and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) No order shall be counted as executed more than once; and (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders shall be included in the tabulation.''[9] Thus, the definition requires a ratio between the total number of orders that post to the NASDAQ book and the number of such orders that actually execute that is low, a characteristic that NASDAQ believes to be reflective of retail and institutional order flow.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month, reflecting the ISP's goals of encouraging higher levels of liquidity provision.

(4) At least 30%[10] of the liquidity provided by the member during the month is provided through ISP-designated ports. This requirement is designed to mitigate ''gaming'' of the program by firms that do not generally represent retail or institutional order flow but that nevertheless are able to channel a portion of their orders that they intend to execute through ISP-designated ports and thereby receive a credit with respect to those orders. NASDAQ is raising the required percentage from 25% to 30% to provide added assurance that program participants represent retail or institutional order flow.

As provided in Rule 7014(c)(2), NASDAQ will pay a credit of $0.000275

[3] The Commission has recently expressed its concern that a significant percentage of the orders of individual investors are executed at over the counter (''OTC'') markets, that is, at off-exchange markets; and that a significant percentage of the orders of institutional investors are executed in dark pools. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, ''Concept Release''). In the Concept Release, the Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. The Commission published the Concept Release to invite public comment on a wide range of market structure issues, including high frequency trading and un-displayed, or ''dark,'' liquidity. *See also* Mary L. Schapiro, *Strengthening Our Equity Market Structure* (Speech at the Economic Club of New York, Sept. 7, 2010) (''Schapiro Speech,'' available on the Commission Web site) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[4] Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (NASDAQ–2010–141) (notice of filing and immediate effectiveness).

[5] A participant in the ISP must designate specific order-entry ports for use in tabulating certain requirements under the program.

[6] A reduction from $0.0001 per share.

[7] ''Participation Ratio'' is defined as follows: ''[F]or a given member in a given month, the ratio of (A) the number of shares of liquidity provided in orders entered by the member through any of its Nasdaq ports and executed in the Nasdaq Market Center during such month to (B) the Consolidated Volume.'' ''Consolidated Volume'' is defined as follows: ''[F]or a given member in a given month, the consolidated volume of shares of System Securities in executed orders reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during such month.'' ''System Securities'' means all securities listed on NASDAQ and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan.

[8] ''Baseline Participation Ratio'' is defined as follows: ''[W]ith respect to a member, the lower of such member's Participation Ratio for the month of August 2010 or the month of August 2011, provided that in calculating such Participation Ratios, the numerator shall be increased by the amount (if any) of the member's Indirect Order Flow for such month, and provided further that if the result is zero for either month, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places).'' ''Indirect Order Flow'' is defined as follows: ''[F]or a given member in a given month, the number of shares of liquidity provided in orders entered into the Nasdaq Market Center at the member's direction by another member with minimal substantive intermediation by such other member and executed in the Nasdaq Market Center during such month.''

[9] These terms have the meanings assigned to them in Rule 4751. MIOC and SIOC orders are forms of ''immediate or cancel'' orders and therefore cannot be liquidity-providing orders.

[10] Previously, 25%.

per share [11] with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.00005 per share [12] with respect to all other shares of displayed liquidity executed at a price of $1 or more, if the following conditions are met:

(1) The member's Participation Ratio for the month exceeds its Baseline Participation Ratio by at least 0.43%.

(2) The member's ''ISP Execution Ratio'' for the month is less than 10.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month.

(4) At least 40% of the liquidity provided by the member during the month is provided through ISP-designated ports.

Alternatively, as provided in Rule 7014(c)(3), NASDAQ will pay a credit of $0.000275 per share [13] with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.00005 per share [14] with respect to all other shares of displayed liquidity executed at a price of $1 or more, if the following conditions are met:

(1) The member's Participation Ratio for the month exceeds its Baseline Participation Ratio by at least 0.30%.

(2) The member's ''ISP Execution Ratio'' for the month is less than 10.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month.

(4) At least 80% of the liquidity provided by the member during the month is provided through ISP-designated ports.

(5) The member has an average daily volume during the month of more than 100,000 contracts of liquidity provided through one or more of its Nasdaq Options Market market participant identifiers (''MPIDs''), provided that such liquidity is provided through Public Customer Orders, as defined in Chapter I, Section 1 of the Nasdaq Options Market Rules; and

(6) The ratio between shares of liquidity provided through ISP-designated ports and total shares accessed, provided, or routed through ISP-designated ports during the month is at least 0.70.

As provided in Rule 7014(c)(4), NASDAQ will pay a credit of $0.000375 per share [15] with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.00005 per share [16] with respect to all other shares of displayed liquidity executed at a price of $1 or more, if the following conditions are met:

(1) The member's Participation Ratio for the month exceeds its Baseline Participation Ratio by at least 0.86%.

(2) The member's ''ISP Execution Ratio'' for the month is less than 10.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month.

(4) At least 40% of the liquidity provided by the member during the month is provided through ISP-designated ports.

NASDAQ is also deleting Rule 7014(i), which contains obsolete language describing a rule for calculating the ISP during the month of December 2011.

Execution and Routing Fees and Credits

NASDAQ is making a number of changes to its fee and credit schedule for order execution and routing. Overall, the changes are designed to (i) raise additional revenue to offset reductions caused by a sustained decrease in trading volumes in the U.S. capital markets, and (ii) encourage members that provide liquidity through non-displayed orders to do so, to a greater extent, through orders that offer price improvement. Specifically, NASDAQ is proposing to make the following changes to Rule 7018(a), which governs execution and routing of order for securities priced at $1 or more per share:

• Currently, NASDAQ pays credits that range from $0.0010 to $0.0015 per share executed with respect to liquidity provided through non-displayed orders. NASDAQ proposes to replace these credits with a credit of $0.0017 or $0.0015 per share for liquidity provided through midpoint pegged [17] or midpoint peg post-only orders [18] (collectively, ''midpoint orders''), and a credit of $0.0010 per share executed for all other non-displayed orders. With respect to midpoint orders, the $0.0017 rate will apply if a member provides an average daily volume of more than 3 million shares through midpoint orders during the month, and the $0.0015 rate will apply if the member provides an average daily volume of 3 million or fewer shares through midpoint orders during the month. NASDAQ's pricing structure is generally designed to encourage the provision of liquidity through displayed orders, since the credits paid with respect to such orders are consistently higher than those for non-displayed orders. However, the change reflects a concomitant goal of encouraging members that use non-displayed orders to also offer price improvement through the use of orders that are designed to execute at the midpoint of the national best bid and offer. In a related change, NASDAQ is also eliminating a liquidity provider rebate tier under which a member earns a credit of $0.0015 per share executed for non-displayed orders, and a credit of $0.0020 per share for displayed orders if the member provides 3 million or more shares of liquidity through non-displayed orders.[19] This change is being made because the tier is inconsistent with the goal of paying a higher non-displayed order rebate with respect to midpoint orders.

• NASDAQ is eliminating a favorable charge of $0.0027 per share executed for orders that employ the SAVE [20] or

[11] A reduction from $0.0003 per share.

[12] A reduction from $0.0001 per share.

[13] A reduction from $0.0003 per share.

[14] A reduction from $0.0001 per share.

[15] A reduction from $0.0004 per share.

[16] A reduction from $0.0001 per share.

[17] As provided in Rule 4751, ''Pegged Orders'' are orders that, after entry, have their price automatically adjusted by the System in response to changes in either the Nasdaq Market Center inside bid or offer or bids or offers in the national market system, as appropriate. A Pegged Order can specify that its price will equal the inside quote on the same side of the market (''Primary Peg''), the opposite side of the market (''Market Peg''), or the midpoint of the national best bid and offer (''Midpoint Peg''). A Midpoint Peg Order is priced based upon the national best bid and offer, excluding the effect that the Midpoint Peg Order itself has on the inside bid or inside offer. Midpoint Pegged Orders will never be displayed. A Midpoint Pegged Order may be executed in sub-pennies if necessary to obtain a midpoint price. A new timestamp is created for the order each time it is automatically adjusted.

[18] ''Midpoint Peg Post-Only Orders'' are orders that are priced in the same manner as Midpoint Peg Orders. Upon entry, a Midpoint Peg Post-Only Order will always post to the book unless it is a buy (sell) order that is priced higher than (lower than) a resting sell (buy) order, in which case it will execute at the price of the resting order. Midpoint Peg Post-Only Orders must always have a price of more than $1 per share. A Midpoint Peg Post-Only Order that would be assigned a price of $1 or less per share will be rejected or cancelled, as applicable. While a Midpoint Peg Post-Only Order that posts to the book is locking a preexisting non-displayed order, the Midpoint Peg Post-Only Order will execute against an incoming order only if the price of the incoming buy (sell) order is higher (lower) than the price of the pre-existing order.

[19] NASDAQ is also making a conforming change to the language that describes the credits payable with respect to displayed orders, but is not making any changes to the applicable rates.

[20] SAVE is a routing option under which orders may either (i) route to the NASDAQ OMX BX Equities Market (''BX'') and NASDAQ OMX PSX (''PSX''), check the System, and then route to other destinations on the System routing table, or (ii) may check the System first and then route to destinations on the System routing table. If shares remain un-executed after routing, they are posted to

SOLV[21] routing strategy but that execute in the Nasdaq Market Center. Accordingly, such orders will be charged the otherwise applicable fee of $0.0030 per share executed. Similarly, the fee for SAVE, SOLV, or TFTY[22] orders that execute at the New York Stock Exchange (''NYSE'') will increase from $0.0022 per share executed to $0.0023 per share executed, and the fee for SAVE or SOLV orders that execute at venues other than NASDAQ, NYSE, BX, or PSX will increase from $0.0026 per share executed to $0.0029 per share executed.

With respect to Rule 7018(b), NASDAQ is proposing to eliminate the liquidity provider rebate of $0.00009 per share executed with respect to securities priced at more than $0.05 but less than $1 per share. As a result, NASDAQ will pay no liquidity provider rebate for securities priced under $1 per share.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[23] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[24] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Changes to the ISP

The ISP encourages members to add targeted liquidity that is executed in the Nasdaq Market Center. NASDAQ believes that the reduction in the rebates paid under the ISP from $0.0001, $0.0003, and $0.0004 to $0.00005, $0.000275, and $0.000375 is reasonable, because it provides a means for NASDAQ to reduce costs during a period of persistently low trading volumes, while maintaining the overall structure of the ISP for the purpose of providing incentives for retail and institutional investors to provide targeted liquidity at NASDAQ. The change is consistent with an equitable allocation of fees: Although the change maintains the ISP's purpose of paying higher rebates to certain market participants in order to encourage them to benefit all NASDAQ members through the submission of targeted liquidity, the change reduces the disparity between rebates paid to ISP participants and other members for providing liquidity. Accordingly, it results in a fee structure in which available rebates are allocated more equitably among market participants. Similarly, although NASDAQ believes that the price differentiation inherent in the ISP is fair, because it is designed to benefit all market participants by drawing targeted liquidity to the Exchange, the change reduces the level of discrimination between the rebates paid to ISP participants and those paid to other liquidity providers.

Finally, NASDAQ believes that the change to increase the percentage of liquidity provided through ISP-designated ports needed for a member to qualify for the lowest ISP tier is reasonable because it will reduce the likelihood that members that do not represent retail or institutional customers will be able to ''game'' the program by channeling a portion of their orders that they intend to execute through ISP-designated ports and thereby receive a credit with respect to those orders. The change is equitable because the ISP is designed to attract and benefit targeted liquidity, and therefore it is equitable to take measures to reduce the likelihood that ISP incentives will be paid to members that do not provide targeted liquidity. Finally, the change is not unfairly discriminatory because excluding members that do not represent retail or institutional customers is consistent with the established purposes of the ISP.

Routing Fee Changes

The changes to fees for use of the SAVE, SOLV, and TFTY routing strategies are reasonable because the current fees for these routing strategies reflect promotional pricing incentives originally designed to encourage greater use of these routing strategies. Recognizing that NASDAQ is not required to maintain promotional pricing differentials indefinitely, NASDAQ believes that it is reasonable to remove these incentives for the following reasons: (i) The fee for SAVE and SOLV orders that execute at NASDAQ will be the same as the fee for most other order executions at NASDAQ, (ii) the fee for SAVE, SOLV, and TFTY orders that execute at NYSE will be same as the fee that NYSE charges to NASDAQ to execute such orders, and (iii) the fee for SAVE and SOLV orders that execute at venues other than NASDAQ, BX, PSX, and NYSE will be less than the fee for executing orders at NASDAQ, and less than the charge for certain other routing strategies, such as MOPP and directed orders, that execute at these venues. NASDAQ believes that these changes promote an equitable allocation of fees among market participants, because they allow NASDAQ to charge fees for these execution and routing services that are more similar to the fees otherwise charged for execution and routing. Finally, NASDAQ believes that the change is not unfairly discriminatory because it reduces the differentiation in NASDAQ's fee schedule with respect to the fees charged for different routing strategies.

Rebates for Non-Displayed Liquidity

The changes to the rebates payable with respect to liquidity provided through non-displayed orders are reasonable because, consistent with NASDAQ's goal of reducing expenses, they direct the focus of rebates away from non-displayed liquidity in general and toward non-displayed liquidity provided through midpoint orders. Because such orders provide price improvement, NASDAQ believes that it is reasonable to use rebates to encourage their use, while still maintaining a rebate structure that places even greater emphasis on the value of displayed liquidity in advancing transparency and price discovery. As a result of the change, the rebate paid for non-displayed liquidity, other than liquidity provided through midpoint orders, will decrease for some market participants, but the rebate paid with respect to midpoint orders will remain constant or increase for all market participants. The change is consistent with an equitable allocation of fees because it is designed to encourage members that provide liquidity through non-displayed orders to benefit other market participants through price improvement. Finally, the change is not unfairly discriminatory: the elements of differentiation between displayed and non-displayed liquidity and midpoint orders and other non-displayed orders are fair because they promote the goals of price discovery and

the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

[21] SOLV is a routing option under which orders may either (i) route to BX and PSX, check the System, and then route to other destinations on the System routing table, or (ii) may check the System first and then route to destinations on the System routing table. If shares remain un-executed after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center.

[22] TFTY is a routing option under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain un-executed after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(4) and (5).

encouraging market participants to provide price improvement.

Rebates for Stocks Priced Under $1

NASDAQ believes that the elimination of the rebate for liquidity provided in stocks priced under $1 is reasonable because the amount of this rebate is extremely small and therefore of minimal value to market participants. For example, the rebate on a 1000 share trade is just $0.09. NASDAQ believes that the change is consistent with an equitable allocation of fees, since the rebate is not being replaced by a fee, so there is no charge for liquidity providers to execute trades in these stocks. Finally, NASDAQ believes that the change is not unfairly discriminatory because the per-trade revenues associated with executions of these stocks are also very small. Accordingly, NASDAQ believes that it is not unfair to pay a rebate with respect to higher priced stocks, while declining to pay a rebate with respect to these stocks.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. These competitive forces help to ensure that NASDAQ's fees are reasonable, equitably allocated, and not unfairly discriminatory since market participants can largely avoid fees to which they object by changing their trading behavior.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[25] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2012–053 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–NASDAQ–2012–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2012–053 and should be submitted on or before May 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11136 Filed 5–8–12; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(a)(ii).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66918; File No. SR–ICC–2012–08]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Add Margin Collection Requirements for Futures Commission Merchant Clearing Participants

May 3, 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 23, 2012, ICE Clear Credit LLC (''ICC'') 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 primarily by ICC. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ICC proposes to require FCM clearing participants to collect margin from their customers in respect of such customers' non-hedge positions at a level that is ten percent (10%) greater than ICC's related margin requirement with respect to each product and swap portfolio. As discussed in more detail in Item II(A) below, ICC published a Circular on April 20, 2012 informing its clearing participants of this rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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 III below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC is registered as a derivatives clearing organization (''DCO'') with the Commodity Futures Trading Commission (''CFTC'') and clears credit default swap contracts subject to the jurisdiction of the CFTC. CFTC Regulation 39.13(g)(8)(ii) provides that a DCO ''shall require its clearing members to collect customer initial margin * * *from their customers, for non-hedge positions, at a level that is greater than 100 percent of the derivatives clearing organization's initial margin requirements with respect to each product and swap portfolio.''

As further described in ICC's Circular 2012/008 dated April 20, 2012, in compliance with CFTC Regulation 39.13(g)(8)(ii), no later than the May 7, 2012 effective date, ICC will require FCM clearing participants to collect margin from their customers in respect of such customers' non-hedge positions, at a level that is ten percent (10%) greater than ICC's related margin requirement with respect to each product and swap portfolio.

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to it. ICC believes that its proposed rule will help protect investors and the public interest because the requirements help safeguard customer funds held at the FCM level.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC represented that it will notify the Commission of any written comments it receives.

III. 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 may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or by sending an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2012–08 on the subject line.
- Paper comments may be sent 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–ICC–2012–08. 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 Section, 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 filings will also be available for inspection and copying at the principal office of ICC and on ICC's Web site at *https://www.theice.com/publicdocs/regulatory_filings/042312_SEC_ICEClearCredit.pdf.*

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–ICC–2012–08 and should be submitted on or before May 30, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b)(2)(C) of the Act[4] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts, and transactions. Section 17A(b)(3)(F) also requires that the rules of a clearing agency be designed to contribute to the safeguarding of securities and funds associated with swap transactions.[6]

The proposed change would allow ICC to require ICC's clearing participants to enhance the margin collected from clients for clients' non-hedge positions, thereby contributing to the safeguarding of securities and funds associated with swap transactions. It should also allow ICC to comply with new CFTC regulatory requirements, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.

Further, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[7] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register** because as a registered DCO ICC is required to comply with the new CFTC regulations by the time they become effective on May 7, 2012.[8]

[3] The Commission has modified the text of the summaries prepared by ICC.

[4] 15 U.S.C. 78s(b)(2)(C).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposed rule change, the Commission considered the proposal's impact on

Continued

V. Conclusion

It is therefore ordered, pursuant to 19(b)(2) of the Act,[9] that the proposed rule change (SR–ICC–2012–08) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–11132 Filed 5–8–12; 8:45 am]

BILLING CODE 8011–01–P

efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66913; File No. SR–FINRA–2012–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Amending FINRA Rules 12401 (Number of Arbitrators) and 12800 (Simplified Arbitration) of the Code of Arbitration Procedure for Customer Disputes, and FINRA Rules 13401 (Number of Arbitrators) and 13800 (Simplified Arbitration) of the Code of Arbitration Procedure for Industry Disputes, To Raise the Limit for Simplified Arbitration From $25,000 to $50,000

May 3, 2012.

I. Introduction

On February 9, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA's Customer and Industry Codes of Arbitration Procedure to raise the limit for simplified arbitration. Specifically, the proposed rule change would amend FINRA Rules 12401 (Number of Arbitrators) and 12800 (Simplified Arbitration) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code''), and FINRA Rules 13401 (Number of Arbitrators) and 13800 (Simplified Arbitration) of the Code of Arbitration Procedure for Industry Disputes (''Industry Code''), to raise the limit for simplified arbitration from $25,000 to $50,000. The proposed rule change was published for comment in the **Federal Register** on February 28, 2011.[3] The Commission received five comment letters on the proposed rule change,[4] and a response to comments from FINRA.[5] This order approves the proposed rule change.

II. Description of the Proposal

As stated in the Notice, FINRA currently offers streamlined arbitration procedures for claimants seeking damages of $25,000 or less. Under FINRA's simplified arbitration rules, one chair-qualified arbitrator decides the claim and issues an award based on the written submissions of the parties, unless the customer requests a hearing (if it is a customer case), or the claimant requests a hearing (if it is an industry case). FINRA also expedites discovery in these cases.[6] The proposed rule change would raise the dollar limit for damages sought in order to offer simplified arbitration to claimants seeking damages of $50,000 or less.

Specifically, the proposed rule change would amend FINRA Rules 12401(a) and 13401(a) to provide that if the amount of a claim is $50,000 or less, exclusive of interest and expenses, the panel would consist of one arbitrator and the claim would be subject to the simplified arbitration procedures under FINRA Rules 12800 and 13800 respectively. The proposed rule change also would amend FINRA Rules 12401(b) and 13401(b) to state that if the amount of a claim is more than $50,000, but not more than $100,000, exclusive of interest and expenses, the panel would consist of one arbitrator unless the parties agree in writing to three arbitrators. The proposed rule change would not amend FINRA Rules 12401(c) and 13401(c), relating to claims of more than $100,000.

The proposed rule change would also amend FINRA Rules 12800(a) and 13800(a) to provide that the simplified arbitration rules would apply to claims involving $50,000 or less, exclusive of interest and expenses. In addition, the proposed rule change would amend FINRA Rules 12800(e) and 13800(e) to state that if any pleading increases the amount in dispute to more than $50,000, FINRA would no longer administer the claim under the simplified arbitration rules and the regular provisions of the Customer Code and Industry Code, respectively, would apply.

In the Notice, FINRA represented that allowing parties disputing claims between $25,000 and $50,000 to resolve their disputes based on the pleadings and other materials submitted by the parties, without a hearing, would benefit users of FINRA's arbitration forum in many ways, for example: (1) It would reduce forum fees because more parties could avoid hearing session fees and hearing process fees;[7] (2) it would save parties the time and expense of preparing for, scheduling, and traveling to hearings; (3) it would provide an alternative for customers who are unable to retain an attorney and uncomfortable appearing at a hearing without representation; and (4) it would expedite cases because the arbitrator and parties would not need to schedule a hearing.

FINRA has indicated that it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval, and that the effective date would be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

III. Discussion of Comment Letters

As stated above, the Commission received five comment letters on the proposed rule change in response to the Notice. All five comment letters supported one or more aspects of the proposal.[8] One commenter suggested an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 66442 (Feb. 22, 2012), 77 FR 12092 (Feb. 28, 2012) (''Notice''). The comment period closed on March 20, 2012.

[4] *See* Letter from Steven B. Caruso, Maddox Hargett & Caruso, P.C., dated March 2, 2012 (''Caruso Letter''); letter from Ryan K. Bakhtiari, President, Public Investors Arbitration Bar Association, dated March 16, 2012 (''PIABA Letter''); letter from William A. Jacobson, Associate Clinical Professor of Law, Cornell University Law School, and Director, Cornell Securities Law Clinic, and Brenda Beauchamp, Cornell Law School '13, dated March 20, 2012 (''Cornell Letter''); letter from Lisa A. Catalano, Director, Christine Lazaro, Supervising Attorney, and Anna Andreescu, Julia Iodice and Ashley Morris, Legal Interns, St. John's School of Law Securities Arbitration Clinic, dated March 20, 2012 (''St. John's Letter''); and letter from Jill I. Gross, Director, Edward Pekarek, Assistant Director, and Genavieve Shingle, Student Intern, Investor Rights Clinic at Pace Law School, dated March 20, 2012 (''PIRC Letter''). Comment letters are available at *http://www.sec.gov.*

[5] *See* Letter from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, to Elizabeth M. Murphy, Secretary, Commission, dated April 19, 2012 (''Response Letter''). The text of the proposed rule change and FINRA's Response Letter are available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room. The text of the Response Letter is also available on the Commission's Web site at *http://www.sec.gov.*

[6] *See* FINRA Rule 12800(d).

[7] FINRA represented that the $25,000 threshold captured twenty-one percent of all cases filed with FINRA's arbitration forum in 1998, but currently captures only ten percent of FINRA's caseload. FINRA stated that, based on 2011 statistics, raising the threshold to $50,000 would increase the percentage of claims administered under simplified arbitration to seventeen percent of the claims filed with the forum.

[8] *Supra* note 4.

amendment to the proposal. None of the commenters opposed the proposal.

The Caruso Letter stated that the proposed rule change would benefit public investors and should be approved.

The PIABA Letter stated that raising the threshold for simplified arbitration would benefit investors and other participants by increasing the efficiency of FINRA's arbitration forum, increasing flexibility to resolve claims through simplified arbitration, and reducing costs for forum users.

The Cornell Letter took no position on the proposed amendments to the Industry Code. But the Cornell Letter stated that raising the limit for simplified arbitration would benefit customers with claims generally considered ''small'' and make it more likely that they could obtain legal representation.

The St. John's Letter stated that raising the threshold for simplified arbitration would benefit investors by removing economic impediments to bringing claims in arbitration. Specifically, the St. John's Letter stated that the proposed rule would reduce arbitration-related expenses, such as hearing fees, legal fees (by facilitating claims brought on a pro se basis), and travel expenses (associated with attending arbitration hearings). The St. John's Letter also stated that brokerage firms would also find the proposed rule change beneficial because it would reduce their expenses related to preparing for and appearing at arbitration hearings.[9] In addition, the St. John's Letter stated that the proposed rule change would raise the percentage of cases eligible for simplified arbitration, which the letter represented has dropped due, in part, to inflation and market conditions after 1998, when the limit on the amount of damages claimed in simplified arbitration was last increased.

The PIRC Letter stated that the proposed rule change would benefit investors by enhancing the efficiency and expediency with which claims could be resolved in FINRA's arbitration forum, and by improving the environment for pro bono legal services organizations to help more investors due to the reduced time and resources involved in simplified arbitration. The PIRC Letter expressed concern, however, about an arbitrator's ability to resolve a customer dispute solely based on paper submissions. In particular, the PIRC Letter stated that disputes involving certain types of issues (e.g., fraud and suitability) require arbitrators to decide issues of witness credibility. The PIRC Letter expressed concern that arbitrators might find it difficult to resolve questions of credibility based solely on written submissions. Accordingly, the PIRC Letter recommended FINRA amend the proposed rule to provide customer claimants the option of electing a telephonic hearing.

In its Response Letter, FINRA stated that it would consider the feasibility of a telephonic hearing option. But because the availability of telephonic hearings is not directly related to the substance of the proposed rule, and parties to an arbitration proceeding currently can jointly request a telephonic hearing, FINRA stated that its consideration of telephonic hearings should not delay the Commission's consideration of the proposed rule change. Therefore, FINRA declined to amend the proposed rule change to grant customer claimants the sole option to elect a telephonic hearing.

IV. Commission's Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's Response Letter. Based on its review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

More specifically, the Commission finds that the proposed rule change to raise the limit for simplified arbitration in FINRA's arbitration forum from $25,000 to $50,000 would benefit investors and other participants in the forum by providing increased flexibility to use simplified arbitration and reducing costs for forum users. While the Commission appreciates the suggestion regarding telephonic hearings expressed in the PIRC Letter, we believe that FINRA has responded adequately to the suggestion and agree with the Response Letter's position that consideration of a telephonic hearing option should not delay our consideration of the proposed rule change, particularly given the Response Letter's representation that FINRA would separately consider the feasibility of granting customer claimants a telephonic hearing option.

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–FINRA–2012–012) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11130 Filed 5–8–12; 8:45 am]

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[9] The St. John's Letter cited a firm's willingness to consent to simplified arbitration to resolve a dispute with an investor claiming damages greater than $50,000.

[10] In approving this proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Computer Matching Between the Selective Service System and the Department of Education

AGENCY: Selective Service System.

ACTION: Notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, the following information is provided:

1. Name of Participating Agencies

The Selective Service System (SSS) and the Department of Education (ED).

2. Purpose of the Match

The purpose of this matching program is to ensure that the requirements of Section 12(f) of the Military Selective Service Act [50 U.S.C. App. 462 (f)] are met. This program has been in effect since December 6, 1985.

3. Authority for Conducting the Matching Computerized Access to the Selective Service Registrant

Registration Records (SSS–9) enables ED to confirm the registration status of

applicants for assistance under Title IV of the Higher Education Act of 1965 (HEA), as amended (20 U.S.C. 1070 et. seq.). Section 12(f) of the Military Selective Service Act (MSSA), as amended [50 U.S.C. App. 462(f)], denies eligibility for any form of assistance or benefit under Title IV of the HEA to any person required to present himself for and submit to registration under Section 3 of the MSSA [50 U.S.C. App. 453] who fails to do so in accordance with that section and any rules and regulations issued under that section. In addition, Section 12(f)(2) of the MSSA specifies that any person required to present himself for and submit to registration under Section 3 of the MSSA must file a statement with the institution of higher education where the person intends to attend or is attending that he is in compliance with the MSSA. Furthermore, Section 12(f)(3) of the MSSA authorizes the Secretary of Education, in agreement with the Director of the Selective Service, to prescribe methods for verifying the statements of compliance filed by students.

Section 484(n) of the HEA [20 U.S.C. 1091(n)], requires the Secretary to conduct data base matches with SSS, using common demographic data elements, to enforce the Selective Service registration provisions of the MSSA [50 U.S.C. App. 462(f)], and further states that appropriate confirmation of a person shall fulfill the requirement to file a separate statement of compliance.

4. Categories of Records and Individuals Covered

1. Federal Student Aid Application File (18–11–01).

Individuals covered are men born after December 31, 1959, but at least 18 years old by January 1 of the applicable award year.

2. Selective Service Registration Records (SSS–9).

5. Inclusive Dates of the Matching Program

Commence on July 2, 2012 or 40 days after copies of the matching agreement are transmitted simultaneously to the Committee on Government Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget, whichever is later, and remain in effect for eighteen months unless earlier terminated or modified by agreement of the parties.

6. Address for Receipt of Public Comments or Inquires

Mr. Gastón Naranjo, Selective Service System, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Dated: May 1, 2012.

Lawrence G. Romo,

Director.

[FR Doc. 2012–11143 Filed 5–8–12; 8:45 am]

BILLING CODE 8015–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB),
Office of Management and Budget,
Attn: Desk Officer for SSA,
Fax: 202–395–6974,
Email address:
OIRA_Submission@omb.eop.gov.
(SSA),
Social Security Administration, DCRDP,
Attn: Reports Clearance Officer,
107 Altmeyer Building,
6401 Security Blvd.,
Baltimore, MD 21235,
Fax: 410–965–6400,
Email address: *OPLM.RCO@ssa.gov.*

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than July 9, 2012. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above email address.

1. *Statement of Self-Employment Income—20 CFR 404.101, 404.110, 404.1096(a)–(d)—0960–0046.* To qualify for insured status and thus collect Social Security benefits, self-employed individuals must demonstrate they earned the minimum amount of self-employment income (SEI) in a current year. SSA uses Form SSA–766, Statement of Self-Employment Income, to collect the information we need to determine if the individual will have at least the minimum amount of SEI needed for one or more quarters of coverage in the current year. Based on the information we obtain, we may credit additional quarters of coverage to give the individual insured status thus expediting benefit payments. Respondents are self-employed individuals who may be eligible for Social Security benefits.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–766	2,500	1	5	208

2. *Certification by Religious Group—20 CFR 404.1075—0960–0093.* SSA is responsible for determining whether religious groups meet the qualifications exempting certain members and sects from payment of Self-Employment Contribution Act taxes under the Internal Revenue Code, section 1402(g). SSA sends Form SSA–1458, Certification by Religious Group, to a group's authorized spokesperson to complete and verify organizational members meet or continue to meet the criteria for exemption. The respondents are spokespersons for religious groups or sects.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1458	180	1	15	45

3. *Claim for Amounts Due in the Case of a Deceased Beneficiary—20 CFR 404.503(b)—0960–0101.* SSA requests applicants complete Form SSA–1724 when there is insufficient information in the file to identify the person(s) entitled to the underpayment, or the person's address. SSA collects the information when a surviving widow(er) is not already entitled to a monthly benefit on the same earnings record, or is not filing for a lump-sum death payment as a former spouse. SSA uses the information Form SSA–1724 provides to ensure proper payment of an underpayment due a deceased beneficiary. The respondents are applicants for underpayments owed to deceased beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1724	250,000	1	10	41,667

4. *Certificate of Election for Reduced Spouse's Benefits—20 CFR 404.421—0960–0398.* Reduced benefits are not payable to an already entitled spouse, at least age 62 but under full retirement age, who no longer has a child in their care unless the spouse elects to receive reduced benefits. If spouses decide to elect reduced benefits, they must complete Form SSA–25. SSA uses the information to pay qualified spouses who elect to receive reduced benefits. Respondents are entitled spouses seeking reduced benefits.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–25	30,000	1	2	1,000

5. *Surveys in Accordance with E.O. 12862 for the Social Security Administration—0960–0526.* Under the auspices of Executive Order 12862, Setting Customer Service Standards, SSA conducts multiple customer satisfaction surveys each year. These voluntary customer satisfaction assessments include paper, Internet, and telephone surveys; mailed questionnaires; and customer comment cards. The purpose of these questionnaires is to assess customer satisfaction with the timeliness, appropriateness, access, and overall quality of existing SSA services and proposed modifications or new versions of services. The respondents are recipients of SSA services (including most members of the public), professionals, and individuals who work on behalf of SSA beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

	Number of respondents (burden for all activities within that year)	Frequency of response	Range of response times (minutes)	Burden (burden for all activities within that year; reported in hours)
Year 1:				
(September 2012–August 2013)	4,481,566	1	3–90	290,741
Year 2:				
(September 2013–August 2014)	1,559,566	1	3–90	144,991
Year 3:				
(September 2014–September 2015)	1,484,566	1	3–90	141,741
Totals	7,525,698			577,473

6. *Request for Business Entity Taxpayer Information—0960–0731.* Law firms or other business entities must complete Form SSA–1694, Request for Business Taxpayer Information, if they wish to serve as appointed representatives and receive direct payment of fees from SSA. SSA uses the information to issue a Form 1099–MISC. SSA also uses the information to allow business entities to designate individuals to serve as entity administrators authorized to perform certain administrative duties on their behalf, such as providing bank account information, maintaining entity information, and updating individual affiliations. Respondents are law firms

or other business entities which have partners or employees that are attorneys or other qualified individuals who represent claimants before SSA.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1694	2,000	1	10	334

Dated: May 3, 2012.

Naomi R. Sipple,

Reports Clearance Analyst, Office of Regulations and Reports Clearance, Social Security Administration.

[FR Doc. 2012–11070 Filed 5–8–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7874]

60-Day Notice of Proposed Information Collection: Form DS–4213, PEPFAR Program Expenditures; OMB Control Number 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* PEPFAR Program Expenditures.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Office of the Global AIDS Coordinator (S/GAC).
- *Form Number:* DS–4213.
- *Respondents:* Recipients of US government funds appropriated to carry out the President's Emergency Plan for AIDS Relief (PEPFAR).
- *Estimated Number of Respondents:* 1,000.
- *Estimated Number of Responses:* 1,000.
- *Average Hours per Response:* 12.
- *Total Estimated Burden:* 12,000 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Mandatory.

DATES: The Department will accept comments from the public up to 60 days from May 9, 2012.

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

- *Web:* Persons with access to the Internet may view and comment on this notice by going to the Federal regulations Web site at *www.regulations.gov.* You can search for the document by: Selecting ''Notice'' under Document Type, entering the Public Notice number as the ''Keyword or ID'', checking the ''Open for Comment'' box, and then click ''Search''. If necessary, use the ''Narrow by Agency'' option on the Results page.
- *Email: duboisa@state.gov.*
- *Mail (paper, or CD submissions):* Dr. Amy DuBois, Office of the US Global AIDS Coordinator (S/GAC), US Department of State, SA–29, 2nd Floor, Washington, DC 20522–2920.
- *Fax:* 202–663–2979.
- *Hand Delivery or Courier:* Dr. Amy DuBois, Office of the US Global AIDS Coordinator, 2100 Pennsylvania Ave. NW.; Suite 200, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Dr. Amy DuBois, Office of the US Global AIDS Coordinator, who may be reached on 202–203–7483 or at *duboisa@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The US President's Emergency Plan for AIDS Relief (PEPFAR) was established through enactment of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Pub. L. 108–25), as amended by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (Pub. L. 110–293) (HIV/AIDS Leadership Act) to support the global response to HIV/AIDS. In order to improve program monitoring, the Finance and Economics Work Group under PEPFAR proposes to add reporting of expenditures by program area to the current routine reporting of program results for the annual report. Data will be collected from implementing partners in countries with PEPFAR programs using a standard tool (DS–4213) via an electronic interface. These data will then be analyzed to produce mean and range in expenditures by partner per result/achievement for all PEPFAR program areas. These analyses then feed into partner and program reviews at the country level for monitoring and evaluation on an ongoing basis. Summaries of these data provide key information about program costs under PEPFAR on a global level. Applying expenditure results will improve strategic budgeting, identification of efficient means of delivering services, accuracy in defining program targets, and will inform allocation of resources to ensure the program is accountable and using public funds for maximum impact.

Methods

Data will be collected in a standard electronic template available to all partners receiving funds under PEPFAR.

To minimize both reporting burden and investment costs into information technologies, a new module capturing expenditure data will be added to an already functional system. This approach will minimize start up costs for the technology and ensure data collection processes are as efficient as possible.

Dated: May 3, 2012.

Julia Martin,

Chief Operating Officer, Office of the U.S. Global AIDS Coordinator, Department of State.

[FR Doc. 2012–11190 Filed 5–8–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2012–0028]

Submission of U.S. Carrier and Airport Tarmac Delay Contingency Plans to Department of Transportation for Approval

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FAA Modernization and Reform Act of 2012 requires covered U.S. carriers and U.S. airports to submit to the Secretary of Transportation for review and approval tarmac delay contingency plans on or before May 14, 2012. This document provides information on how covered U.S. carriers and airports can submit the required plans to the U.S. Department of Transportation's Office of Aviation Enforcement and Proceedings (Enforcement Office) through the World Wide Web, and addresses frequently asked questions about the applicability of the statutory provisions.

FOR FURTHER INFORMATION CONTACT: Livaughn Chapman, Jr., or Laura Jennings, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Ave. SE., W–96–429, Washington, DC 20590–0001; Phone: (202) 366–9342; Fax: (202) 366–7152; Email: *Livaughn.Chapman@dot.gov,* or *Laura.Jennings@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2012, President Obama signed the FAA Modernization and Reform Act of 2012 (the ''Act'') into law. Among other things, the Act requires U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more seats, and operators of large hub, medium hub, small hub, or non-hub U.S. airports, to submit contingency plans for lengthy tarmac delays to the Secretary of Transportation for review and approval no later than May 14, 2012. The Act also requires each covered carrier and airport to ensure public access to its plan after DOT approval by posting the plan on its Web site.

The requirements of the Act do not conflict with the Department's existing tarmac delay rule (14 CFR part 259). The Act also permits the Department to establish, as necessary, minimum standards for contingency plans. As such, the specific requirements of Part 259 remain in effect for U.S. and foreign air carriers.

Under the Act and existing DOT rules, U.S. carrier contingency plans must contain a provision that a passenger shall have the option to deplane an aircraft and return to the airport terminal when there is an excessive tarmac delay (3 hours for domestic flights and 4 hours for international flights) at each large hub, medium hub, small hub, or non-hub U.S. airport at which they operate scheduled or public charter air service, with the following exceptions: (1) Where an air traffic controller with authority over the aircraft advises the pilot in command that permitting a passenger to deplane would significantly disrupt airport operations; or (2) where the pilot in command determines that permitting a passenger to deplane would jeopardize passenger safety or security. The deplaning option also must be offered to a passenger if the flight in covered air transportation is diverted to a commercial airport other than the originally scheduled airport. Under the Act, U.S. carrier contingency plans must also contain a description of how the carrier will: (1) Provide adequate food, potable water, restroom facilities, comfortable cabin temperatures, and access to medical treatment for passengers onboard an aircraft when the departure of a flight is delayed or disembarkation of passengers is delayed; and (2) share facilities and make gates available at the airport in an emergency. Existing DOT rules require carriers to provide assurance that the plan has been coordinated with airport authorities (including terminal facility operators where applicable), U.S. Customs and Border Protection and the Transportation Security Administration at each U.S. large hub airport, medium hub airport, small hub airport and non-hub airport that the carriers serve, as well as their regular U.S. diversion airports. It should be noted that, unlike the Act, DOT rules do not currently require sharing of facilities and gates or comfortable cabin temperature. The DOT rules will be modified in the future to reflect these new requirements as well as the new requirements relating to airports.

Under the Act, airport contingency plans must contain a description of how the airport operator, to the maximum extent practicable, will: (1) Provide for the deplanement of passengers following excessive tarmac delays; (2) provide for the sharing of facilities and make gates available at the airport in an emergency; and (3) provide a sterile area following excessive tarmac delays for passengers who have not yet cleared U.S. Customs and Border Protection.

The Enforcement Office has established a Web address for the filing of contingency plans at *http://filingtarmacdelayplan.dot.gov,* similar to the Department's current disability complaint reporting system, to enable covered U.S. airlines and airports to easily submit their required plans through the World Wide Web. Carriers must use this system to submit their plans rather than sending the plans to the Department by mail or email. In order to use the tarmac delay plan filing system, covered U.S. airlines and airports will need to register on the Web site before they can upload their plans to the system. To register, click on the hyperlink titled ''Create Account to Submit Tarmac Delay Contingency Plan'' in the blue sign-in box on the home page, select the registration type (i.e., Airline or Airport), select your airline or airport name from the dropdown list, click continue, and then simply fill in and submit the following registration information: Representative Name; Representative Title; Telephone Number; and Email address. Carriers and airports may also choose to enter additional contact information (i.e., address, city state, zip and country), and any comments. If your airline or airport name is not listed in the dropdown list, click the ''CLICK HERE'' hyperlink under the dropdown list, and on the landing page, select the registration type (i.e., Airline or Airport), enter the Airline/Airport Code and Name in the appropriate fields, and click the ''Submit'' button. Airlines/airports will then be able to fill in and submit the registration information.

Each airline/airport representative will be assigned a unique username and password after DOT has verified the authenticity of the registered airline/airport representative, which may take up to three days. This step is necessary to ensure that only authorized users can submit information. We encourage each covered airline/airport to register with the Web site as soon as possible so that the airline/airport representative receives a username and password from DOT in advance of May 14, 2012, the date by which covered U.S. airlines/airports are required to submit their plans.

Once an airline/airport representative receives a username and password from DOT, that representative will be able to access the Web site, upload their plan and submit it for approval electronically. Airline/airport representatives may also change their username or password and modify their contact information. To change a username or password, the representative would login with the

given username and password, mouse over the ''Account Management'' tab in the blue bar at the top of the screen, and then click on the ''Change Password'' link. Similarly, an airline/airport representative could modify his/her contact information by clicking on the ''Update Account'' link in the ''Account Management'' tab.

After logging into the system, clicking on the ''Submit New Plan'' button will take the airline/airport representative to a screen where he/she can begin the contingency plan submission process. At this point, an airline/airport representative has the option of either choosing the system-generated title for the plan or entering his/her own title for the plan in the ''Submission Title'' field. Clicking on the ''Create New Plan Submission'' button will then take the airline/airport representative to a screen where he/she can upload the plan document, enter comments and submit the plan to DOT for approval. To upload a tarmac delay plan document, enter a title for the document in the ''Document Title'' field, then click the ''Browse'' button in the ''File'' field, select the appropriate file, and click ''Add New Document'' to upload the selected file into the system. Airlines/airports may upload multiple documents. When an airline/airport representative finishes uploading his/her document(s), he/she should check the certification box after reading and acknowledging the legal certification statement prior to clicking the ''Submit for Approval'' button. After submission, the documents will be forwarded to DOT for review.

If, after submitting a plan for approval, an airline or airport determines that it is necessary to remove their plan and submit a replacement plan for approval, the airline/airport representative should resubmit their replacement plan under the original Submission Title by clicking ''Resubmit This Entry'' after logging back into the system and then upload the revised plan using the uploading procedures noted above. Similarly, if after submission DOT requires changes to an airline/airport's plan, the airline/airport representative should make the requisite changes and submit the revised plan under the original Submission Title by clicking ''Resubmit This Entry.''

Frequently Asked Questions

Since President Obama signed the FAA Modernization and Reform Act of 2012 into law on February 14, 2012, a number of airline and airport representatives have asked for clarification or interpretation of the text of the Act. These clarifications and interpretations have been disseminated primarily through informal conversations or emails between DOT staff and individual airport or airline representatives. The Department believes that the guidance provided to these airline and airport representatives may also be of interest to other members of the public. To ensure that this guidance will be more accessible to the public, and to ensure that the tarmac delay contingency plan submission requirements of the Act will be more readily understandable, we are including frequently asked questions and DOT responses below regarding the tarmac delay contingency plan submission requirements of the Act.

1. *Question:* Which airports must submit tarmac delay contingency plans for review and approval?

Answer: The Act requires operators of large hub, medium hub, small hub, or non-hub commercial U.S. airports, to submit a contingency plan for lengthy tarmac delays to the Secretary of Transportation for review and approval. In defining the hub size of an airport, the Department uses the airport-specific thresholds published by the Department's Bureau of Transportation Statistics (BTS). A large hub airport means an airport accounting for at least 1.00 percent of the total enplanements in the United States. A medium hub airport means an airport accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States. A small hub airport means an airport accounting for at least 0.05%, but less than 0.25% of the total enplanements in the United States. A non-hub airport means an airport accounting for enplanements of more than 10,000 passengers but less than 0.05% of the total enplanements in the United States. A list of airport information for calendar year 2010 (the latest available data) is available on the FAA's Web site at *http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy10_primary_enplanements.pdf.*

2. *Question:* Does DOT have a sample of an approved tarmac delay contingency plan or a model tarmac delay contingency plan that airports can use as a guide in developing their own plan?

Answer: Carriers and airports are directed to the model contingency planning document, titled ''Development of Contingency Plans for Lengthy Airline On-Board Ground Delays,'' that was developed by the Department's National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays for contingency planning guidance. See Docket No. DOT–OST–2007–0108–0124. This document can also be found at *http://airconsumer.dot.gov/publications/TarmacTFModelContingencyPlanningDocument.pdf.* We also understand that Airports Council International—North America and the American Association of Airport Executives have developed a template that airports can use as a reference. Airports can contact those organizations for further information. The Airport Cooperative Research Program (ACRP) has developed some guidance materials in this area as well. Those materials can be found at *http://www.trb.org/ACRP/Blurbs/166569.aspx.* Due to the varying nature and requirements of each airport, however, DOT does not plan to publish a sample of an approved tarmac delay contingency plan. Covered airlines and airports are required to post a copy of their approved contingency plan on their Web site.

3. *Question:* Many airports have developed comprehensive irregular operations plans that deal with issues outside of the requirements of the Act. Should carriers submit those plans?

Answer: Airports are free to submit plans that cover more than the statutory requirements of the Act; however, they are not required to do so. The Department's review of airport contingency plans will concentrate on the statutory requirements for such plans.

4. *Question:* Are covered U.S. carriers required to submit separate airport-specific, station-level contingency plans for each airport that they serve?

Answer: The Act requires each covered U.S. carrier to submit a plan for each covered airport but does not prohibit a carrier from doing so through the submission of one overarching tarmac delay plan covering all of the carrier's operations that contains the requisite assurances required by the statute. Of course, airlines are also free to submit separate airport-specific, station-level plans if they prefer.

5. *Question:* Does the requirement for air carriers to submit tarmac delay contingency plans apply to foreign flag carriers?

Answer: No. The statutory requirement for air carriers to submit tarmac delay contingency plans does not apply to foreign flag carriers. The statutory requirement for air carriers to submit tarmac delay contingency plans applies only to U.S. air carriers that operate at least one aircraft with a design seat capacity of 30 or more passenger seats.

Issued This 2nd Day of May 2012, at Washington, DC.

Blane A. Workie,

Deputy Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation.

[FR Doc. 2012–11105 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2011–0183]

Access to Aircraft Situation Display to Industry (ASDI) and National Airspace System Status Information (NASSI) Data

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed process for limiting aircraft data displayed via ASDI; request for comments.

SUMMARY: On December 16, 2011, the FAA published a notice of an interim policy, instructing aircraft owners and operators on how they can limit the FAA's dissemination of their aircraft data via the FAA's ASDI program. The notice indicated that the FAA would later propose specific procedures by which aircraft owners and operators can in the future express their preference on the FAA's release of their aircraft data to the public via ASDI. This document is the FAA's proposal and the FAA's invitation to the public to comment on any aspect of it. Until the FAA publishes a document that sets forth the FAA's final decision on the ASDI blocking process, the FAA will continue to operate under the interim policy that the FAA described in the notice published in December 2011.

DATES: Any written information that responds to the FAA's proposed procedures must be submitted by June 8, 2012.

ADDRESSES: You may submit written information, identified by docket number FAA–2011–0183, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments by mail to Docket Operations, U.S. Department of Transportation, M–30, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Persons wishing to receive confirmation of receipt of their written submission should include a self-addressed stamped postcard.
- *Hand Delivery:* Deliver comments to Docket Operations in Room W12–140 on the ground floor of the West Building at 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.
- *Facsimile:* Fax comments to the docket operations personnel at 202–493–2251.

Privacy: We will post all comments that we receive, without change, at *http://www.regulations.gov,* including any personal information that you provide. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments in any of our dockets, including the name of the individual sending the comment or signing the comment on behalf of an association, business, labor union, or other entity or organization. You may review the DOT's complete Privacy Act Statement in the **Federal Register** at 65 FR 19477–78 (April 11, 2000), or you may find it at *http://docketsinfo.dot.gov.*

Reviewing the docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket, or go to Docket Operations in Room W12–140 on the ground floor of the West Building at 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: You may direct any questions on adding aircraft to and removing aircraft from the ASDI block list to the FAA's ASDI program staff by telephone at (540) 422–4649 or by electronic mail at *ASDIBlock@faa.gov.*

SUPPLEMENTARY INFORMATION: On November 18, 2011, the President signed into law H.R. 2112, the ''Consolidated and Further Continuing Appropriations Act, 2012,'' which provides the U.S. Department of Transportation's appropriation for the balance of fiscal year 2012. Section 119A of that statute provides that:

> [n]otwithstanding any other provision of law, none of the funds made available under this Act or any prior Act may be used to implement or to continue to implement any limitation on the ability of any owner or operator of a private aircraft to obtain, upon a request to the Administrator of the [FAA], a blocking of that owner's or operator's aircraft registration number from any display of the [FAA's ASDI] data that is made available to the public, except data made available to a Government agency, for the noncommercial flights of that owner or operator.

Public Law 112–55, § 119A, 125 Stat. 552, 649.

In light of this appropriation language, the FAA withdrew a prior policy that it published on June 3, 2011, which required owners or operators to submit a Certified Security Concern in order to have their aircraft blocked from the public's view on displays of ASDI information. In connection with its withdrawal of the June 3 policy, the FAA published interim procedures under which aircraft owners and operators can request that the FAA block their aircraft from release to the public via the FAA's ASDI data feed. 78 FR 78,328 (Dec. 16, 2011). At that time, the FAA noted that it would propose more detailed procedures for the ASDI blocking program and solicit public comment on the proposal. This notice is the FAA's proposal, and the FAA invites the public to comment on any aspect of it in any of the manners described in the **ADDRESSES** section of this notice. After the FAA publishes its final procedures with respect to blocking aircraft data from the public ASDI data feed, the FAA may amend its memoranda of agreement with the subscribers who receive the information to clarify the subscriber responsibilities.

Substance of Aircraft Owner or Operator Requests

Consistent with Congress' recent appropriations directive, the FAA proposes to continue to honor all aircraft owner or operator requests that the FAA block their aircraft from appearing in the FAA's public ASDI data feed. Aircraft owners and operators can submit requests on their own behalf or may do so through their legally authorized agent. The FAA does not view associations to be agents on behalf of their members for this purpose.

To assist the FAA in accurately and efficiently processing the number of requests that the FAA expects, the FAA intends to ask that all requests for ASDI blocking include specific information. The receipt of this information could influence whether the FAA can add or delete aircraft from the ASDI block list in a timely way. In particular, the FAA expects that its program staff will need:

- The name of the requestor;
- The registration number(s) of the aircraft to be blocked or unblocked;
- A certification that the requestor is the owner or operator of the specified aircraft;
- A telephone number and electronic mail address to which the FAA can direct questions about the request; and
- For a request to block one or more aircraft, a statement indicating whether

the requestor desires ASDI blocking at the FAA source or at the industry level.

The distinction between blocking ASDI data at the FAA source and blocking it at the industry level warrants clarification. Blocking ASDI information at the FAA source results in the FAA filtering the blocked data before release to the public, although the FAA supplies unfiltered data to other Government agencies. If the owner or operator selects this level of blocking, however, the aircraft owner or operator who wants to track the aircraft or to grant that ability to anyone else will be unable to do so. Blocking ASDI information at the industry level allows owners or operators to contract with an ASDI data subscriber to reveal their aircraft whereabouts to those with whom the owner or operator wishes to share that information. Under this procedure, owners and operators should be aware that the FAA will provide unfiltered information to all subscribers who receive ASDI data directly from the FAA (direct subscribers), with the instruction that those subscribers are to block the designated aircraft unless the subscriber reaches a contrary agreement with a blocked aircraft's owner or operator. Furthermore, the direct subscribers may contract to share the FAA data with an additional level of subscribers (indirect subscribers). All subscriber use of the information is limited in that they must agree to shield the blocked aircraft data from further release, unless the subscriber enters into an agreement with the owner or operator that allows for the information's further use. If a requestor fails to specify whether the request is for blocking at the FAA source or at the industry level, the FAA will construe the request as seeking to block the information at the FAA source.

FAA Implementation of Requests

The FAA intends to continue its current practice of implementing ASDI block list revisions on the first Thursday of each month. As a practical matter, requests that the FAA receives on or before the 15th of the preceding month are likely to be processed in time to take effect the following month. However, it is possible that the volume of requests in a given month, a requestor's timeliness, or the completeness and accuracy of the information that the FAA receives could preclude the FAA from processing some requests in time for them to take effect in the month following their submission. In that event, the FAA will process all requests in the order in which the FAA receives them to the extent that it is possible.

Process for Aircraft That Are Currently Blocked

A number of aircraft are currently on the FAA's ASDI block lists, some of which are based on a certified security concern submitted after June 3, 2011, and some of which are based on requests under the FAA's interim policy of accepting all aircraft owner or operator requests to block their aircraft data from public display of ASDI and NASSI information. The FAA has tentatively determined that it is not necessary to require the owners or operators of these aircraft to submit their initial requests again, unless they wish to change the status of their aircraft or the level at which an aircraft is blocked.

Block Request Addresses

Because the nature of the FAA's ASDI blocking program is changing, the FAA proposes to change the principal addresses where aircraft owners and operators can submit any information that the program requires. The FAA will still receive and accept information submitted at the previous addresses for this program. However, the FAA has established a new primary electronic mailbox for all aircraft blocking and unblocking requests and inquiries at *ASDIBlock@faa.gov.* The FAA also will accept information submitted by regular mail at: FAA ASDI Blocking Request; ATO System Operations Services, AJR–0; Wilbur Wright Building, Room 3E1500; 600 Independence Avenue SW., Washington, DC 20597.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget (OMB) for its review.

Title: ASDI Block Requests.

Summary: The FAA makes air traffic flow management data available to aviation and other industries, consisting of near real-time position and other relevant flight data for civil aircraft receiving radar services within the National Air Space. Through a Policy Notice published in the **Federal Register** on June 3, 2011, the FAA undertook to formalize a process through which aircraft owners and operators could ask the FAA to block their aircraft identification information from appearing in the FAA's ASDI data feed. Section 119A of H.R. 2112, the ''Consolidated and Further Continuing Appropriations Act, 2012'' and the FAA's resulting policy adjustments expanded the aircraft blocking program to allow any interested aircraft owner or operator to simply opt out of the public ASDI data feed by submitting a written request to the FAA's ASDI Program Office. The FAA's implementation of the ASDI blocking program necessitates a paperwork burden related to the collection and processing of those block requests.

Use of: The collected information will be used by the National Air Space Data Release Office to block aircraft flight data as requested by any interested aircraft owner or operator.

Respondents (including number of): The FAA estimates that approximately 6,000 owners and operators will request ASDI blocks.

Frequency: The information collection would occur one time per requesting owner/operator.

Annual Burden Estimate: The burden estimate is approximately 500 hours.

The agency is soliciting comments related to: (1) Evaluating whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluating the accuracy of the agency's estimate of the burden; (3) enhancing the quality, utility, and clarity of the information to be collected; and (4) minimizing the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the ADDRESS section in this notice. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street NW., Washington, DC 20053.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR section 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after OMB approves it.

Issued in Washington, DC, on May 4, 2012.

Nancy B. Kalinowski,

Vice President, ATO System Operations Service.

[FR Doc. 2012–11251 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Suspected Unapproved Parts Notification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected on the FAA Form 8120–11 is used by those who wish to report suspected unapproved parts to the FAA for review. The information is used to determine if an unapproved, part investigation is warranted.

DATES: Written comments should be submitted by July 9, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0552.

Title: Suspected Unapproved Parts Notification.

Form Numbers: FAA Form 8120–11.

Type of Review: Renewal of an information collection.

Background: 49 U.S.C. 44701 empowers the Administrator of the Federal Aviation Administration (FAA) to provide reasonable rules and regulations for minimum standards governing the design, materials, construction, and performance of aircraft, engines, and propellers as may be required to ensure safety in air transportation. Submission of the Suspected Unapproved Parts Report, FAA Form 8120–11, is necessary to ensure that only FAA-approved parts are installed on type certificated aircraft, and that continued airworthiness is maintained. The information collected on the FAA Form 8120–11 will be reported voluntarily by manufacturers, repair stations, aircraft owner/operators, air carriers, and the general public who wish to report suspected unapproved parts to the FAA for review.

Respondents: Approximately 150 manufacturers, repair stations, aircraft owner/operators, and air carriers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 30 minutes.

Estimated Total Annual Burden: 75 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on May 3, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2012–11225 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Commercial Air Tour Operator Reports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew for full clearance an information collection that has been granted emergency clearance. The commercial air tour operational data provided to the FAA and NPS will be used by the agencies as background information useful in the development of air tour management plans and voluntary agreements for purposes of meeting the mandate of the National Parks Air Tour Management Act (NPATMA) of 2000.

DATES: Written comments should be submitted by July 9, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0750

Title: Commercial Air Tour Operator Reports

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Request for full clearance of an information collection that has been granted short-term emergency clearance.

Background: The FAA Modernization and Reform Act of 2012 included amendments to the National Parks Air Tour Management Act (NPATMA) of 2000. One of these amendments requires commercial air tour operators conducting tours over national park units to begin reporting on the number of operations they conduct and any such other information prescribed by the FAA Administrator and the Director of the National Park Service (NPS). The Administrator and Director have 90 days from date of enactment of the FAA Modernization and Reform Act of 2012 (enacted February 14, 2012) to jointly issue an initial request for reports and the specified frequency and format of these reports. OMB granted emergency clearance of this information collection on April 25, 2012, expiring on October 31, 2012.

Respondents: Approximately 75 air tour operators.

Frequency: Information is collected quarterly, or annually for park units with fewer than 50 tours per year.

Estimated Average Burden per Response: 11.66 hours.

Estimated Total Annual Burden: 3,300 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency

will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on May 3, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer IT Enterprises Business Services Division, AES–200.

[FR Doc. 2012–11228 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Land Release for Dunkirk Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice, request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on the Dunkirk Airport (DKK), Dunkirk, New York, Notice of Proposed Release from Aeronautical Use of approximately 2.666 +/− acres of airport property, to allow for non-aeronautical development.

The 2.666 +/− acres of land are proposed to be transferred to the Town of Sheridan for use as public right-of-way for the relocation of Newell Road. The released lands will be exchanged for the 2.006 acres +/− of the existing Newell Road right-of-way currently owned by the Town of Sheridan.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Office of the Chautauqua County Executive and the FAA New York Airport District Office.

DATES: Comments must be received by June 8, 2012.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Otto N. Suriani, Acting Manager, FAA New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530. In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gregory J. Edwards, County Executive, Chautauqua County, at the following address: 3 North Erie Street, Mayville, NY 14757.

FOR FURTHER INFORMATION CONTACT: Otto N. Suriani, Acting Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530; telephone (516) 227–3809; FAX (516) 227–3813; email *Otto.Suriani@faa.gov*.

SUPPLEMENTARY INFORMATION: Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 1st Century (AIR21) requires the FAA to provide an opportunity for public notice and comment before the Secretary may waive a Sponsor's Federal obligation to use certain airport land for aeronautical use.

Issued in Garden City, New York on May 3, 2012.

Otto N. Suriani,

Acting Manager, New York, Airports District Office, Eastern Region.

[FR Doc. 2012–11212 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Hamilton and Clermont Counties, OH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier 2 Environmental Impact Statement (EIS) will be prepared for proposed highway and light rail improvements in the SR 32 corridor between US 50 and IR 275 in Hamilton and Clermont Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Mark L. Vonder Embse, Major Projects Engineer, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6854.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation (ODOT), will prepare a Tier 2 Environmental Impact Statement (EIS) for proposed improvements to SR 32 from US 50 in Hamilton County east to IR 275 in Clermont County. The broader study area in the Tier 1 documentation was referred to as the Eastern Corridor. This notice applies only to the project identified as Segments II–III of the proposed new highway and Segment 3 of the proposed Oasis Rail Line which would share the right-of-way with relocated SR–32.

Tier 1 of the Eastern Corridor evaluated transportation needs and focused on broad issues such as mode choice, general location, preliminary costs, benefits and impacts within a study area extending from downtown Cincinnati to western Clermont County. The analysis and input was summarized in a Tier 1 Final Environmental Impact Statement (FEIS) (FHWA–OH–EIS–04–02–F) dated September 30, 2005. A Tier 1 Record of Decision issued on June 2, 2006 identified feasible multi-modal components to be advanced by mode and segment into Tier 2 NEPA analyses, including a new rail transit corridor composed of four implementation segments, improved bus transit, various local network improvements, and a new highway capacity corridor composed of five implementation segments. In the interim, new information came to light regarding the archaeological resources present in connection with the Hahn Archaeological District. The discovery of this information prompted a re-evaluation of the Tier 1 ROD to determine if the decision contained there-in remained valid and if a Supplemental EIS should be prepared prior to moving into a Tier 2 EIS. On February 9, 2012 FHWA recommended advancing the project into a Tier 2 EIS as the appropriate level of study and analysis to determine the significance of impacts to archaeological sites. This Tier 2 EIS for the proposed Segments II–III SR 32 project and proposed Oasis Rail Line Segment 3 will involve more detailed engineering and environmental studies to address project-specific impacts, costs and mitigation measures, and will follow a framework for integrating land use, economic development, and environmental stewardship established during Tier 1.

The purpose and need for highway capacity improvements as established in Tier 1 is to reduce congestion, improve safety and efficiency, provide operational capacity for bus transit, accommodate bike and pedestrian ways, and support economic development and community revitalization consistent with the regional land use vision plan. The purpose and need for rail transit investments is to provide a regional transportation alternative to driving, increase mobility for non-drivers, support an expanded bus network, establish stations that effectively link to bus, bike, pedestrian, and roadway systems, connect downtown Cincinnati with outlying areas of population and employment, support neighborhood development and revitalization consistent with the land use vision plan, and reduce demand for new highway capacity while providing a way to meet the future travel demand. Proposed improvements identified during Tier 1 involve: relocation of SR 32, a new interchange at US 50/Red Bank Road/SR 32, and planning for (coordination with) associated Eastern Corridor multi-modal improvements, including the proposed Oasis rail transit (a portion of which parallels the Segment II–III corridor), a

multi-modal clear-span crossing of the Little Miami River (including roadway, rail transit and bikeway) and multi-modal transit hubs at US 50 and Newtown Road. Total length is about six miles. Alternatives to be further evaluated in Tier 2 include (1) taking no action; (2) various interchange configuration options for US 50/Red Bank Road/SR 32; and (3) several alternatives and combinations of alternatives through the Little Miami River floodplain and Newtown.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who previously expressed or are known to have an interest in the project. Public meetings and a public hearing will be held in the project area. Public notice will be given of the time and place of the meetings and hearing. A draft of the Tier 2 EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action is identified and addressed, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Number and Title: FHWA 20.205 Highway Planning and Construction (A, B)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: April 30, 2012.

Laura S. Leffler,

Division Administrator, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 2012–11145 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2012–0005]

Surface Transportation Project Delivery Pilot Program; Caltrans Audit Report

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final report.

SUMMARY: Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established the Surface Transportation Project Delivery Pilot Program, codified at 23 U.S.C. 327. To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates semiannual audits during each of the first 2 years of State participation. This final report presents the findings from the sixth FHWA audit of the California Department of Transportation (Caltrans) under the pilot program.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Rentch, Office of Project Development and Environmental Review, (202)–366–2034, *Ruth.Rentch@dot.gov*, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366–4928, *Michael.Harkins@dot.gov*, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document, the notice and request for comment, and all comments received may be viewed online through the Federal eRulemaking portal at: *http://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 366 days this year. Please follow the instructions. An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov.*

Background

Section 6005 of SAFETEA–LU (codified at 23 U.S.C. 327) established a pilot program to allow up to five States to assume the Secretary of Transportation's responsibilities for environmental review, consultation, or other actions under any Federal environmental law pertaining to the review or approval of highway projects. In order to be selected for the pilot program, a State must submit an application to the Secretary.

On June 29, 2007, Caltrans and FHWA entered into a Memorandum of Understanding (MOU) that established the assignments to and assumptions of responsibility to Caltrans. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under the National Environmental Policy Act, as well as the FHWA's responsibilities under other Federal environmental laws for most highway projects in California.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) requires the Secretary to conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The results of each audit must be presented in the form of an audit report and be made available for public comment. The FHWA solicited comments on the sixth audit report in a **Federal Register** Notice published on February 22, 2012, at 77 FR 10599. The FHWA received one comment from Caltrans. This notice provides the final draft of the sixth FHWA audit report for Caltrans under the pilot program.

Authority: Section 6005 of Public Law 109–59; 23 U.S.C. 315 and 327; 49 CFR 1.48.

Dated: Issued on: April 26, 2012.

Victor M. Mendez,

Administrator.

Surface Transportation Project Delivery Pilot Program Federal Highway Administration Audit of California Department of Transportation October 17–21, 2011

Overall Audit Opinion

Based on the information reviewed, it is the Federal Highway Administration (FHWA) audit team's opinion that as of October 21, 2011, the California Department of Transportation (Caltrans) continued to make progress toward meeting all responsibilities assumed under the Surface Transportation Project Delivery Pilot Program (Pilot Program), as specified in the Memorandum of Understanding (MOU) [1] with FHWA and in Caltrans' Application for Assumption (Application).

The FHWA commends Caltrans for its implementation of corrective actions in response to previous FHWA audit report findings. The FHWA also observed that Caltrans continued to identify and implement on a statewide Pilot Program basis best practices in use at individual Caltrans Districts (Districts).

With the completion of FHWA's sixth audit, Caltrans has now operated under the Pilot Program for 4 years. In compliance with the time specifications for the required audits, FHWA completed four semiannual audits in the first 2 years of State participation and is now conducting the annual audit cycle, which began with the fifth audit in July 2010 and includes this sixth audit in October 2011. Collectively, the FHWA audits have included on-site audits to Caltrans headquarters offices, 10 of the 12 Caltrans Districts, and to the Caltrans Regional Offices supporting the remaining 2 Districts. The audit team continues to identify significant differences across the Districts in terms of implementing Pilot Program policies, procedures, and responsibilities. Examples of such differences include: resource availability and allocation; methods of implementation; methods of process evaluation and improvement; and levels of progress in meeting all assumed

[1] Caltrans MOU between FHWA and Caltrans available at: *http://environment.fhwa.dot.gov/strmlng/safe_cdot_pilot.asp.*

responsibilities. It is the audit team's opinion that the highly decentralized nature of operations across Districts continues to be a major contributing factor to the variations observed in the Pilot Program. As a result of this organizational structure, Caltrans Headquarters must provide clear, consistent, and ongoing oversight over Districts' implementation and operation of the Pilot Program responsibilities. Implementation of a robust oversight program will help foster the exchange of information and the sharing of best practices and resources between Districts and will put the entire organization in a better position to more fully implement all assumed responsibilities and meet all Pilot Program commitments.

Due to the multiyear timeframes associated with most complex and controversial projects, the full lifecycle of the environmental review aspect of project development (proceeding from initiation of environmental studies and concluding with the issuance of a Record of Decision (ROD) or equivalent decision document) has yet to be realized within the Pilot Program to date. Caltrans continues to gain experience in understanding the resource requirements and processes necessary to administer its Program. It is the audit team's opinion that Caltrans needs to continue to refine its approaches and use of resources to meet all Pilot Program commitments, especially given the increasing resource demands associated with managing ever-more complex and controversial projects under the Pilot Program under recent resource constraints.

Requirement for Transition Plan

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) Section 6005(a) established the Pilot Program, codified at 23 U.S.C. 327. Under the provisions of 23 U.S.C 327(i)(1), as enacted in SAFETEA–LU, ''the program shall terminate on the date that is 6 years after the date of enactment of this section,'' which was August 10, 2011. However, section 2203(c) of the Surface Transportation Extension Act of 2010, Part II, Public Law 111–322, amended 23 U.S.C 327(i)(1) to require the Pilot Program to terminate 7 years after the date of the enactment of SAFETEA–LU or August 10, 2012. The MOU between FHWA and Caltrans was amended August 8, 2011, to include this new date and to update related provisions. Specifically, the provisions in the amended MOU provide that Caltrans and FHWA must jointly ''develop a plan to transition the responsibilities that Caltrans has assumed back to the FHWA so as to minimize disruption to the project, minimize confusion to the public, minimize burdens to other affected Federal, State, and local agencies...'' The amended MOU further provides that the transition plan must be completed and approved by both Caltrans and FHWA no later than March 10, 2012.

Effective Practices

The FHWA audit team observed the following effective practices during the sixth audit:

1. The creation of a statewide Community Impacts working team that holds monthly calls to share Community Impact Assessment (CIA) and Environmental Justice information. Caltrans has also developed new CIA guidance.

2. Improved level of consistency in implementing processes and documenting information, largely due to the use of the Standard Environmental Reference (SER) and templates.

3. Improved Section 4(f) de minimis letters to the officials with jurisdiction, with good examples from local agencies in District 4.

4. Increased access to training, including the availability of on-demand training, PowerPoint, Webinars and videoconferencing.

5. Complete and well-organized project files in District 10.

6. Assumptions and Risk statements included in early project development/scoping that list possible consequences, effects and costs of not complying with all environmental requirements and procedures.

7. Caltrans' *Standard Specifications for Construction 2010* (recently released) requires environmental stewardship to be included in all construction contracts, which should aid in environmental mitigation implementation.

8. The new Caltrans Standard Tracking and Exchange Vehicle for Environmental Systems (STEVE) supports tracking of the environmental review process and sharing of project status across project teams and includes an internal dispute resolution process.

Background

The Pilot Program allows the Secretary of Transportation (Secretary) to assign, and the State to assume, the Secretary's responsibilities under the National Environmental Policy Act (NEPA) for one or more highway projects. Upon assigning NEPA responsibilities, the Secretary may further assign to the State all or part of the Secretary's responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review of a specific highway project. When a State assumes the Secretary's responsibilities under this program, the State becomes solely responsible and is liable for carrying out the responsibilities it has assumed, in lieu of the FHWA.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates that FHWA, on behalf of the Secretary, conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The focus of the FHWA audit process is four-fold: (1) To assess a Pilot State's compliance with the required MOU and applicable Federal laws and policies; (2) to collect information needed to evaluate the success of the Pilot Program; (3) to evaluate Pilot State progress in meeting its performance measures; and (4) to collect information for use in the Secretary's annual Report to Congress on the administration of the Pilot Program. Additionally, 23 U.S.C. 327(g) requires FHWA to present the results of each audit in the form of an audit report published in the **Federal Register**. This audit report must be made available for public comment, and FHWA must respond to public comments received no later than 60 days after the date on which the period for public comment closes.

Scope of the Audit

This is the sixth FHWA audit of Caltrans participation in the Pilot Program. The on-site portion of the audit was conducted in California from October 17 through October 21, 2011. As required in SAFETEA–LU, each FHWA audit must assess compliance with the roles and responsibilities assumed by the Pilot State in the MOU. The audit also includes recommendations to assist Caltrans in successful participation in the Pilot Program.

Prior to the on-site audit, FHWA completed telephone interviews with Federal resource agency staff at the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service (FWS), the National Park Service, the National Oceanic and Atmospheric Administration, the Advisory Council on Historic Preservation, and the Environmental Protection Agency. The on-site audit included visits to the Caltrans Offices in District 2 (Redding), District 3/North Region (Marysville), District 4 (Oakland), District 6 (Fresno), District 10 (Stockton), and Headquarters (Sacramento).

This report documents findings within the scope of the audit as of the completion date of the on-site audit on October 21, 2011.

Audit Process and Implementation

The intent of each FHWA audit completed under the Pilot Program is to ensure that the Pilot State complies with the commitments in its MOU with FHWA. The FHWA does not evaluate specific project-related decisions made by the State; these decisions are the sole responsibility of the Pilot State. However, the FHWA audit scope does include the review of the processes and procedures (including documentation) used by the Pilot State to reach project decisions in compliance with MOU Section 3.2.

In addition, Caltrans committed in its Application (incorporated by reference in MOU Section 1.1.2) to implement specific processes to strengthen its environmental procedures in order to assume the responsibilities assigned by FHWA under the Pilot Program. The FHWA audits review how Caltrans is meeting each commitment and assess Pilot Program performance in the core areas specified in the Scope of the Audit section of this report.

The Caltrans' Pilot Program commitments address:

- Organization and Procedures under the Pilot Program
- Expanded Quality Control Procedures
- Independent Environmental Decisionmaking
- Determining the NEPA Class of Action
- Consultation and Coordination with Resource Agencies
- Issue Identification and Conflict Resolution Procedures
- Record Keeping and Retention
- Expanded Internal Monitoring and Process Reviews
- Performance Measures to Assess the Pilot Program

- Training to Implement the Pilot Program
- Legal Sufficiency Review.

The FHWA team for the sixth audit included representatives from the following offices or agencies:

- FHWA Office of Project Development and Environmental Review
- FHWA Office of the Chief Counsel
- FHWA Alaska Division Office
- FHWA Resource Center Environmental Team
- Volpe National Transportation Systems Center
- U.S. FWS.

During the onsite audit, the audit team interviewed more than 60 staff from 5 Caltrans District and headquarters offices. The audit team also reviewed project files and records for over 55 projects managed by Caltrans under the Pilot Program.

The FHWA acknowledges that Caltrans identified specific issues during its sixth self-assessment performed under the Pilot Program (required by MOU section 8.2.6), and is working on corrective actions to address the identified issues. Some issues described in the Caltrans self-assessment may overlap with FHWA findings identified in this audit report.

In accordance with MOU Section 11.4.1, FHWA provided Caltrans with a 30-day comment period to review this draft audit report. The FHWA reviewed comments received from Caltrans and revised sections of the draft report, where appropriate, prior to publishing it in the **Federal Register** for public comment.

Limitations of the Audit

The conclusions presented in this report are opinions based upon interviews of selected persons knowledgeable about past and current activities related to the execution of the Pilot Program at Caltrans, and a review of selected documents over a limited time period. The FHWA audit team's ability to conduct each audit and make determinations of Caltrans' compliance with assumed responsibilities and commitments under the Pilot Program has been further limited by the following:

- Select Districts visited by FHWA audit team. The FHWA audit team has not visited each District during the audit process. Each audit (including this audit) has consisted of visits to Districts with significant activity under the Pilot.
- Caltrans staff availability during audits. Some Caltrans staff selected to be interviewed by the audit team were out of the office and unavailable to participate in the onsite audit, including participation in scheduled interviews, despite Caltrans having been notified ahead of time. This limited the extent of information gathering.
- Limited scope of Pilot Program project development activity. Caltrans has not operated under the Pilot Program for a sufficient period of time to manage the full lifecycle of most Environmental Impact Statements (EIS) and other complex environmental documents. Therefore, FHWA is not yet able to fully determine how Caltrans will comply with its responsibilities assumed under the Pilot Program for these project situations.
- Insufficient data to determine time savings reported by Caltrans in the completion of environmental documents. Due to the relatively short period of time that the Pilot Program has been in place, Caltrans has not completed the environmental process for a sufficient number of projects of varying complexities to adequately support a determination on the potential time savings resulting from participation in the Pilot Program.
- Continued errors in the quarterly reports. As has been the case in every audit, the quarterly reports prepared by Caltrans listing environmental approvals and decisions made under the Pilot Program continue to contain omissions and errors. It is difficult for FHWA to exercise full oversight on Pilot Program projects without a complete accounting of all NEPA documents produced under the Pilot.

Status of Findings Since the Last Audit (July 2010)

As part of the sixth audit, FHWA evaluated the corrective actions implemented by Caltrans in response to the ''Deficient'' and ''Needs Improvement'' findings in the fifth FHWA audit report.

Deficient audit finding status:

1. Quarterly Reports—The quarterly reports Caltrans provided to FHWA under MOU Section 8.2.7 continued to include inaccuracies related to environmental document approvals and decisions made under the Pilot Program. The audit team acknowledges that Caltrans has recently implemented the STEVE environmental database system on a statewide basis to assist in the development of a comprehensive database of environmental projects and milestones.

2. Section 4(f) Documentation—As noted in the past two audits, inconsistencies in Section 4(f) compliance and documentation have been observed by the audit team. The FHWA acknowledges that Caltrans continues to provide Section 4(f) training and assistance to the Districts to improve the understanding of the Section 4(f) statute and regulations. However, training implementation is inconsistent with staff implementing Section 4(f) across Districts.

3. Quality Assurance/Quality Control (QA/QC) Certification Process—Project file reviews completed during the sixth audit continued to identify incorrect and incomplete QC certification forms. Caltrans continues to address inadequacies in this process through staff-specific training when inconsistencies are identified, most notably during the self-assessment process.

Needs Improvement audit findings status:

1. Maintenance of Project and General Administrative Files—Caltrans has instituted specific procedures for maintaining project files in accordance with the Uniform Filing System and has provided training on these procedures. Inconsistencies in the application of these procedures, reported in previous audit findings, were also identified in this audit.

2. Performance Measure—FHWA recommended that Caltrans share with FHWA the specific agencies' rating information so that specific issues could be identified. Caltrans has provided this information to FHWA.

3. Coordination with Resource Agencies—Conversations with Federal resource agencies prior to the onsite audit indicated that relationships between the agencies and Caltrans are generally considered to be effective; however, the audit team noted an issue regarding insufficient information being initially submitted to the resource agencies.

4. Procedural and Substantive Requirements—There were identified instances of incomplete documentation regarding the Endangered Species Act Section 7 process. This was also an area of irregularities identified in the Caltrans Self Assessment. Section 7 compliance continues to be a topic addressed by the Biological Consultancy group and, included as part of the STEVE, there is an elevation process for Section 7 conflicts.

5. Re-evaluation Process—Project file reviews and staff interviews continue to indicate varying degrees of compliance with the re-evaluation process and procedures.

6. Section 4(f) Consistency Issue—Project file reviews and interviews with Caltrans staff confirmed continuing inconsistencies in the implementation of the Section 4(f) process as well as with a general understanding required in carrying out Section 4(f) provisions. The audit team does acknowledge that a Section 4(f) evaluation training on demand module was recently posted for use by Caltrans staff.

7. Training—As in past audits, the audit team observed inconsistencies in the use of tools to identify training needs, ensure training is received, and to track employees' training histories. The audit team also determined there was no method for employees to track completion of any online training available on the Caltrans Web site.

Findings Definitions

The FHWA audit team carefully examined Pilot Program areas to assess compliance in accordance with established criteria in the MOU and Application. The time period covered by this audit report is from the start of the Caltrans Pilot Program (July 1, 2007) through completion of the sixth onsite audit (October 21, 2011) with the focus of the audit on the most recent 15-month period. This report presents audit findings in three areas:

- *Compliant*—Audit verified that a process, procedure, or other component of the Pilot Program meets a stated commitment in the Application and/or MOU.
- *Needs Improvement*—Audit determined that a process, procedure or other component of the Pilot Program as specified in the Application and/or MOU is not fully implemented to achieve the stated commitment or the process or procedure implemented is not functioning at a level necessary to ensure the stated commitment is satisfied. Action is recommended to ensure success.
- *Deficient*—Audit was unable to verify if a process, procedure or other component of the Pilot Program met the stated commitment in the Application and/or MOU. Action is required to improve the process, procedure or other component prior to the next audit;

or

Audit determined that a process, procedure or other component of the Pilot Program did

not meet the stated commitment in the Application and/or MOU. Corrective action is required prior to the next audit.

or

Audit determined that for a past Needs Improvement finding, the rate of corrective action has not proceeded in a timely manner; is not on the path to timely resolution of the finding.

Summary of Findings—October 2011

Compliant

Caltrans was found to be compliant in meeting the requirements of the MOU for the key Pilot Program areas within the scope and the limitations of the audit, with the exceptions noted in the Deficient and Needs Improvement findings in this audit report set forth below.

Needs Improvement

(N1) *Training*—Inconsistent Level of Training for Staff—MOU Section 12.1.1 requires Caltrans to ensure that its staff is properly trained and that training will be provided ''in all appropriate areas with respect to the environmental responsibilities Caltrans has assumed.'' Section 4.2.2 of the MOU also requires that Caltrans maintain adequate staff capability to effectively carry out the responsibilities it has assumed.

The audit team found the following inconsistencies across the Districts regarding the level of needed trainings received by Caltrans staff:

(a) Several of the Section 4(f) District Points of Contact (POC) have very little, if any experience with writing or reviewing a Section 4(f) document and have had little training in Section 4(f). The audit team learned that the specific roles and responsibilities for the POCs had not yet been determined. Also, it has not been decided if there will be the formation of a working/peer group of these POCs or how they should proceed in becoming ''expert'' in this area;

(b) The audit team learned through interviews that the number and variety of available online, on-demand trainings have increased. However, the lack of a system to track those taking these trainings creates difficulties in identifying staff training needs;

(c) Interviews with staff reflected instances where staff had to cancel their attendance at trainings due to resource limitations, or schedule demands; and

(d) Interviews with staff indicated a large staff turnover in certain Districts. The loss of experienced staff increases the importance of the training needed for new employees, which is uncertain due to resource restrictions in these same Districts.

(N2) *Training*—Inconsistent Understanding of Required Processes—MOU Section 4.2.2 requires Caltrans to maintain adequate organizational and staff capacity to effectively carry out the responsibilities it has assumed under MOU Section 3. Good communication among all staff levels is essential for this to be accomplished. The following inconsistencies in lack of knowledge and inconsistent understanding were noted during interviews with Caltrans staff:

(a) Interviews with Caltrans staff in varying positions in three Districts revealed a lack of understanding of the FHWA fiscal constraint requirements and its relationship to NEPA documents;

(b) A majority of Caltrans staff members interviewed indicated that there is a lack of understanding of the definitions for the following Section 4(f) terms: Section 4(f) use; temporary occupancy; avoidance alternatives; least overall harm analysis; and constructive use of a Section 4(f) resource.

(c) Interviews with Caltrans staff reflected that there was a lack of understanding for determining a de minimis impact on a Section 4(f) resource;

(d) Several Caltrans staff members interviewed indicated a lack of knowledge regarding the identification of officials with jurisdiction over Section 4(f) resources; and

(e) Interviews with Caltrans District 4 staff reflected that there was a lack of communication among all staff concerning the District's new requirement to hold public hearings for all environmental assessments (EA).

(N3) *Air Quality Conformity Determinations*—Section 8.5.1 of the MOU and SER Chapter 38 require Caltrans staff to document the air quality conformity analysis for each project by submitting a request to FHWA for a formal conformity determination, as required by 23 U.S.C. 327(a)(2)(B)(ii)(I). The request for the conformity determination should be submitted to FHWA as soon as possible after the preferred alternative is identified. The FHWA conformity determination must be received before the final NEPA action is completed.

Through interviews and project file reviews, the audit team identified an EA that was approved without a project-level conformity determination letter from FHWA. This determination letter was later obtained from FHWA and a re-evaluation was performed by Caltrans and included in the project file.

Deficient

(D1) *Reports Listing Approvals and Decisions* (i.e., Quarterly Reports)—MOU Section 8.2.7 requires Caltrans to submit a report listing all Pilot Program approvals and decisions made with respect to responsibilities assumed under the MOU with FHWA (each quarter for the first 2 years and no less than every 6 months after the first 2 years). Caltrans has chosen to continue to provide quarterly reports to FHWA after the first 2 years. As was identified in every previous FHWA audit report, inaccurate project reporting was identified in this audit and it continues to be an ongoing issue affecting the quarterly report process.

Among the reporting errors identified in this audit were the omission of two completed decisions—one ROD and one Finding of No Significant Impact (FONSI).

The FHWA acknowledges that the STEVE has recently been implemented throughout the Districts, and Caltrans anticipates that this new system will improve the accuracy of information provided in the quarterly reports provided to FHWA.

(D2) *QA/QC Certification Process*—MOU Section 8.2.5 and SER Chapter 38 require Caltrans staff to review each environmental document in accordance with the policy memorandum titled, ''*Environmental Document Quality Control Program under the NEPA Pilot Program''* (July 2, 2007). As was identified in past audits, incomplete and incorrectly completed QC certification forms continued to be identified in this audit. During project file reviews by the audit team, the following instances of incomplete or incorrect QC certification forms were observed:

(a) Four Internal QC certification forms (for three projects) were completed and signed and dated by reviewers after the approval date of the document;

(b) One class of action determination form was signed on the same date that the document was approved;

(c) Five QC certification forms contained undated review signatures or the signatures were not obtained in the proper sequence in accordance with the Caltrans established QA/QC processes. This included four projects where external QC certification forms contained signatures that were obtained after the internal QC certification form signatures; and

(d) Five QC certification forms were missing the signatures of required reviewers.

(D3) *QA/QC Certification Process*—MOU Section 8.2.5 and SER Chapter 38 require Caltrans staff to review each environmental document in accordance with the policy memorandum titled, ''*Environmental Document Quality Control Program under the NEPA Pilot Program''* (July 2, 2007). The policy memorandum included the revision to the quality control program that includes the addition of a NEPA QC Review. The purpose of this review component is to ensure that the environmental document complies with FHWA policies and guidance and the requirements of all applicable Federal laws, executive orders, and regulations.

Interviews with Caltrans staff and project file reviews in one District indicated that a NEPA QC reviewer was directed by the Office Chief of Environmental Affairs and the District Director to sign the internal certification form without having reviewed the final version of the environmental document in order to meet the project schedule. The NEPA QC reviewer had noted in the project file that there were two items, previously identified to be addressed, that had not yet been addressed in the document that was signed.

Since the determination of this finding, the audit team and Caltrans have had several discussions concerning the finding. Additionally, Caltrans has provided additional information through a comment posted by them on the docket during the comment period of the draft audit report. An internal investigation has been completed by Caltrans Audits and Investigations staff concerning the reported circumstances in the finding. Caltrans has determined that the NEPA QC reviewer was not directed or instructed by the Office Chief of Environmental Review and/or the District Director to sign the internal certification form. They determined that the memo written by this QC reviewer was ''ambiguous'' and gave an inaccurate impression of events. The audit team

acknowledges that the situation cited in this finding has been resolved.

(D4) *Re-evaluation Process*—MOU Section 5.1 requires Caltrans to be subject to the same procedural and substantive requirements that apply to the U.S. Department of Transportation (DOT) in carrying out the responsibilities assumed under the Pilot Program. This includes the process and documentation for conducting NEPA re-evaluations to comply with 23 CFR 771.129. Additionally, SER Chapter 33 discusses revalidations and re-evaluations. As in past audits, project file reviews and staff interviews identified varying degrees of understanding of, and compliance with, these procedures and the improper use of reevaluation documentation to serve another project development purpose. Project file reviews identified the following inconsistencies with regards to re-evaluations:

(a) A re-evaluation is done to determine if the approved environmental document or the Categorical Exclusion (CE) designation remains valid. In the re-evaluation process, the original decision and analysis needs to be reviewed for its validity. A re-evaluation was used to increase the scope of the original EA/FONSI. The FHWA re-evaluation process does not accommodate such an approach. The supporting documentation and project files for this project were not available for review; and

(b) In a second project, the NEPA document was identified in the Quarterly Report as a re-evaluation. This project was identified as an intersection improvement that was to be added to a larger project, already under construction. The project file contained both re-evaluation forms and CE checklist forms. Under NEPA, the project should have been a stand-alone CE, as it was not a part of the original project.

(D5) *Section 4(f) Documentation*—MOU Section 5.1.1 affirms that Caltrans is subject to the same procedural and substantive requirements that apply to DOT in carrying out the responsibilities assumed under the Pilot Program. The SER Chapter 20, Section 4(f) and Related Requirements, sets forth procedures for documenting impacts to Section 4(f) properties in Caltrans-assigned environmental documents. As was also noted in the fourth and fifth FHWA audits of the Pilot Program, project file reviews and interviews with staff conducted during this audit identified inconsistencies with the implementation and documentation requirements for carrying out the Section 4(f) provisions.

In the case of Section 4(f) evaluations, the audit team found the following:

(a) Two of three evaluations did not contain a required Section 4(f) avoidance alternative analysis.

(b) Two of the three evaluations did not provide a required Least Overall Harm Analysis.

(D6) *Statement Regarding Assumption of Responsibility*—MOU section 3.2.5 requires language regarding Caltrans' assumption of responsibility under 23 U.S.C. 327 be included on the cover page of each environmental document for all assumed Pilot Program projects. The audit teams' project file reviews found the following inconsistencies with this requirement:

(a) The cover page for one EA reviewed during the audit did not include this required statement;

(b) The cover page for one Final EIS had been modified from the language agreed to in the MOU; and

(c) The cover page for three California Environmental Quality Act only document contained the FHWA assumption statement, even though there was no FHWA involvement in this document.

Response to Comments and Finalization of Report

The FHWA received one comment from Caltrans during the 30-day comment period for the draft audit report. Caltrans submitted its comment regarding finding D3. Caltrans had been informed of this finding by the audit team through initial draft findings shared with them, as per the provisions of the MOU and then also through the draft audit report published in the **Federal Register** for the 30-day comment period. There have been several discussions between FHWA and Caltrans concerning the details of this finding. Since the audit team made and verified this finding, Caltrans has done its own internal investigation into the situation reported. Caltrans's investigation determined that the NEPA QC reviewer was not directed or instructed to by the Office Chief of Environmental Review and/or the District Director to sign the internal certification form. They determined that the memo written by this QC reviewer was ''ambiguous'' and gave an inaccurate impression of events.

Caltrans stated that they do not concur with the deficient finding and request that the finding be revised to reflect the situation they have determined to accurate from their investigations. The FHWA has revised finding D3 to address the Caltrans comment.

[FR Doc. 2012–11119 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Supplemental Fiscal Year 2012 Apportionments, Allocations, and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) annually publishes one or more notices apportioning funds appropriated by law. In some cases, if less than a full year of funds is available, FTA publishes multiple partial apportionment notices. This notice is the second notice announcing partial apportionment for programs funded with Fiscal Year (FY) 2012 contract authority because the current authorization of FTA's programs provides contract authority for the period October 1, 2011 through June 30, 2012.

FOR FURTHER INFORMATION CONTACT: For general information about this notice contact Kimberly Sledge, Acting Director, Office of Transit Programs, at (202) 366–2053. Please contact the appropriate FTA regional office for any specific requests for information or technical assistance. A list of FTA regional offices and contact information is available on the FTA Web site at *http://www.fta.dot.gov.*

I. Overview

FTA's current authorization, the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU), expired September 30, 2009. Since that time, Congress has enacted short-term extensions allowing FTA to continue its current programs. The Surface Transportation Extension Act of 2012, Public Law 112–102, continues the authorization of the Federal transit programs of the U.S. Department of Transportation (DOT) through June 30, 2012. It extends contract authority for the Formula and Bus Grants programs at approximately seventy-five percent of the FY 2011 levels until June 30 2012.

Additionally, FTA's full-year appropriations bill (Pub. L. 112–055, the Consolidated and Further Continuing Appropriations Act, 2012), hereinafter (''Appropriations Act, 2012'') was enacted in November 2011, giving FTA appropriated resources for all of FY 2012 for Administrative Expenses, Capital Investment Grants, and Research programs and grants to the Washington Metropolitan Area Transportation Authority. The Appropriations Act, 2012 also provides a full fiscal year obligation limitation on any contract authority that is made available to FTA programs funded from the Mass Transit Account of the Highway Trust Fund during this fiscal year.

On January 11, 2012, FTA published an apportionments notice that apportioned the FY 2012 authorized contract authority among potential program recipients based on contract authority that was available from October 1, 2011 through March 31, 2012 (see **Federal Register** Volume 77, No.7). That notice also provided relevant information about the FY 2012 funding available, program requirements, period of availability, prior year unobligated balances, and other related program information and highlights. A copy of that notice and accompanying tables can be found on the FTA Web site at *http://www.fta.dot.gov/apportionments.*

This document apportions the currently available FY 2012 authorized contract authority among potential program recipients according to statutory formulas in 49 U.S.C. Chapter 53 and allocates Section 5309 Bus and Bus Facilities funds to bus testing and the Fuel Cell program.

Tables displaying the funds available to eligible states and urbanized areas have been posted on FTA's Web site at *http://www.fta.dot.gov/apportionments.* The table below displays funds allocated to bus testing and the Fuel Cell program. FTA will issue a supplemental notice at a later date if additional contract authority becomes available. This notice does not include reprogramming of discretionary funds that lapsed to the designated project as of September 30, 2011 or the allocation of FY 2012 discretionary resources.

FY 2012 BUS AND BUS FACILITIES ALLOCATIONS

State	Project ID	Project description/name	Amount allocated
CA, GA, MA	E2012–BUSP–018	Fuel Cell Bus Program	$13,500,000
PA	E2012–BUSP–019	Bus Testing	3,000,000
FY 2012 Total			16,500,000

Issued in Washington, DC, this 4th day of May 2012.

Peter Rogoff,

Administrator.

[FR Doc. 2012–11203 Filed 5–8–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0050]

National Emergency Medical Services Advisory Council (NEMSAC); Notice of Federal Advisory Committee Meeting

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

ACTION: Meeting notice—National Emergency Medical Services Advisory Council.

SUMMARY: The NHTSA announces a meeting of NEMSAC to be held in the Metropolitan Washington, DC area. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of NEMSAC is to provide a nationally recognized council of emergency medical services representatives and consumers to provide advice and recommendations regarding Emergency Medical Services (EMS) to DOT's NHTSA.

DATES: The meeting will be held on May 30, 2012, from 10 a.m. to 5 p.m. EDT, and on May 31, 2012, from 8 a.m. to 12 p.m. EDT. A public comment period will take place on May 30, 2012 between 3:30 p.m. and 4:30 p.m. EDT. Written comments must be received by May 25, 2012.

ADDRESSES: The meeting will be held on the 8th floor of the FHI 360 Conference Center at 1825 Connecticut Avenue NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, U.S. Department of Transportation, Office of Emergency Medical Services, 1200 New Jersey Avenue SE., NTI–140, Washington, DC 20590, telephone number 202–366–9966; email *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.). The NEMSAC will meet on Wednesday and Thursday, May 30–31, 2012, on the 8th floor of the FHI 360 Conference Center at 1825 Connecticut Avenue NW., Washington, DC 20009.

Tentative Agenda of National EMS Advisory Council Meeting, May 30–31, 2012

The tentative agenda includes the following:

Wednesday, May 30, 2012 (10 a.m. to 5 p.m. EDT)

(1) Opening Remarks
(2) Introduction of Members and All in Attendance
(3) Review and Approval of Minutes of Last Meeting
(4) Update From NHTSA Office of EMS
(5) Federal Partner Update
(6) Review of the NEMSAC Roundtable on the EMS Education Agenda for the Future Meeting Results
(7) Public Comment Period (3:30 p.m. to 4:30 p.m. EDT)
(8) Business of the Council

Thursday, May 31, 2012 (8 a.m. to 12 p.m. EDT)

(1) Presentations from NEMSAC Committees
(2) Deliberations of Committee Documents
(3) Voting To Finalize Several NEMSAC Advisories and Recommendations
(4) Unfinished Business/Continued Discussion From Previous Day
(5) Next Steps and Adjourn

Public Attendance: This meeting will be open to the public. There will not be a teleconference option for this meeting. Individuals wishing to attend must register online at *www.regonline.com/NEMSAC1* no later than May 25, 2012.

Public Comment: Members of the public who wish to make comments on Wednesday, May 30, 2012, between 3:30 p.m. and 4:30 p.m. EDT are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 5 minutes. Written comments from members of the public will be distributed to NEMSAC members at the meeting and should reach the NHTSA Office of EMS by May 25, 2012. All submissions received may be submitted by either one of the following methods: (1) You may submit comments by email: *nemsac@dot.gov,* or (2) you may submit comments by fax: 202–366–7149.

A final agenda as well as meeting materials will be available to the public online through *www.ems.gov* prior to May 30, 2012.

Issued on: May 4, 2012.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. 2012–11144 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2012–0094]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on two information collections that we will be submitting to the Office of Management and Budget (OMB) for renewal. The information collections relate to the pipeline integrity management requirements for gas transmission pipeline operators and the response plan requirements for operators of onshore oil pipelines.

DATES: Interested persons are invited to submit comments on or before July 9, 2012.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov Web Site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

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

Hand Delivery: Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2012–0094, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477) or visit *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2012–0094.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies two information collection requests that PHMSA will be submitting to OMB for renewal. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. PHMSA will request a three-year term of approval for each information collection activity. PHMSA requests comments on the following information collections:

1. Title: Pipeline Integrity Management in High Consequence Areas Gas Transmission Pipeline Operators.

OMB Control Number: 2137–0610.

Current Expiration Date: 9/30/2012.

Type of Request: Renewal with revision.

Abstract: 49 CFR 192.947 requires operators of gas transmission pipelines located in or near high consequence areas to maintain a written integrity management program and records showing compliance with 49 CFR part 192, subpart O. Operators must also submit documentation relative to their integrity management program to PHMSA as applicable.

Affected Public: Operators of gas transmission pipelines located in or near high consequence areas.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 733.

Total Annual Burden Hours: 1,018,807.

Frequency of Collection: On occasion.

2. Title: Response Plans for Onshore Oil Pipelines.

OMB Control Number: 2137–0589.

Current Expiration Date: 9/30/2012.

Type of Request: Renewal.

Abstract: 49 CFR part 194 requires an operator of an onshore oil pipeline facility to prepare and submit an oil spill response plan to PHMSA for review and approval.

Affected Public: Operators of onshore oil pipeline facilities.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 367.

Total Annual Burden Hours: 50,186.

Frequency of Collection: On occasion.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on May 3, 2012.

Cameron H. Satterthwaite,

Transportation Specialist, Office of Standards and Rulemaking.

[FR Doc. 2012–11157 Filed 5–8–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Waybill Compliance Survey; Request for Comments

AGENCY: Surface Transportation Board, DOT.

ACTION: 60-day notice of intent to seek extension of approval: Waybill Compliance Survey.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek from the Office of Management and Budget (OMB) approval for the Waybill Compliance Survey. This information collection, which was previously approved but expired, is described in detail below. Comments are requested concerning (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Waybill Compliance Survey.
OMB Control Number: 2140–0010.
STB Form Number: None.
Type of Review: Reinstatement without change of a previously approved collection.
Respondents: Regulated railroads that are required to submit carload waybill sample information to the STB in the previous year.
Number of Respondents: 120.
Estimated Time per Response: .5 hours.
Frequency: Annually.
Total Burden Hours (annually including all respondents): 60.
Total ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.
Needs and Uses: The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred to the STB the responsibility for the economic regulation of common carrier rail transportation, including the collection and administration of the Carload Waybill Sample. Under 49 CFR 1244, a railroad terminating 4500 or more carloads, or terminating at least 5% of the total revenue carloads that terminate in a particular state, in any of the three preceding years is required to file carload waybill sample information (Waybill Sample) for all line-haul revenue waybills terminating on its lines. The information in the Waybill Sample is used to monitor traffic flows and rate trends in the industry. The Board needs to collect information in the Waybill Compliance Survey—information on carloads of traffic terminated each year by U.S. railroads—in order to determine which railroads are required to file the Waybill Sample. In addition, information collected in the Waybill Compliance Survey, on a voluntary basis, about the total operating revenue of each railroad helps to determine whether respondents are subject to other statutory or regulatory requirements. Accurate determinations regarding the size of a railroad help the Board minimize the reporting burden for smaller railroads. The Board has authority to collect this information under 49 U.S.C. 11144 and 11145 and under 49 CFR 1244.2.

DATES: Comments on this information collection should be submitted by July 9, 2012.

ADDRESSES: Direct all comments to Marilyn Levitt, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, or to *levittm@stb.dot.gov.* When submitting comments, please refer to ''Waybill Compliance Survey, OMB control number 2140–0010.''

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THE STB FORM, CONTACT: Paul Aguiar, (202) 245–0323 or at *paul.aguiar@stb.dot.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(c)(2)(A) of the PRA, Federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: May 4, 2012.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–11161 Filed 5–8–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Actions Taken Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing on OFAC's list of Specially Designated Nationals and Blocked Persons (''SDN List'') the names of four newly-designated entities and two individuals, whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.'' OFAC is also announcing an update to the entry of an individual on OFAC's SDN List by adding an alias to the individual's entry. The designations by the Director of OFAC and addition of the alias, pursuant to Executive Order 13382, were effective on March 28, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the

Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On March 28, 2012, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated four entities and two individuals whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

Entities and Individuals

1. EZATI, Ali (a.k.a. EZZATI, Ali); DOB 5 Jun 1963; Passport Z19579335 (Iran) (individual) [NPWMD].
2. RASOOL, Seyed Alaeddin Sadat; DOB 23 Jul 1965 (individual) [NPWMD].
3. DEEP OFFSHORE TECHNOLOGY COMPANY PJS, 1st Floor, Sadra Building, No. 3, Shafagh Street, Shahid Dadman Boulevard, Paknejad Boulevard, 7th Phase, Shahrake-E-Quds, Tehran, Iran [IRGC] [NPWMD].
4. IRAN MARINE INDUSTRIAL COMPANY, SADRA (a.k.a. IRAN MARINE INDUSTRIAL COMPANY SSA; a.k.a. IRAN SADRA; a.k.a. IRAN SHIP BUILDING CO.; a.k.a. SADRA; a.k.a. SHERKATE SANATI DARYAI IRAN), 3rd Floor Aftab Building, No. 3 Shafagh Street, Dadman Blvd., Phase 7, Shahrak Ghods, P.O. Box 14665–495, Tehran, Iran; Office E–43 Torre E-Piso 4, Centrao Commercial Lido Av., Francisco de Miranda, Caracas, Venezuela; Web site www.sadra.ir [IRGC] [NPWMD].
5. MALSHIP SHIPPING AGENCY LTD., 143/1 Tower Road, Sliema, Malta; Commercial Registry Number C43447 (Malta) [NPWMD].
6. MODALITY LIMITED, 2, Liza, Fl. 5, Triq Il-Prekursur, Madliena, Swieqi, Malta; Commercial Registry Number C49549 (Malta) [NPWMD].

In addition, on March 28, 2012, the Director of OFAC amended the designation record for NEKA NOVIN to include a new alias and alternate location. The updated entry on the SDN List is as follows:

Individual

NEKA NOVIN (a.k.a. NIKSA NIROU), Unit 7, No. 12, 13th Street, Mir-Emad St., Motahary Avenue, Tehran 15875–6653, Iran; No. 2, 3rd Floor, Simorgh St., Dr. Shariati Avenue, Tehran, Iran [NPWMD].

Dated: March 28, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–11113 Filed 5–8–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990 and Schedules

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)). Currently, the IRS is soliciting comments concerning Form 990, Return of Organization Exempt From Income Tax Under Section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation), and schedules.

DATES: Written comments should be received on or before May 16, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return of Organization Exempt From Income Tax .

OMB Number: 1545–0047.

Form Number: 990, and Schedules.

Abstract: Form 990 is needed to determine that Code section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemption. Schedule H is directly related to the Affordable Care Act and has changed significantly since this collection was previously approved by OMB. Section 9007 of the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148, 124 Stat. 119 (March 23, 2010), included new requirements for tax-exempt hospital organizations and their hospital facilities, including information return reporting requirements. To gather information on hospital organizations' compliance with these requirements and on related policies and practices, the IRS revised the Form 990, Schedule H for tax year 2010 to add a new Part V.B. To give the hospital community more time to familiarize itself with the types of information the IRS is requesting, the IRS made Part V.B optional for tax year 2010. See Announcement 2011–37, 2011–27 I.R.B. 37. Beginning in tax year 2011, Part V.B is no longer optional, with the exception of lines 1 through 7, regarding community health needs assessments (CHNAs), as the CHNA requirements of the Affordable Care Act are only effective for tax years beginning after March 23, 2012. Accordingly, hospital organizations that are required to file the 2011 Form 990 are required to complete all parts and sections of the 2011 Schedule H, including Part V.B, except lines 1 through 7 of Part V.B.

Current Actions: Schedule H (Form 990) has been revised.

Type of Review: Revision of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 403,068.

Estimated Time per Respondent: 63 hrs., 56 min.

Estimated Total Annual Burden Hours: 25,766,156.

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. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2012.

Robert Dahl,

Treasury Reports Clearance Officer.

[FR Doc. 2012–11200 Filed 5–8–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 90 May 9, 2012

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to an Exploration Drilling Program Near Camden Bay, Beaufort Sea, Alaska; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA804

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to an Exploration Drilling Program Near Camden Bay, Beaufort Sea, Alaska

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) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Shell Offshore Inc. (Shell) to take marine mammals, by harassment, incidental to offshore exploration drilling on Outer Continental Shelf (OCS) leases in the Beaufort Sea, Alaska.

DATES: Effective July 1, 2012, through October 31, 2012.

ADDRESSES: A copy of the issued IHA, application with associated materials, and NMFS' Environmental Assessment (EA) and Finding of No Significant Impact may be obtained by writing 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, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, 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 May 10, 2011, from Shell for the taking, by harassment, of marine mammals incidental to offshore exploration drilling on OCS leases in the Beaufort Sea, Alaska. NMFS reviewed Shell's application and identified a number of issues requiring further clarification. After addressing comments from NMFS, Shell modified its application and submitted a revised application on September 2, 2011. NMFS carefully evaluated Shell's application, including their analyses, and deemed the application complete. The September 2, 2011, application was the one available for public comment (see **ADDRESSES**) and considered by NMFS for this IHA. NMFS published a Notice of Proposed IHA in the **Federal Register** on November 7, 2011 (76 FR 68974). That notice contained in depth descriptions and analyses that are generally not repeated in this document. Only in cases where descriptions or analyses changed is that information updated here. The most notable changes include: (1) The description of the sound characteristics of the drillship *Kulluk* based on the installation of quieting technologies; (2) modifications to the acoustic and aerial monitoring programs presented in the marine mammal monitoring plan; (3) take estimates from exposure to sound from the *Kulluk* with the reduced sound isopleths based on the installation of quieting technologies; and (4) updated information regarding Shell's Oil Spill Response Plan (OSRP). These changes are described in greater detail in the applicable sections later in this document.

Shell plans to drill two exploration wells at two drill sites in Camden Bay, Beaufort Sea, Alaska, during the 2012 Arctic open-water season (July through October). Impacts to marine mammals may occur from noise produced by the drillship, zero-offset vertical seismic profile (ZVSP) surveys, and supporting vessels (including icebreakers) and aircraft. Shell requested authorization to take nine marine mammal species by Level B harassment. However, narwhals (*Monodon monoceros*) are not expected to be found in the activity area. Therefore, NMFS has authorized take of eight marine mammal species, by Level B harassment, incidental to Shell's offshore exploration drilling program in Camden Bay. These species include: beluga whale (*Delphinapterus leucas*); bowhead whale (*Balaena mysticetus*); gray whale (*Eschrichtius robustus*); harbor porpoise (*Phocoena phocoena*); bearded seal (*Erignathus barbatus*); ringed seal (*Phoca hispida*); spotted seal (*P. largha*); and ribbon seal (*Histriophoca fasciata*).

Description of the Specified Activity and Specified Geographic Region

Shell plans to conduct an offshore exploration drilling program on U.S. Department of the Interior (DOI), Bureau of Ocean Energy Management (BOEM, formerly the Minerals Management Service) Alaska OCS leases located north of Point Thomson near Camden Bay in the Beaufort Sea, Alaska, during the 2012 open-water season. During the 2012 drilling program (July through October), Shell plans to complete two exploration wells at two drill sites, one well each on the Torpedo prospect (NR06–04 Flaxman Island lease block 6610, OCS–Y–1941 [Flaxman Island 6610—Torpedo ''H'' or ''J'' drill site]) and the Sivulliq prospect (NR06–04 Flaxman Island lease block 6658, OCS–

Y 1805 [Flaxman Island 6658—Sivulliq ''N'' or ''G'' drill sites]). See Figure 1–1 in Shell's application for the lease block and drill site locations (see **ADDRESSES**). All drilling is planned to be vertical.

The Notice of Proposed IHA (76 FR 68974, November 7, 2011) contained a full description of Shell's planned operations. That notice describes the equipment to be used for the different operational activities, the timeframe of activities, and the sound characteristics of the associated equipment. Except to clarify changes to the information contained in the proposed IHA notice, the information is not repeated here; therefore, please refer to the proposed IHA for the full description of the specified activity and specified geographic region.

Drilling Vessels

The Notice of Proposed IHA (76 FR 68974, November 7, 2011) noted that Shell plans to use one of two drilling vessels for its 2012 Camden Bay exploratory drilling program: the *Kulluk* (owned by Shell and operated by Noble Drilling [Noble]); or the *Discoverer* (owned and operated by Noble). Only one of these drilling vessels would be used for the Camden Bay program, not both. Information on each vessel can be found in Attachment A of Shell's IHA application (see **ADDRESSES**). Since publication of that notice, Shell has continued to refine the details of its program. Shell intends for the *Kulluk* to be the primary choice of drillship to be used for the Camden Bay program. The *Discoverer* is Shell's second choice for use as the drillship and will only be used for the 2012 Camden Bay program if the primary drillship (*i.e.,* the *Kulluk*) is unavailable.

Exploratory Drilling Program Sound Characteristics

Potential impacts to marine mammals could occur from the noise produced by the drillship and its support vessels (including the icebreakers), aircraft, and the airgun array during ZVSP surveys. The drillship produces continuous noise into the marine environment. NMFS currently uses a threshold of 120 dB re 1 μPa (rms) for the onset of Level B harassment from continuous sound sources. This 120 dB threshold is also applicable for the icebreakers when actively managing or breaking ice. The airgun array to be used by Shell for the ZVSP surveys produces pulsed noise into the marine environment. NMFS currently uses a threshold of 160 dB re 1 μPa (rms) for the onset of Level B harassment from pulsed sound sources.

The Notice of Proposed IHA (76 FR 68974, November 7, 2011) contains information regarding sound characteristics of the *Kulluk* and *Discoverer,* other vessels, aircraft, and airguns. That information is not repeated here. However, Shell conducted a retrofit of the *Kulluk* following publication of the Notice of Proposed IHA. The purpose of the retrofit is to reduce transmission of noise from the vessel into the water. A brief description of the retrofit is provided here.

Two primary noise-reducing technologies have been installed on the *Kulluk* in its main engine room that houses the new engine-driven generators (gensets). These technologies are surface acoustic insulation and resilient engine mounts upon which the new gensets were recently installed. Both technologies reduce the amount of mechanical vibrations transmitted from the water. The surface insulation is expected to reduce transmission of airborne sound energy into the deck and bulkheads and subsequently through the vessel hull into the water. The resilient engine mounts provide vibrational isolation of the genset engines from the deck to reduce mechanical vibrations that would otherwise be conducted into the deck and subsequently through the vessel structure and hull into the water as sound. The use of modern generators is itself expected to result in some vibration reduction.

Because measurements of the drilling vessel's acoustic source levels have not yet been made with quieting technologies installed, the actual sound emission reductions cannot yet be quantified with certainty. Once on location in Camden Bay, Shell plans to take measurements of the drillship to quantify the absolute sound levels produced by drilling and to monitor their variations with time, distance, and direction from the drilling vessel. However, Shell estimated the reductions based on applications of similar technologies applied elsewhere. A comprehensive review of noise reducing technologies provides ranges of achieved reductions by several different technologies (Spence *et al.,* 2007; see Table 1 here). One should not assume that the reductions are additive because one transmission pathway could dominate, and improvement of the other pathway would have little benefit. NMFS acoustic experts reviewed the information provided by Shell regarding the quieting technologies and additional sources and determined that a 5 dB reduction of modeled noise source is a reasonable estimate of the effectiveness of the quieting techniques being implemented. Therefore, for purposes of calculating potential takes by harassment from the *Kulluk,* NMFS has assumed a 5 dB reduction, which alters the 120-dB isopleth by a factor of 1.6. Additional information on sound radii and take estimates are provided later in this document.

Table 1. Reductions of emitted sound levels by noise quieting technologies (Spence et al., 2007).

Treatment	Description	Effectiveness Reduction	Frequency range
Resilient Isolation of Equipment	Reduction of vibration by mechanically isolating machinery from supporting structure	0-20+ dB 10-25+ dB	20-100 Hz >100 Hz
Spray-on Damping	Reduces vibration energy in structures. Used on stiffened plating near machinery sources, plating adjacent to water, and locations in-between.	3-8+ dB depending on type, amount and location	>30 Hz

Comments and Responses

A Notice of Proposed IHA published in the **Federal Register** on November 7, 2011 (76 FR 68974) for public comment. During the 30-day public comment period, NMFS received nine comment letters from the following: the Alaska Eskimo Whaling Commission (AEWC); Inupiat Community of the Arctic Slope (ICAS); the Marine Mammal Commission (MMC); State of Alaska Department of Natural Resources; Consumer Energy Alliance; Resource Development Council; the North Slope Borough (NSB); Shell; and Alaska Wilderness League (AWL), Audubon Alaska, Center for Biological Diversity, Defenders of Wildlife, Earthjustice, Natural Resources Defense Council, Northern Alaska Environmental Center, Oceana, Pacific Environment, Resisting Environmental Destruction on Indigenous Lands, Sierra Club, the Wilderness Society, and World Wildlife Fund (collectively ''AWL''), along with an attached letter from David E. Bain, Ph.D.

AWL submitted several journal articles and documents as attachments to their comment letter. NMFS acknowledges receipt of these articles and documents but does not intend to address each one specifically in the responses to comments. All of the public comment letters received on the Notice of Proposed IHA (76 FR 68974, November 7, 2011) are available on the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following is a summary of the public comments and NMFS' responses.

General Comments

Comment 1: Shell notes that NMFS stated in the Notice of Proposed IHA (76 FR 68975, November 7, 2011) that either drillship will be ''attended by 11 vessels.'' Shell states that the actual number of support vessels may vary due to operational needs and therefore did not note 11 as an absolute number in the IHA application.

Response: NMFS acknowledges this comment and understands that there might be slight variation in the number of vessels. However, this does not change the analysis provided in the Notice of Proposed IHA (76 FR 68975, November 7, 2011).

Comment 2: The State of Alaska Department of Natural Resources, Consumer Energy Alliance, and Resource Development Council all urge NMFS to finalize Shell's IHA since NMFS has issued the proposed IHA.

Response: After careful evaluation of all comments and the data and information available regarding potential impacts to marine mammals and their habitat and to the availability of marine mammals for subsistence uses, NMFS has issued the final authorization to Shell to take marine mammals incidental to conducting an exploration drilling program in Camden Bay during the 2012 Arctic open-water season.

Comment 3: ICAS incorporates the comments made by the AEWC into its letter by reference and urges NMFS to address the concerns of AEWC and its whaling captains.

Response: All comments made by the AEWC are addressed in this document.

Comment 4: The MMC and AWL question the source levels and harassment zones for the two drillships. If the source levels for the *Kulluk* and *Discoverer* are nearly identical, then why is there a four-fold difference in the size of the corrected harassment zones for the two drilling vessels?

Response: Differences in sound propagation from the two rigs are real and are caused by differences in the design of the two vessels. While the broadband source levels for the *Discoverer* and *Kulluk* may be similar, their spectral properties differ considerably. Acoustic modeling considers the source levels in 1/3-octave frequency bands. Figures 1 and 2 show the band levels for both drillships during drilling. Of key importance are the significantly lower levels of the *Discoverer* in the 50 to 500 Hz bands that propagate well in the relatively shallow waters of these drilling operations. While the *Discoverer* apparently has higher band levels below 50 Hz, this energy is more rapidly attenuated than higher frequency sound energy. This characteristic of sound propagation in shallow waters leads to predominantly mid-frequency sounds (50–500 Hz) dominating the acoustic field at distance from the drillships. A further consideration is that the *Kulluk* source levels are known to include contributions from support vessels, and much of the mid-high frequency band energy in its source levels may not originate entirely from the drillship itself, as acknowledged by Greene (1987). The *Discoverer* source level measurements by Austin and Warner (2010) were made at closer distances and do not include significant contributions from other vessels. The *Kulluk's* modeled sound footprint may be an overestimate as a result, but we cannot quantify by how much since the relative contribution of vessel noise to its source level measurements is unknown. The source level for the *Discoverer* was measured, though not in the Beaufort Sea, and those measurements were used to model propagation in the Beaufort Sea environment. Regardless of which drill rig is used by Shell in the Beaufort Sea in 2012, the IHA requires Shell to conduct sound source verification (SSV) and characterization tests on all equipment used.

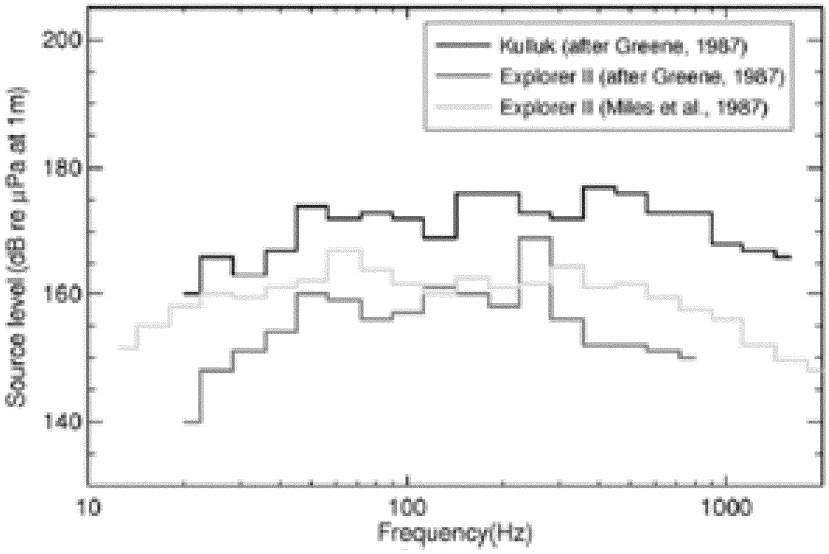

Figure 1. Band levels for the Kulluk during drilling.

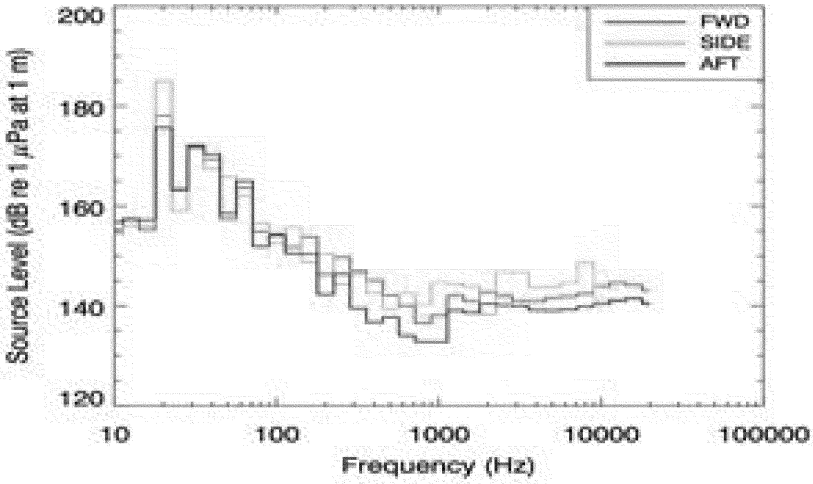

Figure 2. Band levels for the Discoverer during drilling.

Comment 5: The NSB stated in their letter that comments made previously on Shell's IHA applications for seismic and drilling are still applicable and are incorporated by reference into their letter dated December 7, 2011.

Response: NMFS has responded to comments on Shell's seismic IHA requests in previous **Federal Register** notices. Those responses are incorporated into this document by reference (*e.g.,* 73 FR 66106, November 6, 2008; 74 FR 55368, October 27, 2009; 75 FR 49710, August 13, 2010). The NSB submitted letters regarding Shell's proposed Camden Bay exploration drilling programs for the years 2007, 2008, and 2010. NMFS has only provided responses to comments contained in the 2007, 2008, and 2010 letters that are different from comments in the NSB's 2011 letter on this IHA. Additionally, some of the comments in those three earlier letters are no longer relevant to Shell's program as currently proposed in this document.

MMPA Statutory Concerns

Comment 6: The AEWC, NSB, AWL, and MMC state that the requested take does not meet the MMPA standard of ''small numbers'' and that the proposed IHA does not demonstrate that Shell's activities will have only a negligible impact on the species or stock. The NSB states that NMFS fails to distinguish between these two standards. AWL states that the proposed IHA does not include a specific ''small numbers'' finding for bowhead whales. Additionally, AEWC, MMC, and AWL ask NMFS to clarify how the statutory standard of ''least practicable impact'' is being met if the *Kulluk* is permitted for use instead of the *Discoverer,* which will have a smaller zone of impact.

Response: First, NMFS is not required to publish a preliminary finding regarding ''small numbers'' at the proposed IHA stage. The MMPA implementing regulations indicate that NMFS will publish any preliminary finding of ''negligible impact'' or ''no unmitigable adverse impact'' for public comment along with the proposed IHA if preliminary findings have been made at that time. 50 CFR 216.104(c). In this instance, at the proposed IHA stage

NMFS was still evaluating the available information and believed it would be beneficial to review information and comments submitted by the public before making determinations regarding whether Shell's proposed action will have a negligible impact on the affected species or stocks of marine mammals and no unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses. There is no requirement to include a finding of ''small numbers'' as part of a proposed IHA. Based on our review, we have made the requisite findings of small numbers, negligible impact, and no unmitigable adverse impact on the availability of the taking of marine mammals for subsistence uses.

NMFS is required to authorize the take of ''small numbers'' of a species or stock if the taking by harassment will have a negligible impact on the affected species or stocks and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence purposes. *See* 16 U.S.C. 1371(a)(5)(D). In determining whether to authorize ''small numbers'' of a species or stock, NMFS determines whether the taking will be small relative to the estimated population size and relevant to the behavior, physiology, and life history of the species or stock.

With the exception of bowhead whales, less than 1% of each species stock or population would be taken by harassment, regardless of which drillship is utilized by Shell. With respect to the type of take, NMFS is authorizing only Level B behavioral harassment of bowhead whales and does not anticipate any injury or mortality. The Bering-Chukchi-Beaufort (BCB) stock of bowhead whales is estimated at approximately 15,232 individuals based on a 2001 population of 10,545 (Zeh and Punt, 2005) and a continued annual growth rate of 3.4% (Allen and Angliss, 2011). Although modeling results indicate that up to 23% of the BCB bowhead whale population (which is lower than the estimate provided in the Notice of Proposed IHA based on the retrofit of the *Kulluk*) could potentially be exposed to received sound levels ≥120 dB re 1 μPa, NMFS is confident that takes resulting from Shell's activities will constitute only a ''small number'' of bowheads for the following reasons:

(1) The modeling results do not mean that 23% of the BCB bowhead whale population will *actually* be ''taken'' by Level B behavioral harassment. Bowheads may engage in avoidance behavior preventing their exposure to these levels of sound, and, even if exposed, may not exhibit a behavioral reaction.

(2) In reviewing information submitted by Shell regarding the modeling of the number of bowheads potentially affected, NMFS considered the fact that Shell's estimates included an inflation factor of the sound radii, meaning that the *actual* number of animals exposed to sound levels ≥120 dB will almost certainly be lower than the projections described here; and

(3) With the exception of the subsistence mitigation measure of shutting down during the Nuiqsut and Kaktovik fall bowhead whale hunts, the modeling results do not take into account the implementation of mitigation measures, which will lower the number of animals taken even further.

Finally, the MMPA requires that NMFS prescribe mitigation measures to ensure the least practicable impact on marine mammal species or stocks. NMFS' evaluation of mitigation measures includes 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.

In this instance, NMFS is authorizing only Level B behavioral harassment and has concluded the take from the specified activity will have a negligible impact on marine mammals, regardless of whether the *Kulluk* or the *Discoverer* is used. Even if the determination of which drill rig to use could properly be characterized as a ''mitigation measure,'' Shell has submitted information indicating that a requirement to use the *Discoverer* in the Beaufort during its 2012 drilling program would not constitute a practicable mitigation measure.

Determining which drill rig to use is based upon a complex combination of technical factors. One of the most important factors is that of being the optimum vessel to operate under the specific conditions that exist at the specific location. Shell indicates that the company specifically acquired the *Kulluk* for nearshore operations in the Beaufort Sea, and since that time has invested hundreds of millions of dollars in upgrading and maintaining the vessel. The vessel has a proven track record, as it has been used successfully for such work in both the Alaskan and Canadian Beaufort Sea nearshore waters, including, most recently, five wells in or in the immediate vicinity of Camden Bay. Because the *Kulluk* is the rig most capable of operating under ice conditions, it is the most appropriate rig to operate in the Beaufort Sea where ice conditions may be subject to quick change. Though Shell does not intend to operate under conditions of ice closure, use of the *Kulluk* in the Beaufort Sea provides the greatest margin of safety. It is not practicable for Shell to forfeit an investment of hundreds of millions of dollars in order to provide only marginal reductions to impacts that NMFS has already determined will be negligible.

Comment 7: The AEWC and AWL state that NMFS cannot make a negligible impact determination without considering other activities planned for this year and future years in the U.S. Arctic Ocean and Russian and Canadian waters. AWL states that NMFS should also evaluate the potential impacts of future activities in both oceans and the acknowledged uncertainty regarding the effects of noise in the marine environment in the context of subsistence hunting.

Response: NMFS considered the cumulative effects analysis contained in NMFS' Draft Environmental Impact Statement (EIS) on the ''Effects of Oil and Gas Activities in the Arctic Ocean'' (NMFS, 2011), NMFS' EA for the ''Issuance of Incidental Harassment Authorizations for the Take of Marine Mammals by Harassment Incidental to Conducting Exploratory Drilling Programs in the U.S. Beaufort and Chukchi Seas,'' and other relevant data to inform its MMPA determination here. Pursuant to NEPA, those documents contained a cumulative impacts assessment, as well as an assessment of the impacts of the proposed exploratory drilling program on marine mammals and other protected resources.

Section 101(a)(5)(D) of the MMPA and its implementing regulations require NMFS to consider a request for the taking of marine mammals incidental to a *specified activity* within a specified geographical region and, assuming certain findings can be made, to authorize the taking of small numbers of marine mammals while engaged in that activity. NMFS has defined ''specified activity'' in 50 CFR 216.103 as ''any activity, other than commercial fishing, that takes place in a specified geographical region and potentially involves the taking of small numbers of marine mammals.'' When making a negligible impact determination, NMFS considers the total impact during each 1-year period resulting from the specified activity only and supports its determination by relying on factors such

as: (1) The number of anticipated mortalities from the activity; (2) the number and nature of anticipated injuries from the activity; (3) the number, nature, intensity, and duration of Level B harassment resulting from the activity; (4) the context in which the takes occur; (5) the status of the species or stock; (6) environmental features that may significantly increase the potential severity of impacts from the proposed action; (7) effects on habitat that could affect rates of recruitment or survival; and (8) how the mitigation measures are expected to reduce the number or severity of takes or the impacts to habitat. When making its finding that there will be no unmitigable adverse impact on the availability of the affected species or stock for taking for subsistence uses, NMFS analyzes the measures contained in the applicant's Plan of Cooperation (POC). Additionally, Shell signed the 2012 Conflict Avoidance Agreement (CAA) with the AEWC. NMFS included all necessary measures from both documents in the IHA to ensure no unmitigable adverse impacts to subsistence.

NMFS considered the impacts analyses (*i.e.,* direct, indirect, and cumulative) contained in the previously mentioned EIS and EA in reaching its conclusion that any marine mammals exposed to the sounds produced by the drillship, ice management/icebreaking vessels, support vessels and aircraft, and airguns would be disturbed for only a short period of time and would not be harmed or killed. Furthermore, the required mitigation and monitoring measures are expected to reduce the likelihood or severity of any impacts to marine mammals or their habitats over the course of the activities.

Moreover, NMFS gave careful consideration to a number of other issues and sources of information. In particular, NMFS relied upon a number of scientific reports, including the 2010 U.S. Alaska Marine Mammal Stock Assessment Reports (SARs) to support its findings. The SARs contain a description of each marine mammal stock, its geographic range, a minimum population estimate, current population trends, current and maximum net productivity rates, optimum sustainable population levels and allowable removal levels, and estimates of annual human-caused mortality and serious injury through interactions with commercial fisheries and subsistence harvest data. NMFS also used data from the annual and final Bowhead Whale Aerial Survey Program (BWASP) reports.

After careful consideration of the proposed activities, the context in which Shell's proposed activities would occur, the best available scientific information, and all effects analyses (including cumulative effects), NMFS has determined that the specified activities: (1) Would not result in more than the behavioral harassment (*i.e.,* Level B harassment) of small numbers of marine mammal species or stocks; (2) taking by harassment would not result in more than a negligible impact on affected species or stocks; and (3) taking by harassment would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses. Therefore NMFS has decided to issue an IHA to Shell to take, by no more than Level B harassment, small numbers of marine mammals incidental to its Camden Bay exploratory drilling program.

Comment 8: The MMC recommends that NMFS require Shell to evaluate the source levels of the available drilling rigs at the proposed drilling locations, recalculate the 120-dB re 1 μPa harassment zones and estimated takes as appropriate, and use the rig best suited for the proposed drilling locations based, in part, on consideration of the size of the harassment zones and the requirements of the MMPA to reduce impacts of the proposed activity to the least practicable level.

Response: As conditioned in the IHA, Shell is required to conduct SSV and characterization of the equipment to be used, including the drilling rig. Shell is required to report received levels down to 120 dB re 1 μPa. Upon completion of those tests, Shell will then use the new sound radii for estimating take throughout the season. While new take estimates will not be calculated to replace those in the application, Shell will use the new radii for reporting estimated take levels in the 90-day report. See the response to *Comment 6* regarding use of the different drilling rigs in Camden Bay.

Comment 9: The NSB and AWL state that NMFS must consider whether the increase in vessel presence and vessel noise around the drill sites and during transit across the Arctic have the potential to disturb marine mammals.

Response: Shell's application and NMFS' Notice of Proposed IHA (76 FR 68974, November 7, 2011) outline all of the vessels intended for use to support the exploratory drilling program. While the application and proposed IHA do not include source levels or take estimates for those vessels, their presence is considered and accounted for in several of the mitigation measures. For example, vessel speed and maneuvering conditions apply to all vessels, not just the drill ship and icebreakers. Therefore, while NMFS contemplated the use of all vessels during activities and has included mitigation measures during operation of these vessels to reduce potentially disturbing marine mammals in the vicinity, NMFS does not consider the transit or operation of these vessels to rise to a level that would result in take.

Comment 10: The NSB states that there is a general lack of information regarding behavior of animals that have previously been exposed to industrial sounds and that no studies have looked at long-term impacts on survival or reproduction. With limited information available, NMFS cannot make a rational negligible impact finding. The NSB (in its 2008 letter) and AWL state that a lack of adequate information precludes NMFS from complying with the MMPA standards. AWL states that NMFS should defer all oil and gas-related IHAs while the necessary information is gathered.

Response: As required by the MMPA implementing regulations at 50 CFR 216.102(a), NMFS has used the best scientific information available in assessing potential impacts and whether the activity will have no more than a negligible impact on the affected marine mammal species or stock (please see response to *Comment 7*). However, while NMFS agrees that there may be some uncertainty regarding behavior of animals that have been previously exposed to industrial sounds and how that may impact survival and reproduction, the best available information supports our findings.

Industrial activities have been occurring (at varying rates) in the U.S. Arctic Ocean for decades, and the available measurable indicators do not suggest that these activities are having long-term impacts. For example, bowhead whales continued to increase in abundance during periods of intense seismic activity in the Chukchi Sea in the 1980s (Raftery *et al.,* 1995; Angliss and Outlaw, 2007), even without implementation of current mitigation requirements. Additionally, industry has been collecting data and conducting monitoring in the region for many years and will continue to do so under this IHA. Therefore, NMFS has determined that a negligible impact finding is rational.

Comment 11: AWL and the NSB (in its 2008 letter) note that Shell's activities have the potential to result in serious injury. AWL also states that in the proposed IHA, NMFS conflated two different regulatory provisions governing the issuance of IHAs when it

stated that for there to be the potential for serious injury or mortality an activity must be ''reasonably expected or likely'' to result in serious injury or mortality. AWL's letter states: ''There is no indication that NMFS considered the dire consequences of a spill when determining whether the 'potential' for serious harm exists * * * NMFS must carefully consider these risks and apply the appropriate MMPA standard.''

Response: As analyzed in the proposed IHA, NMFS has determined that Shell's activities are not likely to result in injury, serious injury, or mortality. The activities for which Shell is authorized to take marine mammals would most likely result in behavioral harassment. The mitigation and monitoring measures analyzed in the proposed IHA and required in the authorization are designed to ensure the least practicable impact on marine mammals and their habitat and the availability of marine mammals for subsistence uses.

AWL cites to NMFS' definition of ''negligible impact'' to argue that the agency has improperly conflated separate regulatory standards. ''Negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103).

NMFS believes its decision-making should be informed by whether impacts are actually reasonably likely to occur. This principle is recognized in multiple contexts, and this does not represent the conflation of separate regulatory standards (in this instance, ''negligible impact'' and ''potential to result in serious injury or mortality''). It is well recognized in the cases interpreting NEPA. For example see *Ground Zero Ctr. for Non-Violent Action* v. *United States Dept of the Navy,* 383 F.3d 1082, 1090–91 (9th Cir. 2004) (concluding that where Navy had concluded that risk was extremely remote, ''such remote possibilities do not in law require environmental evaluation.'') As explained later in this document, this interpretation reflects NMFS' longstanding practice of issuing IHAs in cases where the agency found that the potential for serious injury or mortality was ''highly unlikely'' (See 73 FR 40512, 40514, July 15, 2008; 73 FR 45969, 45971, August 7, 2008; 73 FR 46774, 46778, August 11, 2008; 73 FR 66106, 66109, November 6, 2008; 74 FR 55368, 55371, October 27, 2009). Interpreting ''potential'' to include impacts with any probability of occurring (*i.e.,* speculative or extremely low probability events) would be administratively unworkable and inconsistent with Congressional intent. NMFS' proposed IHA considered the risks of an oil spill in its analysis and used that analysis to make the final determinations here.

Comment 12: AWL states that if Shell is unable to commence drilling in the Chukchi Sea in 2012 and therefore can use the *Discoverer* in the Beaufort Sea, for purposes of this MMPA review, NMFS should assume that the *Kulluk* is used in the Beaufort Sea in order to capture the full extent of the potential effects.

Response: In conducting this MMPA review, NMFS assumed that either vessel could be used and presented a range of estimated takes and potential impacts. Additionally, in the EA, NMFS assumed use of the *Discoverer* in the Chukchi Sea and the *Kulluk* in the Beaufort Sea in order to assess the combined higher level of potential takes.

Marine Mammal Impact Concerns

Comment 13: AWL states that NMFS' uniform marine mammal harassment thresholds do not consider documented reactions of specific species in the Arctic to much lower received levels. The letter notes reactions of bowhead and beluga whales to certain activities below 160 dB. The letter also states: ''At a minimum, the proposed IHA cannot apply thresholds that fail to accurately capture potential marine mammal harassment, as required by the standards imposed by the MMPA.''

Response: For continuous sounds, such as those produced by drilling operations and during icebreaking activities, NMFS uses a received level of 120-dB (rms) to indicate the onset of Level B harassment. For impulsive sounds, such as those produced by the airgun array during the ZVSP surveys, NMFS uses a received level of 160-dB (rms) to indicate the onset of Level B harassment. Therefore, while a level of 160-dB was used to estimate take for a portion of the operations that will only occur for a total of 10–28 hours during the entire 4-month open-water season, a threshold of 120-dB was used to estimate potential takes for all species from the drilling operations and ice management/icebreaking activities.

While some published articles indicate that certain marine mammal species may avoid seismic airguns (an impulsive sound source) at levels below 160 dB, NMFS does not consider that these responses rise to the level of a take, as defined in the MMPA. While studies, such as Miller *et al.* (1999), have indicated that some bowhead whales may have started to deflect from their migratory path 21.7 mi (35 km) from the seismic source vessel, it should be pointed out that these minor course changes are during migration and have not been seen at other times of the year and during other activities. To show the contextual nature of this minor behavioral modification, recent monitoring studies of Canadian seismic operations indicate that feeding, non-migratory bowhead whales do not move away from a noise source at a sound pressure level (SPL) of 160 dB. Therefore, while bowheads may avoid an area of 12.4 mi (20 km) around a noise source, when that determination requires a post-survey computer analysis to find that bowheads have made a 1 or 2 degree course change, NMFS does not consider that deviation to rise to a level of a ''take,'' as the change in bearing is due to animals sensing the noise and avoiding passage through the ensonified area during their migration and should not be considered as being displaced from their habitat. NMFS therefore continues to estimate ''takings'' under the MMPA from impulse noises, such as seismic, as being at a distance of 160 dB (re 1 μPa).

Although it is possible that marine mammals could react to any sound levels detectable above the ambient noise level within the animals' respective frequency response range, this does not mean that such a reaction would be considered a take. According to experts on marine mammal behavior, whether a particular stressor could potentially disrupt the migration, breathing, nursing, breeding, feeding, or sheltering, etc., of a marine mammal, *i.e.,* whether it would result in a take, is complex and context specific, and it depends on several variables in addition to the received level of the sound by the animals. These additional variables include: Other source characteristics (such as frequency range, duty cycle, continuous vs. impulse vs. intermittent sounds, duration, moving vs. stationary sources, etc.); specific species, populations, and/or stocks; prior experience of the animals (naive vs. previously exposed); habituation or sensitization of the sound by the animals; and behavior context (whether the animal perceives the sound as predatory or simply annoyance), etc. (Southall *et al.* 2007). Therefore, although using a uniform SPL of 160–dB for the onset of behavioral harassment for impulse noises may not capture all of the nuances of different marine mammal reactions to sound, it is an appropriate metric to guide our evaluation of anthropogenic noise

impacts on marine mammals. Therefore, NMFS will continue to use the 160–dB threshold for determining the level of take of marine mammals by Level B harassment for impulse noise (such as from airguns). However, as mentioned earlier, NMFS used the lower threshold of 120-dB to estimate potential Level B harassment takes of marine mammals from the continuous sounds of the drillship and ice management/icebreaking vessels.

Comment 14: AWL and Dr. Bain indicate that a large-scale disruption to bowhead whales feeding near Camden Bay would exceed the negligible impact standard of the MMPA. Additionally, an assumption that displacement to another part of the range is harmless does not have sound basis. Dr. Bain also states that excluding whales from feeding areas effectively reduces the carrying capacity, which in turn reduces the rate of population increase and is equivalent to removing individuals from the population.

Response: Recent articles and reports have noted bowhead whales feeding in several areas of the U.S. Beaufort Sea. The Barrow area is commonly used as a feeding area during spring and fall, with a higher proportion of photographed individuals displaying evidence of feeding in fall rather than spring (Mocklin, 2009). A bowhead whale feeding ''hotspot'' (Okkonen *et al.,* 2011) commonly forms on the western Beaufort Sea shelf off Point Barrow in late summer and fall. Favorable conditions concentrate euphausiids and copepods, and bowhead whales congregate to exploit the dense prey (Ashjian *et al.,* 2010, Moore *et al.,* 2010; Okkonen *et al.,* 2011). Surveys have also noted bowhead whales feeding in the Camden Bay area during the fall (Koski and Miller, 2009; Quakenbush *et al.,* 2010). As noted by AWL's and Dr. Bain's letters, displacement from feeding grounds with high prey density to ones with low prey density would reduce food intake. However, there is nothing to indicate the prey densities are lower off Point Barrow than in Camden Bay.

The 2006–2008 BWASP Final Report (Clarke *et al.,* 2011a) and the 2009 BWASP Final Report (Clarke *et al.,* 2011b) note sightings of feeding bowhead whales in the Beaufort Sea during the fall season. During that 4 year period, the largest groups of feeding whales were sighted between Smith Bay and Point Barrow (hundreds of miles to the west of Camden Bay), and none were sighted feeding in Camden Bay (Clarke *et al.,* 2011a, b). In 2007, a small group of whales were seen feeding off of Kaktovik, which is just to the east of Camden Bay (Clarke *et al.,* 2011a). Clarke and Ferguson (undated) examined the raw BWASP data from the years 2000–2009. They noted that feeding behavior was noted more often in September than October and that while bowheads were observed feeding throughout the study area (which includes the entire U.S. Beaufort Sea), sightings were less frequent in the central Alaskan Beaufort than they were east of Kaktovik and west of Smith Bay. Additionally, Clarke and Ferguson (undated) and Clarke *et al.* (2011b) refer to information from Ashjian *et al.* (2010), which describes the importance of wind-driven currents that produce favorable feeding conditions for bowhead whales in the area between Smith Bay and Point Barrow. Increased winds in that area may be increasing the incidence of upwelling, which in turn may be the reason for increased sightings of feeding bowheads in the area. Clarke and Ferguson (undated) also note that the incidence of feeding bowheads in the eastern Alaskan Beaufort Sea has decreased since the early 1980s. Therefore, NMFS' statement about sufficient feeding grounds being available outside of Camden Bay is based on recent data.

Moreover, while some whales may avoid Camden Bay because of the increased sound levels while operations are ongoing, there has also been evidence that some bowheads continued feeding in close proximity to seismic sources (*e.g.,* Richardson, 2004). The sounds produced by the drillship are of lower intensity than those produced by seismic airguns. Therefore, if animals remain in ensonified areas to feed, their feeding opportunity would not be missed, and they would be in areas where the sound levels are not high enough to cause injury (as discussed in greater detail later in this document).

Lastly, Shell will cease operations in Camden Bay on August 25 and will not resume until the close of the fall bowhead whale hunts conducted by the communities of Kaktovik and Nuiqsut. Those hunts typically end in mid-September but could remain open until as late as the end of September. Therefore, early migrating whales will be afforded the opportunity to feed in Camden Bay without any operations going on in the vicinity. Based on this information and the proposed shutdown, NMFS does not anticipate that whales will be excluded from feeding opportunities in Camden Bay in numbers sufficient to reduce carrying capacity or the rate of population increase.

Comment 15: AWL states that the proposed IHA fails to adequately address impacts to bowhead whale cow/calf pairs during the spring and fall migrations.

Response: NMFS discussed potential impacts to bowhead whales, including cow/calf pairs in the Notice of Proposed IHA (76 FR 68974, November 7, 2011). In the section that discussed potential impacts to marine mammals from the specified activity, NMFS described data from studies that included observations and reactions (or lack thereof) of cow/calf pairs to different anthropogenic activities. Additionally, NMFS included discussion of cow/calf pairs in the negligible impact analysis section of that document. Mitigation measures are required in the IHA during vessel transits (*e.g.,* speed restrictions, avoiding multiple changes in direction when within 300 yards [274 m] of whales) through the Chukchi and Beaufort Seas as the vessels mobilize to Camden Bay. These measures will ensure that potential impacts are reduced to the lowest level practicable. Moreover, Shell will not enter the Chukchi Sea prior to July 1, after the conclusion of the spring bowhead whale migration.

Comment 16: AWL states that NMFS must consider whether Shell's ice management efforts have the potential to seriously injure or kill ringed seals resting on pack ice.

Response: NMFS considered the potential impacts of Shell's ice management efforts to ringed seals resting on pack ice in the Notice of Proposed IHA (76 FR 68974, November 7, 2011) in the section regarding anticipated effects on marine mammal habitat. AWL also references the MMS 2008 Draft EIS for the Beaufort Sea and Chukchi Sea Planning Areas Oil and Gas Lease Sales 209, 212, 217, and 221 (MMS, 2008), which includes a reference to Reeves (1998). Reeves (1998) noted that some ringed seals have been killed by icebreakers moving through fast-ice breeding areas. In the proposed IHA analysis, NMFS considered this information and noted that since Shell's use of the icebreakers would occur outside of the ringed seal breeding and pupping seasons in the Beaufort Sea, serious injury or mortality from use of the icebreakers would not occur.

Limited ice breaking might be needed to assist the fleet in accessing/exiting the project area if large amounts of ice pose a navigational hazard. Ice seals have variable responses to ice management activity. Alliston (1980, 1981) reported icebreaking activities did not adversely affect ringed seal abundance in the Northwest Territories and Labrador. Brueggeman *et al.* (1992)

reported ringed seals and bearded seals diving into the water when an icebreaker was 0.58 mi (0.93 km) away. However, Kanik *et al.* (1980) reported that ringed seals remained on sea ice when an icebreaker was 0.62–1.24 mi (1–2 km) away.

The drill site is expected to be mostly ice-free during July, August, and September, and the need for ice management should be infrequent. The presence of an icebreaker is primarily a safety precaution to protect the drill ship from damage. Ice seals could be on isolated floes that may need to be managed for safety. Any ice seals on floes approaching the drill ship may be disturbed by ice management activities. Ringed seals on an ice floe are anticipated to enter the water before the icebreaker contacts the ice, remain in the water as the ice moves past the drill ship, and could reoccupy ice after it has moved safely past the drill ship. As was discussed in the proposed IHA, NMFS determined that this activity and these reactions would result in Level B harassment. NMFS did not determine that there was a potential for serious injury or morality to occur from Shell's ice management efforts.

Comment 17: AWL states that NMFS should consider and impose limits on the location and timing of the drilling to ensure that impacts are reduced.

Response: The IHA requires, and Shell will implement, a cessation of activity on August 25 through the completion of the fall bowhead whale hunts conducted by the communities of Kaktovik and Nuiqsut in order to ensure no unmitigable adverse impact on the availability of bowhead whales for subsistence uses. NMFS determined that this was the only time/area closure needed to make the requisite findings under Section 101(a)(5)(D) of the MMPA.

Comment 18: Dr. Bain states that noise exposure can lead to stress, which can impair the immune system and result in an increase in mortality from disease. He also notes that impairing the energy balance can slow growth, delay onset of sexual maturity, and increase the interval between successful births, all of which can cause a reduction in the number of animals recruited to the population. Dr. Bain concludes that these impacts in Camden Bay, which serves as a resting and feeding area for bowhead whales, will create the need for greater energy expenditure, leading to the impacts noted here.

Response: While deflection may cause animals to expend extra energy, there is no evidence that deflecting around oil and gas activities (or other anthropogenic activities) is causing a significant behavioral change that will adversely impact population growth. In fact, bowhead whales continued to increase in abundance during periods of intense seismic activity in the Chukchi Sea in the 1980s (Raftery *et al.,* 1995; Allen and Angliss, 2011). Additionally, as mentioned in the response to *Comment 14,* observations of feeding bowheads during aerial surveys from 2000–2009 have been made more often in the areas east of Kaktovik and from Smith Bay to Point Barrow than in Camden Bay (Clarke and Ferguson, undated; Clarke *et al.,* 2011a,b). Therefore, deflection around the drilling area is not anticipated to result in significantly reduced feeding opportunities of bowhead whales. Regarding recruitment of calves to the population, the count of 121 calves during the 2001 census was the highest yet recorded and was likely caused by a combination of variable recruitment and the large population size (George *et al.,* 2004). The calf count provides corroborating evidence for a healthy and increasing population. Based on this information, NMFS does not expect Shell's activities to impact annual rates of recruitment or survival within the Western Arctic bowhead stock.

Comment 19: Dr. Bain states: ''Disturbance has the effect of causing the population to behave as though it is closer to carrying capacity than it would in the absence of disturbance.'' Even though the bowhead population increased in the face of industry activity in the 1990s, an increase in disturbance now (while it appears close to carrying capacity) could result in slowed growth or a loss of individuals.

Response: Based on information provided in the responses to earlier comments in this section, NMFS does not agree that population growth would be slowed as a result of Shell's proposed activity or increase the numbers of individuals lost. There are no data indicating that the population cannot continue to grow (as it has for over a decade) in the face of such activities. Shell's activities will occur in a small portion of the bowhead's range. Additionally, activities will cease for the first few weeks of the fall migration, allowing for some individuals to pass without any potential for disturbance.

Comment 20: Dr. Bain states that the increase in vessel traffic associated with Shell's project increases the risk of ship strike.

Response: NMFS acknowledges that there is always some risk of a ship strike whenever a vessel transits the ocean. However, the IHA requires Shell to implement several mitigation measures applicable to vessel operation (*e.g.,* speed restrictions in the presence of marine mammals or in inclement weather, avoiding multiple changes in direction when within 300 yards [274 m] of whales) to reduce further the low probability of a ship strike.

Comment 21: Dr. Bain notes that masking of beluga whale echolocation signals by noise and temporary and permanent threshold shifts will impair the ability of belugas to find food. This mechanism is in addition to impaired abilities to find food due to displacement from high quality feeding areas.

Response: As noted in the proposed IHA, beluga whale echolocation signals have peak frequencies from 40–120 kHz, which are far above the frequency range of the sounds produced by the devices to be used by Shell during the Camden Bay exploratory drilling program. Therefore, those industrial sounds are not expected to interfere with echolocation. Additionally, the source levels of the drillships are lower than the thresholds used by NMFS for the onset of auditory injury. Shutdown and power-down measures are required in the IHA when the airguns are in use to help reduce further the extremely low likelihood of temporary threshold shift (a Level B harassment). Lastly, there are no data indicating that Camden Bay is an important feeding area for beluga whales.

Comment 22: Dr. Bain states: ''Support vessel traffic will be disturbing to the part of the beluga population using lagoons and other nearshore habitats.''

Response: For Shell's Camden Bay exploratory drilling program, transfer of supplies will occur either from the Deadhorse/West Dock shorebase or Dutch Harbor. For much of the early part of the operational season, belugas will not be present in high numbers in the Beaufort Sea. Transits through the Chukchi Sea to help support the Camden Bay, Beaufort Sea, program will occur further offshore, and support vessels will not enter the lagoons used by belugas in the Chukchi Sea. Moreover, as mentioned earlier in this document, Shell is required to implement several vessel mitigation measures to reduce impacts to marine mammals. NMFS analyzed the entirety of Shell's operations (including support vessel activities) and has included measures to reduce potential disturbance from all aspects of the operations.

Comment 23: Dr. Bain states that hearing loss or masking from exposure to high levels of noise would impair bowhead whales' ability to hear vocalizations. He also states that hearing

loss and masking would increase vulnerability to predation or ship strike, which in turn could increase mortality.

Response: As noted in the response to *Comment 21,* the source levels of the drillships are lower than the thresholds used by NMFS for the onset of auditory injury. Shutdown and power-down measures are required in the IHA when the airguns are in use to help reduce further the extremely low likelihood of temporary threshold shift (a Level B harassment). As noted in the proposed IHA, masking effects are anticipated to be limited. Annual acoustic monitoring near BP's Northstar production facility during the fall bowhead migration westward through the Beaufort Sea has recorded thousands of calls each year (for examples, see Richardson *et al.,* 2007; Aerts and Richardson, 2008). To compensate for and reduce masking, some mysticetes may alter the frequencies of their communication sounds (Richardson *et al.,* 1995a; Parks *et al.,* 2007). Additionally, if some individuals avoid the drilling area, impacts from masking will be even lower. There is no evidence to suggest that any masking would increase the likelihood of death.

Acoustic Issues/Concerns

Comment 24: AWL and Dr. Bain question the radius of the 120 dB isopleth for the *Kulluk.* AWL states that the 120 dB distance is not conservative enough and therefore understates potential impacts to marine mammals. Dr. Bain indicates that the problems arise from differences in empirical data and that the modeling used does not capture the most efficient mode of propagation.

Response: The commenters cite to a study conducted by Hall *et al.* (1994) in noting that Shell did not use a conservative enough 120-dB radius for the *Kulluk.* Blackwell and Greene (unpub.) conducted an assessment of Hall *et al.* (1994) in comparison to Greene (1987). That assessment is summarized here. Blackwell and Greene (unpub.) found that there are two main issues with the information presented in the Hall *et al.* (1994) report. First, the authors did not characterize the sounds produced by the *Kulluk* during specific activities, such as drilling, but then assume that the sounds recorded tens or even more than 100 km away are indeed those of the *Kulluk.* In other words, they have no way of demonstrating that the sounds they recorded at tens of km from the *Kulluk* are actually made by the *Kulluk* or whether those sounds are made by other sources, such as vessels unrelated to the drilling project.

Second, the authors use propagation models that do not take into account scattering and absorption losses, which become important at distances of tens of km. The authors then use these models to make or support extrapolations to large distances, up to 120 km from the drilling operation. Also, as noted in the response to *Comment 4,* the source levels for the *Kulluk* used by the modeling study are considered an overestimate since they include the contributions of support vessels. Greene (1987), from which these measurements were taken, points out that measurements at 1 km from the drillship are a composite of the sounds emitted from the drillship and other vessels. Based on this information, NMFS has determined that an appropriate 120-dB radius was considered when assessing impacts to marine mammals.

Comment 25: AWL states that the proposed IHA is inadequate because it relies on modeling for the Sivulliq prospect to estimate the *Kulluk's* drilling noise despite the fact that sounds are ''expected to propagate shorter distances at the Sivulliq site.'' In contrast, NMFS took a ''precautionary approach'' when estimating the effects of drilling with the *Discoverer,* using the greater Torpedo site distance.

Response: Modeled predictions were performed for the drillship *Explorer* operating at both Sivulliq (site K) and Torpedo (site N) and for the *Kulluk* operating at Sivulliq only. It is true that the maximum propagation distance to the 120 dB re 1 μPa for the *Explorer* was greater at the Torpedo site, but the difference was less than 3% (the distances were 2.99 mi [4.81 km] and 3.06 mi [4.93 km] at Sivulliq and Torpedo, respectively). This is likely due to the fact that Torpedo is approximately 3.7 mi (6 km) further offshore, and sound from this location reaches into deeper water, even though the wellsite depths are almost identical (108.3 ft [33 m] at Torpedo vs. 111.5 ft [34 m] at Sivulliq). Remodeling of the *Kulluk* operation at Torpedo was deemed unnecessary due to the similarity of the predicted noise footprints at these two sites and because any variability would be conservatively accounted for by the use of the 1.5 correction factor. Additionally, as noted previously, Shell will conduct SSV measurements of all equipment once on location.

Comment 26: Dr. Bain states that the correction factor of 1.5 applied to the distance to the 120 dB contour is inadequate to conservatively account for the variability.

Response: The concern raised here is that the sound speed profile used for acoustic modeling of drill rig noise may not account for changes to the salinity and temperature profile that could influence and create variability in sound propagation, and the resulting variability might lead to conditions in which model estimates would not be conservative. While significant structure can form in the sound speed profile, the profile used for this modeling study was taken from the GDEM database for the corresponding locations and timing (month of September was used). The specific profile chosen (see Figure 3) has increasing sound speed with depth over the full water column. This profile leads to upward acoustic refraction that causes propagating sounds to bend up, thereby reducing interactions with the seabed. This situation generally reduces acoustic transmission loss as a result of acoustic energy being lost due to reflection and scattering from the bottom. It is believed to produce longer propagation distances than the stratified profile that sometimes forms with warmer high speed water overlying cooler water. That profile would be downward-refracting and would lead to more bottom interaction and sound energy loss. Therefore, a correction factor of 1.5 is appropriate in this circumstance.

Marine Mammal Biology Concerns

Comment 27: AWL states that information on the essential spatial and temporal habitat needs of beluga whales is limited, severely compromising the ability to assess the impacts of Shell's proposal.

Response: As noted in responses to earlier comments in this document, as required by the MMPA implementing regulations at 50 CFR 216.102(a), NMFS has used the best scientific information available in assessing potential impacts and whether the activity will have no more than a negligible impact on the affected marine mammal species or stock. However, while NMFS agrees that there may be some uncertainty regarding spatial and temporal habitat needs of belugas, the best available information supports our findings.

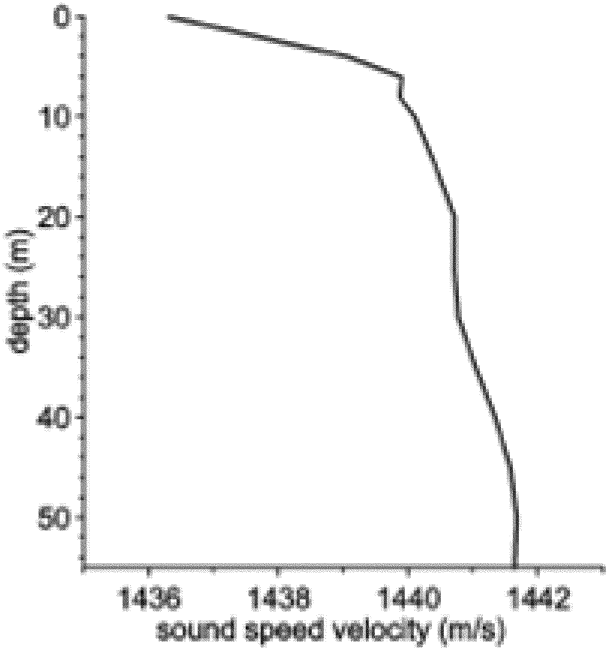

Figure 3. Sound speed profile used in drill rig modeling.

Comment 28: AWL states that any final IHA must analyze potential effects of all of Shell's operations on ribbon, ringed, spotted, and bearded seals and must do so considering the distinct habitats and life histories for each. AWL also notes that portions of the ringed and bearded seal populations are proposed for listing under the Endangered Species Act (ESA) and that those listings were prompted, in part, by the effects of climate change on ice seal habitat. The added stress of diminishing habitat should be considered in NMFS' analysis here.

Response: NMFS has considered the potential effects of Shell's activities on all four ice seal species in the context of the distinct habitats and life histories for each. In the proposed IHA, NMFS acknowledged the importance of sea ice to various life functions, such as breeding, pupping, and resting. Several of these species perform these functions on sea ice outside of the Camden Bay area. The ringed seal, which does construct subnivean lairs in the Beaufort, does not pup during the time when Shell would be operating. NMFS' EA for this action considers the impacts of climate change on ice seals in the region.

Comment 29: AWL notes the recent outbreak of skin lesions and sores among ringed seals. The letter states that NMFS should consider the weakened state of the population as part of the analysis. They also note that some spotted and bearded seals have shown symptoms as well.

Response: NMFS began receiving reports of the outbreak in summer 2011 and declared an unusual mortality event in December 2011. An investigative team was established, and testing has been underway. Testing has ruled out numerous bacteria and viruses known to affect marine mammals, including Phocine distemper, influenza, Leptospirosis, Calicivirus, orthopoxvirus, and poxvirus. Foreign animal diseases and some domestic animal diseases tested for and found negative include foot and mouth disease, VES, pan picornavirus, and Rickettsial agents. Last month, preliminary radiation testing results were announced which indicate radiation exposure is likely not a factor in the illness. Further quantitative radionuclide testing is occurring this spring. Results will be made publicly available as soon as the analyses are completed.

Reports from the NSB indicate that hunters during early winter observed many healthy bearded and ringed seals. The seals behaved normally: They were playful, curious but cautious, and maintained distance from boats. No lesions were observed on any seals. During December 2011 and January 2012, 20–30 adult ringed seals were harvested from leads in the sea ice in the NSB. Based on local reports, these seals had neither hair loss nor lesions. However, during late February 2012, a young ringed seal with nodular and eroded flipper lesions but no hair loss was harvested. Additionally, necropsy results of the internal organs were consistent with animals with this disease that continues to affect ice seals in the NSB and Bering Strait regions. Chukotka hunters did not report any sightings or harvest of sick and/or hairless seals in December 2011 and January 2012.

NMFS has considered this information as part of its analysis in making the final determinations for this IHA. The data available to date do not indicate that this has weakened the population. Moreover, Shell's activities are anticipated to take less than 1% of the population of all of the stocks of all three species noted by the commenter. The sound that will be produced by Shell's activities is of a low level. Therefore, even if the population were weakened from this outbreak it would not change our evaluation of the impacts of this activity at the population level.

Comment 30: Dr. Bain states that work will be underway during the peak of the beluga calving season, and mothers with calves under 6 months of age are most likely to occur near the drill sites and are the most vulnerable to harm from the project.

Response: While Shell's exploratory drilling program will overlap temporally with the beluga calving season, it will not overlap spatially. Tagging data from the 1990s indicates that belugas from the eastern Beaufort Sea stock will be in

Canadian waters (*i.e.,* Mackenzie Delta and Amundsen Gulf) in the summer (July and August) and do not start migrating through the Beaufort Sea until September but do so far offshore (Richard *et al.,* 2001; DFO, 2000). In the summer months, belugas from the eastern Chukchi Sea stock are typically found in Kasegaluk Lagoon and Kotzebue Sound (Suydam *et al.,* 2001). Shell will transit far offshore so as not to disturb the summer beluga hunts conducted in Kasegaluk Lagoon and therefore will avoid interactions with mothers and calves. Tagging data of belugas from this stock have also indicated that they travel far offshore in the Beaufort Sea to Canadian waters later in the summer (Suydam *et al.,* 2001). Based on this information, it is unlikely that many beluga mother/calf pairs will pass within the 120-dB isopleths of Shell's Camden Bay exploratory drilling program. Mitigation and monitoring measures will ensure that impacts to any belugas that do occur in the vicinity of the program will be at the lowest level practicable.

Comment 31: Dr. Bain states the population censuses for the eastern Chukchi Sea and Beaufort Sea stocks of belugas have not been conducted in the last 10 years and that population trends are unknown. No evidence of population growth was seen when censuses were still being conducted.

Response: In accordance with NMFS' implementing regulations at 50 CFR 216.102(a), NMFS used the best available science to make the requisite findings for issuance of the IHA. That science indicates that only small numbers of belugas will be taken and that those incidental takings will have no more than a negligible impact on the affected beluga stocks and will not have an unmitigable adverse impact on the availability of those belugas for taking for subsistence uses.

Density and Take Estimate Concerns

Comment 32: Shell states that the value of 38 as the maximum estimated take of beluga whales was incorrect in the IHA application. The maximum estimated take of beluga from the *Kulluk* drilling sounds should be 65, not 38. The miscalculation was a result of a cell reference error in the ''Total'' table (Table 6–12 in Shell's IHA application).

Response: NMFS agrees that it continued this error in the proposed IHA by not adding in the potential takes from ice management/icebreaking and the ZVSP airguns. Therefore, NMFS has increased the estimated take of beluga whales from Shell's operations (*i.e.,* use of the *Kulluk,* ice management/icebreaking, and ZVSP airgun usage) to 65. This changes the percentage of stock or population potentially taken from 0.1% to 0.2%.

Comment 33: The NSB and Dr. Bain state that because some bowhead whales have shown responses to noise below 120 dB and only individuals within the 120 dB isopleth were considered taken, NMFS' estimate of take by harassment is likely biased low.

Response: As indicated in the response to *Comment 13,* although it is possible that marine mammals could react to any sound levels detectable above the ambient noise level within the animals' respective frequency response range, this does not mean that such a reaction would be considered a take. According to experts on marine mammal behavior, whether a particular stressor could potentially disrupt the migration, breathing, nursing, breeding, feeding, or sheltering, etc., of a marine mammal, *i.e.,* whether it would result in a take, is complex and context specific, and it depends on several variables in addition to the received level of the sound by the animals. The 120-dB acoustic criteria is a generalized threshold based on the available data that is intended to assist in the accurate assessment of take while acknowledging that sometimes animals will respond at received levels below that and sometimes they will not respond in a manner considered a take at received levels above 120 dB. NMFS, therefore, does not agree that the estimates of take by harassment are biased low.

Comment 34: AWL states that there is no indication that the proposed IHA considered marine mammal movement during the time period over which the activities will occur. The letter also states that despite the fact that belugas will be migrating in the area, the proposed IHA does not consider their movement when calculating take, citing to the lower beluga densities and a lack of detailed data. Dr. Bain also notes that density and ensonified area can be used to calculate the number of individuals present at any given moment, but different individuals will be present at different times.

Response: During migration, there are clear changes in the density of animals that pass through a particular area of ocean, and ''take'' estimates attempt to consider this. In other situations, it is difficult to account for the movements of individuals within a relatively small area of ocean. Using densities provides the best estimate of animals though it assumes that animals are distributed evenly in the environment, which is not correct. This approach has, however, been used for most statistical approaches to dealing with animals in such situations, and NMFS determined that it is an appropriate and robust approach to use in this instance. In most cases, it overestimates the number of animals actually ''taken'' by the activities because it assumes no avoidance of the area by individuals.

Comment 35: AWL states that NMFS must first account for the movement of marine mammals during the time over which ice management/icebreaking will occur. Also, any final IHA must also assess exactly when Shell's ice management/icebreaking will occur and also consider the effects of both ice management vessels operating simultaneously but at some distance apart. It cannot be assumed that such activities will be neatly confined to the beginning and end of Shell's operations.

Response: See the response to *Comment 34* regarding accounting for the movement of marine mammals. Because it cannot be predicted with absolute certainty as to when ice may be present in the area that could pose a risk to drilling operations, it is difficult to state with absolute certainty when Shell's ice management/icebreaking will occur. Using data on Arctic sea ice presence from recent years, Shell estimated the most likely times that such activities would be required. Shell will also implement an Ice Management Plan (IMP) to ensure real-time ice and weather forecasting is conducted in order to identify conditions that might put operations at risk and will modify activities accordingly. The description of Shell's activities in the proposed IHA indicated that both ice management vessels could be operating simultaneously at different locations and was considered in the analysis.

Comment 36: Dr. Bain states that Shell's Camden Bay drill sites are in a location where the migration corridor is narrow and that this will require nearly all bowheads passing by a drill site while it is active to be exposed to biologically significant levels of noise.

Response: While some bowhead whales show behavioral reactions (*e.g.,* avoidance, increase swim speed, etc.) to drilling and other industry activities, not all behavioral reactions rise to the level of biological significance (NRC, 2000, 2005). Many of the animals that migrate past Shell's operations will do so on the outer edge of the 120-dB isopleth, NMFS' threshold for Level B (behavioral) harassment, where reactions are likely to be less severe. Additionally, Shell will cease operations on August 25 and will not resume until the close of the fall bowhead whale hunts conducted by the communities of Kaktovik and Nuiqsut (which is typically mid- to late

September). Therefore, those whales that pass through the migration corridor during the first few weeks of the migration period will do so during a period of time without any activity being conducted by Shell.

Subsistence Use Concerns

Comment 37: The AEWC and ICAS state that they have expressed concerns about direct impacts to the subsistence hunts resulting from deflection of bowhead whales by vessel traffic and underwater noise, as well as from icebreaking and geophysical exploration. The letters note that concerns about direct and indirect threats to hunting arise from discharge and associated impacts on water quality, the risk of an oil spill, and the cumulative impacts from the sum of all commercial and industrial activities occurring in our waters. Under the MMPA, NMFS has an obligation to ensure that any proposed activities do not have an unmitigable adverse impact on our subsistence activities.

Response: NMFS analyzed the potential impacts from the activities noted here in the proposed IHA and the EA. Potential impacts to the availability of marine mammals for subsistence uses were included in those analyses. Based on the mitigation measures contained in the IHA to ensure the availability of marine mammals for subsistence uses (including a temporary shutdown of activities during the fall bowhead hunt and collection of drilling muds and certain waste streams), NMFS determined that Shell's activities would not have an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses. Additionally, Shell worked independently with the AEWC to develop and sign a CAA, which also includes measures to reduce impacts to bowhead whaling from their drilling operations and other activities.

Comment 38: The AEWC expressed concern about potential impacts to the subsistence hunt in the Chukchi and Bering Seas communities from end of season transits and asks that NMFS address this issue in its response to comments, determining whether vessel transit could impact the fall subsistence hunt in Wainwright, Point Lay, and Point Hope, or the Bering Sea communities. The AEWC also requests that NMFS and Shell amend the Communications Plan in a way that allows Chukchi and Bering Sea communities to be notified when Shell's vessels are approaching subsistence use areas. In the past, whaling captains have asked that Shell begin to transit out of the Chukchi Sea by October 31 for vessels heading to Dutch Harbor or points south.

Response: Shell signed the 2012 CAA with the AEWC on March 26, 2012. In the signed 2012 CAA, Shell agreed to establish Communication Centers in the Chukchi and Bering Sea communities and will conduct such communications in the manner laid out in the CAA. The CAA also requires that vessel transits through the Chukchi Sea should remain as far offshore as weather and ice conditions allow and at all times at least 5 mi (8 km) offshore during transit. Because Shell will abide by these measures, as indicated in the signed CAA and included in the IHA, NMFS has determined that fall vessel transits through the Chukchi Sea will not impact the hunts at Wainwright, Point Lay, and Point Hope. Shell's IHA is valid for drilling operations through October 31. Therefore, demobilization and transit out of the area must begin by that date. Information shared with NMFS from hunters on St. Lawrence Island in 2011 noted that the fall bowhead whale hunts typically occur the week of Thanksgiving. Shell will begin to demobilize and transit south towards Dutch Harbor beginning on October 31 and will avoid being in the area when hunters from Gambell and Savoonga (on St. Lawrence Island) are actively hunting bowhead whales.

Comment 39: The AEWC asks that NMFS require Shell to disclose through the Communications Plan the location of its oil spill response fleet and oil spill tanker in order to ensure that Shell does not station the vessels in a location that could potentially interfere with the fall hunt in Barrow, which often continues after the conclusion of the Nuiqsut and Kaktovik hunts.

Response: As agreed to in the signed CAA, Shell will move the drillship and other related vessels to a location that will not cause interference with the hunts in Kaktovik, Nuiqsut, and Barrow.

Comment 40: The MMC states that negotiating and completing a CAA related to bowhead whales is useful but also prompts the question as to why such agreements are not being developed with subsistence hunters taking other species that might be affected by oil and gas operations. With that in mind, the MMC recommends that NMFS issue the requested IHA contingent upon the successful negotiation of a CAA between Shell and the AEWC and the bowhead whale hunters it represents. Similarly, the MMC recommends that NMFS facilitate the development of more comprehensive CAAs that involve other species and potentially affected communities and co-management organizations and take into account all potential adverse effects on all marine mammal species taken for subsistence purposes.

Response: The signing of a CAA is not a requirement to obtain an IHA. The CAA is a document that is negotiated between and signed by the industry participant, AEWC, and the Village Whaling Captains' Associations. NMFS has no role in the development or execution of this agreement. Although the contents of a CAA may inform NMFS' no unmitigable adverse impact determination for bowhead (and to some extent beluga) whales, the signing of it is not a requirement. Regulations promulgated pursuant to the 1986 MMPA amendments require that for an activity that will take place near a traditional Arctic hunting ground, or may affect the availability of marine mammals for subsistence uses, an applicant for MMPA authorization must either submit a POC or information that identifies the measures that have been taken to minimize adverse impacts on subsistence uses. Shell submitted a POC with its IHA application, which was available during the public comment period. Additionally, as indicated earlier in this document, Shell signed the 2012 CAA with the AEWC on March 26, 2012.

NMFS (or other Federal agencies) has no authority to require agreements between third parties, and NMFS would not be able to enforce the provisions of CAAs because the Federal government is not a party to the agreements. Regarding the CAA signed with the AEWC, NMFS has reviewed that document, as well as Shell's POC. The majority of the conditions are identical between the two documents. NMFS has also included measures from the 2012 CAA between Shell and the AEWC relevant to ensuring no unmitigable adverse impact on the availability of marine mammals for subsistence uses. NMFS has also determined that the measures in the POC related to species other than the bowhead whale are sufficient to ensure no unmitigable adverse impact on the availability of those species for subsistence uses.

In the recently released Draft EIS on the Effects of Oil and Gas Activities in the Arctic Ocean (NMFS, 2011), NMFS began to examine both the CAA and POC processes. There are strengths and weaknesses in how both processes are currently executed. NMFS is committed to working with the AEWC, Alaska Beluga Whale Committee, and Ice Seal Committee and other stakeholders to improve upon and combine these processes, as appropriate.

Comment 41: The NSB appreciates Shell's effort to mitigate impacts to the bowhead hunt; however, Shell's proposed activities may adversely impact subsistence hunting of other species. Mitigation measures are needed to protect eastern Chukchi Sea belugas and beluga hunters. Restricting transit through the Chukchi Sea until the hunt is completed at Point Lay would be an effective measure. NMFS must also evaluate impacts to seals from the transit of vessels associated with Shell's planned activities and how that may impact seal hunts.

Response: In the proposed IHA, NMFS evaluated potential impacts to subsistence hunts of all species in the project area. Beluga whales and ice seals are not typically hunted in Camden Bay from July through October. The primary periods during which sealing takes place occur outside of Shell's operating time frame, and some of the more established seal hunts that do occur in the Beaufort Sea, such as the Colville delta area hunts, are located a significant distance (in some instances 100 mi [161 km] or more) from Shell's drill sites.

NMFS understands the NSB's concerns regarding vessel transit and how that may affect hunts in the Chukchi Sea communities, especially the summer beluga hunt at Point Lay. Shell has committed to transiting offshore of the hunt and to communicating with Point Lay via the Communication Center regarding vessel transits to ensure that they remain outside of the hunting areas. These measures were part of Shell's POC and are included in the IHA. Therefore, NMFS has determined that there will not be an unmitigable adverse impact on the availability of beluga whales and ice seals for taking for subsistence uses.

Mitigation and Monitoring Concerns

Comment 42: Shell states that the 1,500 ft (457 m) flight altitude restriction mitigation measure applies to all ''non-marine mammal observation'' flights, thus allowing for observer flights to fly lower as needed to afford the best possible marine mammal sightings and identifications.

Response: NMFS concurs. The measure was written in two different ways in several parts of the proposed IHA. One way only exempted takeoffs, landings, and emergency situations from the 1,500 ft (457 m) altitude restriction, while in other parts of the document marine mammal monitoring flights were also exempted. NMFS has eliminated the discrepancy in the final IHA. The exemption now applies to takeoffs, landings, emergency situations, and marine mammal monitoring flights.

Comment 43: The MMC asks how Shell will monitor the large harassment zone of the drill rig to estimate actual numbers of takes? The MMC recommends that NMFS require Shell to develop and employ a more effective means to monitor the entire corrected 120-dB re 1 μPa harassment zone for the presence and movement of bowhead whales and other marine mammals and for estimating the actual number of takes that occur. Monitoring only a portion of the harassment zone and then extrapolating to estimate the total number of takes is reasonable only if the company and NMFS have a basis for making assumptions about the composition and distribution of marine mammals throughout the areas potentially affected.

Response: While the 120-dB harassment zone from the drill rig will likely extend beyond what the observers can effectively see from the drill rig, Shell will place Protected Species Observers (PSOs) on all vessels used for the drilling operations. Many of these vessels will be located several kilometers from the drill rig, thus expanding the visual observation zone. Moreover, Shell will supplement its vessel-based operations with marine mammal aerial observations, thus expanding the visual observation zone. PSOs will be stationed on the vessels to observe from the best vantage points available and will be equipped with ''Big-eyes'' and other binoculars to aid in detection. Additionally, NMFS does not contend that PSOs will be able to see every marine mammal within the harassment zone. Using the vessel-based and aerial platforms to detect and count marine mammal sightings and then to use those observations in conjunction with sightings from other surveys such as BWASP is reasonable for estimating maximum take.

Comment 44: The MMC recommends that NMFS track and enforce Shell's implementation of mitigation and monitoring measures to ensure that they are executed as expected.

Response: During Shell's operating season, NMFS will meet weekly with staff from BOEM, the Bureau of Safety and Environmental Enforcement (BSEE), and the U.S. Fish and Wildlife Service (USFWS) to review and analyze proprietary operations reports, including PSO logs to ensure environmental and regulatory compliance. Additionally, BSEE will have inspectors on the drilling platform 24 hours a day/7 days a week.

Comment 45: The NSB, MMC, and AWL state that NMFS should require Shell to make monitoring data available to the public. The NSB states that in addition to the monitoring data, locations and activities of drill rigs, icebreakers, and support vessels should also be made publicly available.

Response: In accordance with an agreement between NOAA, Shell, ConocoPhillips, and Statoil, data from Shell sponsored science and monitoring efforts and from those that are jointly funded by the signatory parties will be made available to NOAA and to the public. The manner of release, format of released data, site(s) of data repository, and rights of data use are currently being addressed by a working group. Public access to these data is being addressed through this process and would not be enhanced by conditions imposed through the IHA.

Shell has committed to the support and operation of communication centers in Kaktovik, Nuiqsut, Barrow, Wainwright, Point Lay, Point Hope, Kivalina, Kotzebue, St. Lawrence Island, and Wales. As required by the CAA (which Shell signed on March 26, 2012), all Shell vessels operating in the Beaufort and Chukchi Sea will contact the nearest communication center every 6 hours and provide the following information:

(A) Vessel name, operator of vessel, charter or owner of vessel, and the project the vessel is working on;

(B) Vessel location, speed, and direction; and

(C) Plans for vessel movement between the time of the call and the time of the next call. The final call of the day will include a statement of the vessel's general area of expected operations for the following day, if known at that time.

The vessels will also contact the nearest communications center in the event that operations change significantly from those projected during the prior 6 hour reporting period. The communication centers will be generally open and available to the public and will provide a capability for direct communications between subsistence hunters and Shell vessels. Shell will operate these centers for the entire duration of operations in the Chukchi and Beaufort Seas, rather than limiting operations to the periods of the bowhead subsistence hunt.

Since 2010, NMFS has required operators in the Arctic to provide vessel tracks during the season as a part of the required 90 day report. Given that the potentially impacted public are provided with multiple avenues with which they can acquire vessel location and activity data, and that vessel tracks will be made available to the general

public at the end of the season, there is no additional need for real-time public access to vessel location information. Further, given that there are current and legitimate concerns with respect to security of vessels, crew, and operations, public access to vessel locations and activities may not be in the best interest of safe marine operations.

Cumulative Impact Concerns

Comment 46: The MMC noted that it is important to consider that some of the animals may already be in a compromised state as a result of climate disruption, stochastic variation in food resources, or variation in physiological state due to normal life history events (*e.g.,* molting or reproduction in pinnipeds).

Response: In the Notice of Proposed IHA (76 FR 68974, November 7, 2011), NMFS considered others factors, including when pinnipeds and cetaceans conduct varying life history functions and whether or not those activities overlap in time and space with Shell's Camden Bay exploratory drilling program. Pupping and breeding for most ice seals do not occur in Camden Bay. Pupping of ringed seals, which do build subnivean lairs in the Beaufort Sea, occurs outside of Shell's operating time frame in the Beaufort Sea. Additionally, in the EA for this action, NMFS analyzed impacts of other activities and factors, such as climate disruption. Based on this information, NMFS determined that the taking by harassment from Shell's activities would have no more than a negligible impact on the affected marine mammal species or stocks.

Comment 47: Dr. Bain states that cumulative effects are of concern and that the drilling in the Beaufort Sea cannot be considered separately from other planned activities, including similar activities in the Chukchi Sea. Further, if exploratory drilling results in future production, the cumulative effect of production in the core of the migration route needs to be considered.

Response: NMFS analyzed the combination of both of Shell's proposed 2012 drilling programs in its EA, as well as other seismic exploration and vessel transportation in the Beaufort and Chukchi Seas. Additionally, NMFS' response to *Comment 7* explains how other factors were taken into consideration when analyzing this proposal under the MMPA. Because it is unknown if Shell will successfully find oil during its exploratory drilling program, it is premature and speculative to discuss potential impacts from building a production facility in Camden Bay. If Shell finds oil, it would be several years before construction of a production facility would begin. Additional environmental analyses would be required at that time.

ESA Statutory Concerns

Comment 48: AWL notes that the proposed IHA indicates that NMFS will initiate ESA section 7 consultation for three listed marine mammal species but then cites to the Chukchi Sea Notice of Proposed IHA (76 FR 70007, November 9, 2011). NMFS, however, should not overlook bearded and ringed seals in its consultation.

Response: The Notice of Proposed IHA (76 FR 68974, November 7, 2011) for this action noted that NMFS would initiate ESA section 7 consultation for the bowhead whale. However, NMFS has included ringed and bearded seals in the Biological Opinion prepared for this action, which analyzes effects to ESA-listed species, as well as species proposed for listing.

Comment 49: AWL states that the conclusions reached in NMFS' 2008 and 2010 Biological Opinions for oil and gas activities in the Arctic regarding effects of oil spills must be reconsidered.

Response: NMFS' Office of Protected Resources Permits and Conservation Division requested consultation under section 7 of the ESA with the NMFS Alaska Regional Office Endangered Species Division. A new Biological Opinion has been prepared for this IHA. In April, 2012, NMFS finished conducting its section 7 consultation and issued a Biological Opinion, and concluded that the issuance of the IHA associated with Shell's 2012 Beaufort Sea drilling program is not likely to jeopardize the continued existence of the endangered bowhead whale, the Arctic sub-species of ringed seal, or the Beringia distinct population segment of bearded seal. No critical habitat has been designated for these species, therefore none will be affected.

NEPA Statutory Concerns

Comment 50: The AEWC and NSB state that NMFS must include information regarding upcoming oil and gas activities planned for the Beaufort and Chukchi Seas in 2012 in U.S., Russian, and Canadian waters, as well as reasonably foreseeable future drilling activities. Both letters request that NMFS develop a method for assessing impacts from multiple drilling operations and to ascertain the significance of multiple exposures to underwater noise, ocean discharge, and air pollution and vessel traffic.

Response: NMFS' EA contains information on upcoming activities in U.S., Russian, and Canadian waters for the 2012 season, as well as reasonably foreseeable future drilling activities in the project area. The EA qualitatively describes how marine mammals could be impacted from multiple activities in a given season and what the results of those exposures might be.

Comment 51: NSB states that NMFS should be required to prepare an EIS, not an EA, to adequately consider the potentially significant impacts of the proposed IHAs, including the cumulative impacts of Shell's proposed activities.

Response: NMFS' 2012 EA was prepared to evaluate whether significant environmental impacts may result from the issuance of IHAs to Shell for the take of marine mammals incidental to conducting exploratory drilling programs in the U.S. Beaufort and Chukchi Seas, which is an appropriate application of NEPA. After completing the EA, NMFS determined that there would not be significant impacts to the human environment and accordingly issued a FONSI. Therefore, an EIS is not needed for this action.

Comment 52: The NSB states that NMFS should consider the cumulative impact of discharge and whether bioaccumulation of contaminants could have lethal or sub-lethal effects on bowhead whales and other marine mammals. NMFS should then synthesize that information into a health impact assessment looking at the overall combined effect to the health of the local residents.

Response: As explained by the Council on Environmental Quality, an EA is a concise document and should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. See NEPA's Forty Most Asked Questions, 46 FR 18026 (March 23, 1981); 40 CFR 1508.9(b). The EA prepared for this action contains a discussion of water quality, including contaminants, in sections 3.1.5.2 and 4.2.1.5 and incorporates additional material by reference. It also notes that contaminants have the potential to bioaccumulate in marine mammals, but that monitoring has shown that oil and gas developments in the Alaskan Beaufort Sea ''are not contributing ecologically important amounts of petroleum hydrocarbons and metals to the near-shore marine food web of the area'' (EA at 4.2.2.3). Given that the studies done so far have detected no

bioaccumulation of contaminants as a result of oil and gas activity in the Beaufort Sea, it is only a remote and highly speculative possibility that discharges from Shell's exploration drilling program could contribute to cumulative impacts from contaminants that could ultimately result in health impacts to local residents. Agencies are not required to consider such remote or speculative impacts in an EA (see *Ground Zero Ctr. for Non-Violent Action* v. *United States Dept of the Navy,* 383 F.3d 1082, 1090 (9th Cir. 2004)). However, NMFS acknowledges the importance of this issue to residents of the North Slope Borough, and has included a more extensive discussion of environmental contamination and its potential effects in the Draft EIS on Effects of Oil and Gas Activities in the Arctic Ocean (NMFS, 2011).

Comment 53: AWL states that it would be illegal for NMFS to approve the IHA without completing the EIS that is in progress. NSB also states that it would be shortsighted to allow Shell to proceed on a 1-year IHA when the impacts could negatively affect arctic resources and preclude options that could be developed in the forthcoming EIS.

Response: While the Final EIS is still being developed, NMFS conducted a thorough analysis of the affected environment and environmental consequences from exploratory drilling in the Arctic in 2012 and prepared an EA specific to the two exploratory drilling programs proposed to be conducted by Shell. The analysis contained in that EA warranted a Finding of No Significant Impact.

The analysis contained in the Final EIS will apply more broadly to multiple Arctic oil and gas operations over a period of 5 years. NMFS' issuance of IHAs to Shell for the taking of several species of marine mammals incidental to conducting its exploratory drilling operations in the Beaufort and Chukchi Seas in 2012, as analyzed in the EA, is not expected to significantly affect the quality of the human environment. Additionally, the EA contained a full analysis of cumulative impacts.

Oil Spill Concerns

Comment 54: The NSB and MMC state that Shell's application and NMFS' Notice of Proposed IHA (76 FR 68974, November 7, 2011) do not contain adequate information regarding effects of a major oil spill. The MMC notes that NMFS is too dismissive of the potential for a large oil spill. The NSB requests clarification on how NMFS considers the risk of an oil spill when issuing MMPA authorizations for exploratory drilling activities and contends that NMFS must analyze the potential harm to marine mammals and subsistence activities. The NSB also states that Shell's application lacks any information about potential take resulting from a release of oil in any amount.

Response: NMFS' Notice of Proposed IHA contained information regarding measures Shell has instituted to reduce the possibility of a major oil spill during its operations, as well as potential impacts on cetaceans and pinnipeds, their habitats, and subsistence activities (*see* 76 FR 68992–68996, 69001, and 69024, November 7, 2011). NMFS' EA also contains an analysis of the potential effects of an oil spill on marine mammals, their habitats, and subsistence activities. Much of that analysis is incorporated by reference from other NEPA documents prepared for activities in the region. There is no information regarding potential take from a release of oil because an oil spill is not a component of the ''specified activity.''

DOI's BOEM and BSEE are the agencies with expertise in assessing risks of an oil spill. In reviewing Shell's Camden Bay Exploration Plan and Regional OSRP, BOEM and BSEE determined that the risk was low and that Shell will implement adequate measures to minimize the risk. Shell's OSRP: identifies the company's prevention procedures; estimates the potential discharges and describes the resources and steps that Shell would take to respond in the unlikely event of a spill; and addresses a range of spill volumes, ranging from small operational spills to the worst case discharge calculations required to account for the unlikely event of a blowout. Additionally, NOAA's Office of Response and Restoration reviewed Shell's OSRP and provided input to DOI requesting changes that should be made to the plan before it should be approved. Shell incorporated NOAA's suggested changes, which included updating the trajectory analysis and the worst case discharge scenario. Based on these revisions, NOAA Ocean Service's Office of Response and Restoration believes that Shell's plans to respond to an offshore oil spill in the U.S. Arctic Ocean are satisfactory, as described in a memorandum provided to NMFS by the Office of Response and Restoration. Lastly, in the unlikely event of an oil spill, Shell will conduct response activities in accordance with NOAA's Marine Mammal Oil Spill Response Guidelines.

Comment 55: The MMC notes that the risk of an oil spill is not simply a function of its probability of occurrence; it also must take into account the consequences if such a spill occurs. Those consequences are, in part, a function of the spill's characteristics and the ability of the industry and government to mount an effective response. The MMC states: ''The assertion that Shell would be able to respond adequately to any kind of major spill is simply unsupported by all the available evidence.'' The MMC asserts that the OSRP is still inadequate for addressing a large oil spill in the Arctic.

Response: As noted in the response to *Comment 54,* DOI approved Shell's OSRP on March 28, 2012. That approval came after an extensive review process and changes were made to the plan based on comments from DOI, NOAA, and other Federal agencies. The plan calls for Shell to have several response assets near the drill sites for immediate response, while also having additional equipment available for quick delivery, if needed. DOI will also continue to provide oversight with exercises, reviews, and inspections. NMFS' EA and recent BOEM NEPA analyses assess impacts to the environment from an oil spill.

Comment 56: The MMC recommends that NMFS require Shell to cease drilling operations in mid- to late September to reduce the possibility of having to respond to a large oil spill in ice conditions. AWL also states that NMFS should consider restrictions on late-season drilling.

Response: NMFS has determined that such a requirement is unnecessary. Shell requested an IHA to conduct drilling operations through October 31. NMFS analyzed potential impacts to marine mammals, their habitat, and the availability of marine mammals for subsistence uses from Shell's activities being conducted from early July through October. NMFS has concluded that those activities will result in the take of small numbers of marine mammals and that take will have no more than a negligible impact on the affected marine mammal species or stocks and will not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses. Additionally, for its Camden Bay exploratory drilling program, Shell will cease operations on August 25 for the fall bowhead whale hunts conducted by the communities of Kaktovik and Nuiqsut and will not resume until those hunts are deemed closed (which typically occurs in mid- to late September). During this hunting shutdown period, Shell will monitor ice conditions at the drill sites. If those data indicate that it would be too dangerous to return to the drill sites after the close

of the hunts, then Shell will cease operations in Camden Bay for the remainder of the season. Additionally, BOEM will have inspectors on the drill rig 24 hours a day/7 days a week and can call for a shutdown of operations, if necessary.

Comment 57: The MMC recommends that NMFS require Shell to develop and implement a detailed, comprehensive and coordinated Wildlife Protection Plan that includes strategies and sufficient resources for minimizing contamination of sensitive marine mammal habitats and that provides a realistic description of the actions that Shell can take, if any, to respond to oiled or otherwise affected marine mammals. The plan should be developed in consultation with Alaska Native communities (including marine mammal co-management organizations), state and Federal resource agencies, and experienced non-governmental organizations.

Response: As noted in the response to *Comment 54,* Shell will operate any needed oil spill response activities in accordance with NOAA's Marine Mammal Oil Spill Response Guidelines. These guidelines were released to the public as part of NMFS' Programmatic EIS on the Marine Mammal Health and Stranding Response Program and were available for public review at that time. Those guidelines also underwent legal and peer review before being released. Those guidelines are currently being updated based on lessons learned from the Deepwater Horizon spill in the Gulf of Mexico.

Comment 58: AWL states that NMFS should further examine the potential impacts of a major oil spill on bowhead whales. For example, although the proposed IHA notes that a late-season spill could contaminate the spring lead system, it does not appear to consider whether a spill in October could affect both fall and spring migrants (*see* 76 FR 68995).

Response: NMFS' Notice of Proposed IHA (76 FR 68974, November 7, 2011) contains analysis of potential impacts from a late season spill on both fall and spring migrants. The information regarding whales migrating past the Camden Bay drill sites in the fall is found on the same page in the **Federal Register** notice noted by AWL in its comment. That analysis notes that the fall migration would not be completed if a spill were to occur in the fall and that some animals migrate close to shore. If fall migrants were moving through leads in the pack ice or were concentrated in nearshore waters, some bowhead whales might not be able to avoid oil slicks and could be subject to prolonged contamination. However, the autumn migration past Camden Bay extends over several weeks, and some of the whales travel along routes north of the area, thereby reducing the number of whales that could approach patches of spilled oil. Additionally, vessel activity associated with spill cleanup efforts may deflect whales traveling near Camden Bay farther offshore, thereby reducing the likelihood of contact with spilled oil. Also, during years when movements of oil and whales might be partially confined by ice, the bowhead migration corridor tends to be farther offshore (Treacy, 1997; LGL and Greeneridge, 1996a; Moore, 2000).

Comment 59: AWL states that NMFS should also revisit the proposed IHA's conclusions as to the effects of an oil spill on beluga whales. It is unclear why the Beaufort Sea stock's migration into the Beaufort Sea in the spring results in the conclusion that an oil spill in summer would ''not be expected to have major impacts.''

Response: The migration patterns and recorded locations of beluga whales from the Beaufort Sea stock indicate that the majority of these animals are not located in the U.S. Beaufort Sea in July and August, although some individuals may remain in the area. Therefore, if a spill were to happen after Shell is on location in Camden Bay (after July 1) in July or August, few (if any) beluga whales would be in the vicinity. Based on this, NMFS determined that major impacts would not be expected if a spill occurred at this time and were cleaned up before the animals began migrating back through the U.S. Beaufort Sea.

Proposed IHA Language Concerns

The comments and concerns contained in this grouping relate to the language that was contained in the Notice of Proposed IHA (76 FR 69024–69027, November 7, 2011) in the section titled ''Proposed Incidental Harassment Authorization.'' The commenters requested clarification or changes to some of the specific wording of the conditions that would be contained in the issued IHA. The referenced condition in the proposed IHA is noted in the comments here. Numbers of the conditions match the proposed IHA and may differ slightly from the issued IHA.

Comment 60: Regarding Condition 1, Shell asks that the IHA become effective on July 1 instead of July 10 since the company will begin transiting into the Chukchi Sea on July 1 (but not before), if weather permits, and could therefore arrive on location at the Torpedo or Sivulliq prospects before July 10.

Response: NMFS has made the requested change. Changing the date from July 10 to July 1 does not alter any of the analyses contained in the proposed IHA.

Comment 61: Regarding Condition 2, Shell asks that the language of the IHA not limit the incidental takings from authorized sound sources to those made while only on Shell lease holdings because ice management activities may occur beyond the lease boundaries and the continuous noise of the drillship may extend beyond the limits of Shell's lease holdings.

Response: NMFS has retained the first sentence of Condition 2, as originally proposed, which states that only activities associated with Shell's 2012 Camden Bay exploration plan are covered by the IHA. Because the exploration plan describes the locations of activities, NMFS has determined that language is legally sufficient. NMFS understands, and did analyze, that ice management may at times occur 25 mi (40 km) from the actual drill site. Additionally, NMFS analyzed the propagation and sound isopleths of the drill rig, which may attenuate beyond the actual lease holding itself.

Comment 62: Regarding Condition 3(a), Shell requests that narwhal be included in the list of species for which incidental take is authorized.

Response: As noted in the Notice of Proposed IHA (76 FR 68974, November 7, 2011), NMFS determined that presence of narwhal in the U.S. Beaufort Sea is rare and extralimital. Encounters are unlikely.

Comment 63: Regarding Condition 7(a), Shell asks whether the response they provided to NMFS on July 29, 2011, for a definition of ''group'' is consistent with the intent meant by NMFS in the **Federal Register** notice. As a general practice, Shell will adopt a definition of a group as being three or more whales observed within a 547-yd (500-m) area and displaying behaviors of directed or coordinated activity (*e.g.,* group feeding).

Response: NMFS agrees with this definition and will add the following sentence to Condition 7(a): ''For purposes of this Authorization, a group is defined as being three or more whales observed within a 547-yd (500-m) area and displaying behaviors of directed or coordinated activity (*e.g.,* group feeding).''

Comment 64: Shell requests that Condition 7(e) be modified to match with the language contained in Condition 9(e), which allows marine mammal monitoring flights to also fly below the 1,500 ft (457 m) altitude restriction. In the proposed IHA, those two conditions contradicted on another.

Response: NMFS agrees that Condition 7(e) should be rewritten to match Condition 9(e). The condition now reads as follows: ''Aircraft shall not fly within 1,000 ft (305 m) of marine mammals or below 1,500 ft (457 m) altitude (except during marine mammal monitoring, takeoffs, landings, or in emergency situations) while over land or sea.''

Comment 65: Regarding Condition 7(f), Shell asks if the length of daily duty restrictions included in the measure apply only to the drillship and ice management vessels or to all vessels, including smaller support vessels. Shell's view is that the remainder of support vessels, not included as ''sound sources,'' will have fewer observers than either the drillship or ice management vessels (mainly due to bunk space), which will be sufficient to cover marine mammal observations.

Response: NMFS concurs that the watch requirements were meant to apply to the drillship and two ice management vessels. PSOs will be required to be stationed on the other support vessels. However, they will not need to be on watch 24 hours a day, as those vessels are not always active 24 hours a day. PSOs will need to be on watch when the smaller support vessels are active, such as for supply transport.

Comment 66: Regarding Condition 7(g)(iv), Shell requests that the requirement to measure water temperature be removed as a stipulation under this measure given that it lacks material value to the recording of marine observations and adherence to other more salient mitigation measures.

Response: NMFS included the recording of water temperature along with other more salient data collection parameters in the proposed IHA because it was included in Shell's original 4MP. After further discussion with Shell, NMFS agrees that it is not necessary to record water temperature each time a marine mammal is sighted and has removed the requirement from the IHA, and Shell has removed it from its monitoring plan.

Comment 67: Shell acknowledges that they have voluntarily elected to institute Condition 9(f) as a subsistence mitigation measure. However, they do not concur with the implied assertion in the heading of Condition 9 ''Subsistence Mitigation Measures'' that this measure is a necessity ''to ensure no unmitigable adverse impact on subsistence uses of marine mammals.''

Response: NMFS will move this condition from section 9 of the IHA (''Subsistence Mitigation Measures'') to section 7 (''General Mitigation and Monitoring Requirements''). NMFS acknowledges that collection of drilling mud and cuttings and certain other waste streams is a voluntary decision on the part of Shell. While the inclusion of this measure was part of NMFS' analysis and used in making the negligible impact and no unmitigable adverse impact to subsistence uses findings, the absence of such a measure likely would not have altered the conclusion for those two findings.

Comment 68: The AEWC requests that Condition 10(c)(i) include a date certain for Shell to carry out the SSV. Shell requests that this condition, as well as Condition 11(a), include language reflecting the flexibility of providing the drilling sounds on a ''rolling'' basis. Shell states that SSVs for the drilling vessel will necessitate that recordings of the various sounds of the drilling program continue throughout the drilling season. Hence, all drilling program sounds will not be available within 5 days of initiating drilling. Instead, Shell volunteers to provide to NMFS a ''rolling'' transmission of recorded drilling program sounds throughout the drilling program.

Response: NMFS concurs that a ''rolling'' transmission of sound signatures is appropriate based on the fact that different activities will be conducted at various times throughout the open-water season. In order to capture all of the different sound signatures and for that data to be transmitted to NMFS, it is not appropriate to do it all in the first 5 days but rather to collect the data on a real-time basis. Spectrograms will be calculated daily, and all information will be included in a weekly report that discusses the drillship and vessel activities that occurred during the week. Language has been included in the IHA to reflect this weekly reporting requirement.

Comment 69: Regarding Condition 10(c)(ii), Shell asks that the phrase ''to the extent practical'' precede the last sentence of the measure. Shell fully intends to deploy and execute the study as designed. However, conditional temporal and spatial factors, such as ice at the locations for deployment of acoustic recorders could cause some recorders to not be deployed or to be deployed at alternate locations.

Response: NMFS has made the requested language change to the condition.

Comment 70: Regarding Condition 11(d), Shell requests that the IHA stipulate that the comprehensive report be due 240 days from the end of the drilling season instead of 240 days from the date of issuance, since the IHA is being issued months before the start of the program.

Response: NMFS agrees and has rewritten the condition to state that the comprehensive report is due 240 days from the date of expiration of the IHA (*i.e.,* 240 days from October 31, 2012).

Description of Marine Mammals in the Area of the Specified Activity

The Beaufort Sea supports a diverse assemblage of marine mammals, including: Bowhead, gray, beluga, killer (*Orcinus orca*), minke (*Balaenoptera acutorostrata*), and humpback (*Megaptera novaeangliae*) whales; harbor porpoises; ringed, ribbon, spotted, and bearded seals; narwhal; polar bears (*Ursus maritimus*); and walruses (*Odobenus rosmarus divergens;* see Table 4–1 in Shell's application). The bowhead and humpback whales are listed as ''endangered'' under the ESA and as depleted under the MMPA. Certain stocks or populations of gray, beluga, and killer whales and spotted seals are listed as endangered or are proposed for listing under the ESA; however, none of those stocks or populations occur in the activity area. On December 10, 2010, NMFS published a notice of proposed threatened status for subspecies of the ringed seal (75 FR 77476) and a notice of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register**. Neither of these two ice seal species is considered depleted under the MMPA. Additionally, the ribbon seal is considered a ''species of concern'' under the ESA. Both the walrus and the polar bear are managed by the USFWS and are not considered further in this IHA.

Of these species, eight are expected to occur in the area of Shell's proposed operations. These species include: the bowhead, gray, and beluga whales, harbor porpoise, and the ringed, spotted, bearded, and ribbon seals. The marine mammal species that is likely to be encountered most widely (in space and time) throughout the period of the drilling program is the ringed seal. Bowhead whales are also anticipated to occur in the project area more frequently than the other cetacean species; however, their occurrence is not expected until later in the season. Even though harbor porpoise and ribbon seals are not typically sighted in Camden Bay, there have been recent sightings in the Beaufort Sea near the Prudhoe Bay area, so their occurrence could not be completely ruled out. Additional information about species occurrence in the project area was

provided in the Notice of Proposed IHA (76 FR 68974, November 7, 2011). Where available, Shell used density estimates from peer-reviewed literature in the application. In cases where density estimates were not readily available in the peer-reviewed literature, Shell used other methods to derive the estimates. NMFS reviewed the density estimate descriptions and articles from which estimates were derived and requested additional information to better explain the density estimates presented by Shell in its application. This additional information was included in the revised IHA application. The explanation for those derivations and the actual density estimates are described later in this document (see the ''Estimated Take by Incidental Harassment'' section).

Shell's application contains information on the status, distribution, seasonal distribution, abundance, and life history of each of the species under NMFS jurisdiction mentioned in this document. When reviewing the application, NMFS determined that the species descriptions provided by Shell correctly characterized the status, distribution, seasonal distribution, and abundance of each species. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS SARs. The Alaska 2010 and 2011 Draft SARs are available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2010.pdf* and *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2011_draft.pdf,* respectively.

Brief Background on Marine Mammal Hearing

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data. Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz (however, a study by Au *et al.* (2006) of humpback whale songs indicate that the range may extend to at least 24 kHz);
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, eight marine mammal species (four cetacean and four pinniped species) are likely to occur in the exploratory drilling area. Of the four cetacean species likely to occur in Shell's project area, two are classified as low frequency cetaceans (*i.e.,* bowhead and gray whales), one is classified as a mid-frequency cetacean (*i.e.,* beluga whales), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise) (Southall *et al.,* 2007). Additional information regarding marine mammal hearing and sound production is contained in the Notice of Proposed IHA (76 FR 68974, November 7, 2011).

Potential Effects of the Specified Activity on Marine Mammals

The likely or possible impacts of the exploratory drilling program in Camden Bay on marine mammals could involve both non-acoustic and acoustic effects. Potential non-acoustic effects could result from the physical presence of the equipment and personnel. Petroleum development and associated activities introduce sound into the marine environment. Impacts to marine mammals are expected to primarily be acoustic in nature. Potential acoustic effects on marine mammals relate to sound produced by drilling activity, vessels, and aircraft, as well as the ZVSP airgun array. The potential effects of sound from the exploratory drilling program might include one or more of the following: tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.,* 1995a). However, for reasons discussed in the proposed IHA, it is unlikely that there would be any cases of temporary, or especially permanent, hearing impairment resulting from these activities.

In the ''Potential Effects of the Specified Activity on Marine Mammals'' section of the Notice of Proposed IHA (76 FR 68974, November 7, 2011), NMFS included a qualitative discussion of the different ways that Shell's 2012 Camden Bay exploratory drilling program may potentially affect marine mammals. That discussion focused on information and data regarding potential acoustic and non-acoustic effects from drilling activities (*i.e.,* use of the drillship, icebreakers, and support vessels and aircraft) and use of airguns during ZVSP surveys. Marine mammals may experience masking and behavioral disturbance. The information contained in the ''Potential Effects of Specified Activities on Marine Mammals'' section from the proposed IHA has not changed. Please refer to the proposed IHA for the full discussion (76 FR 68974, November 7, 2011).

Exploratory Drilling Program and Potential for Oil Spill

As noted above, the specified activity involves the drilling of exploratory wells and associated activities in the Beaufort Sea during the 2012 open-water season. The impacts to marine mammals that are reasonably expected to occur will be acoustic in nature. In response to previous IHA applications submitted by Shell, various entities have asserted that NMFS cannot authorize the take of marine mammals incidental to exploratory drilling under an IHA. Instead, they contend that incidental take can be allowed only with a letter of authorization (LOA) issued under five-year regulations because of the potential that an oil spill will cause serious injury or mortality.

There are two avenues for authorizing incidental take of marine mammals under the MMPA. NMFS may, depending on the nature of the anticipated take, authorize the take of marine mammals incidental to a specified activity through regulations and LOAs or annual IHAs. *See* 16 U.S.C. 1371(a)(5)(A) and (D). In general, regulations (accompanied by LOAs) may be issued for any type of take (*e.g.,* Level B harassment (behavioral disturbance), Level A harassment (injury), serious injury, or mortality), whereas IHAs are limited to activities that result only in harassment (*e.g.,* behavioral disturbance or injury). Following the 1994 MMPA Amendments, NMFS promulgated implementing regulations governing the issuance of IHAs in Arctic waters. See 60 FR 28379 (May 31, 1995) and 61 FR

15884 (April 10, 1996). NMFS stated in the preamble of the proposed rulemaking that the scope of IHAs would be limited to ''* * * those authorizations for harassment involving incidental harassment that may involve *non-serious injury.''* See 60 FR 28380 (May 31, 1995; emphasis added); 50 CFR 216.107(a). (''[e]xcept for activities that have the potential to result in serious injury or mortality, which must be authorized under 216.105, incidental harassment authorizations may be issued, * * * to allowed activities that may result in only the incidental harassment of a small number of marine mammals.''). NMFS explained further that applications would be reviewed to determine whether the activity would result in more than harassment and if so, the agency would either (1) attempt to negate the potential for serious injury through mitigation requirements, or (2) deny the incidental harassment authorization and require the applicant to apply for incidental take regulations. See id. at 28380–81.

NMFS' determination of whether the type of incidental take authorization requested is appropriate occurs shortly after the applicant submits an application for an incidental take authorization. The agency evaluates the proposed action and all information contained in the application to determine whether it is adequate and complete and whether the type of taking requested is appropriate. *See* 50 CFR 216.104; *see also* 60 FR 28380 (May 31, 1995). Among other things, NMFS considers the specific activity or class of activities that can reasonably be *expected* to result in incidental take; the *type* of incidental take authorization that is being requested; and the *anticipated* impact of the activity upon the species or stock and its habitat. See id. at 216.104(a). (emphasis added). Any application that is determined to be incomplete or inappropriate for the type of taking requested will be returned to the applicant with an explanation of why the application is being returned. See id. Finally, NMFS evaluates the best available science to determine whether a proposed activity is reasonably expected or likely to result in serious injury or mortality.

NMFS evaluated Shell's incidental take application for its proposed 2012 drilling activities in light of the foregoing criteria and has concluded that Shell's request for an IHA is warranted. Shell submitted information with its IHA Application indicating that an oil spill (large or very large oil spill) is highly unlikely and thus not reasonably expected to occur during the course of exploration drilling or ZVSP surveys. *See* Camden Bay IHA Application, pp. 3 and Attachment E—Analysis of the Probability of an ''Unspecified Activity'' and Its Impacts: Oil Spill. In addition, Shell's 2012 Exploration Plan, which was conditionally approved by the Department of the Interior, indicates there is a ''very low likelihood of a large oil spill event.'' *See* Shell Offshore, Inc.'s Revised Outer Continental Shelf Lease Exploration Plan, Camden Bay, Beaufort Sea, Alaska (May 2011), at p. 8–1; *see also,* Appendix F to Shell's Revised Outer Continental Shelf Lease Exploration Plan, at p. 4–174; *see also,* Beaufort Sea Planning Area Environmental Assessment for Shell Offshore, Inc.'s 2012 Revised Outer Continental Shelf Lease Exploration Plan (August 2011).

The likelihood of a large or very large (*i.e.* ≥1,000 barrels or ≥150,000 barrels, respectively) oil spill occurring during Shell's proposed program has been estimated to be low. A total of 35 exploration wells have been drilled between 1982 and 2003 in the Chukchi and Beaufort seas, and there have been no blowouts. In addition, no blowouts have occurred from the approximately 98 exploration wells drilled within the Alaskan OCS (MMS, 2007a; BOEMRE, 2011). Attachment E in Shell's IHA Application contains information regarding the probability of an oil spill occurring during the proposed program and the potential impacts should one occur. Based on modeling conducted by Bercha (2008), the predicted frequency of an exploration well oil spill in waters similar to those in Camden Bay, Beaufort Sea, Alaska, is 0.000612 per well for a blowout sized between 10,000 barrels (bbl) to 149,000 bbl and 0.000354 per well for a blowout greater than 150,000 bbl. Please refer to Shell's application for additional information on the model and predicted frequencies (see **ADDRESSES**).

Shell has implemented several design standards and practices to reduce the already low probability of an oil spill occurring as part of its operations. The wells proposed to be drilled in the Arctic are exploratory and will not be converted to production wells; thus, production casing will not be installed, and the well will be permanently plugged and abandoned once exploration drilling is complete. Shell has also developed and will implement the following plans and protocols: Shell's Critical Operations Curtailment Plan; IMP; Well Control Plan; and Fuel Transfer Plan. Many of these safety measures are required by DOI's interim final rule implementing certain measures to improve the safety of oil and gas exploration and development on the OCS in light of the Deepwater Horizon event (see 75 FR 63346, October 14, 2010). Operationally, Shell has committed to the following to help prevent an oil spill from occurring in the Beaufort Sea:

- Shell's Blow Out Preventer (BOP) was inspected and tested by an independent third party specialist;
- Further inspection and testing of the BOP have been performed to ensure the reliability of the BOP and that all functions will be performed as necessary, including shearing the drill pipe;
- Subsea BOP hydrostatic tests will be increased from once every 14 days to once every 7 days;
- A second set of blind/shear rams will be installed in the BOP stack;
- Full string casings will typically not be installed through high pressure zones;
- Liners will be installed and cemented, which allows for installation of a liner top packer;
- Testing of liners prior to installing a tieback string of casing back to the wellhead;
- Utilizing a two-barrier policy; and
- Testing of all casing hangers to ensure that they have two independent, validated barriers at all times.

NMFS has considered Shell's proposed action and has concluded that there is no reasonable likelihood of serious injury or mortality from the 2012 Camden Bay exploration drilling program. NMFS has consistently interpreted the term ''potential,'' as used in 50 CFR 216.107(a), to only include impacts that have more than a discountable probability of occurring, that is, impacts must be reasonably expected to occur. Hence, NMFS has regularly issued IHAs in cases where it found that the potential for serious injury or mortality was ''highly unlikely'' (*See* 73 FR 40512, 40514, July 15, 2008; 73 FR 45969, 45971, August 7, 2008; 73 FR 46774, 46778, August 11, 2008; 73 FR 66106, 66109, November 6, 2008; 74 FR 55368, 55371, October 27, 2009).

Interpreting ''potential'' to include impacts with any probability of occurring (*i.e.,* speculative or extremely low probability events) would nearly preclude the issuance of IHAs in every instance. For example, NMFS would be unable to issue an IHA whenever vessels were involved in the marine activity since there is always some, albeit remote, possibility that a vessel could strike and seriously injure or kill a marine mammal. This would be inconsistent with the dual-permitting scheme Congress created and

undesirable from a policy perspective, as limited agency resources would be used to issue regulations that provide no additional benefit to marine mammals beyond what can be achieved with an IHA.

Despite concluding that the risk of serious injury or mortality from an oil spill in this case is extremely remote, NMFS nonetheless evaluated the potential effects of an oil spill on marine mammals. While an oil spill is not a component of Shell's specified activity, potential impacts on marine mammals from an oil spill are discussed in more detail in the Notice of Proposed IHA (76 FR 68974, November 7, 2011) and NMFS' EA. Please refer to those documents for the discussion.

Anticipated Effects on Marine Mammal Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels produced by the exploratory drilling program (*i.e.* the drillship and the airguns). However, other potential impacts are also possible to the surrounding habitat from physical disturbance and an oil spill (should one occur). The proposed IHA contains a full discussion of the potential impacts to marine mammal habitat and prey species in the project area. No changes have been made to that discussion. Please refer to the proposed IHA for the full discussion of potential impacts to marine mammal habitat (76 FR 68974, November 7, 2011). NMFS has determined that Shell's exploratory drilling program is not expected to have any habitat-related effects that could cause significant or long-term consequences for marine mammals or on the food sources that they utilize.

Mitigation

In order to issue an incidental take authorization (ITA) under Sections 101(a)(5)(A) and (D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable 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 (where relevant). This section summarizes the contents of Shell's Marine Mammal Monitoring and Mitigation Plan (4MP).

Operational Mitigation Measures

Shell submitted a 4MP as part of its application (Attachment C; see **ADDRESSES**). Shell submitted a revised 4MP after the plan was reviewed by an independent peer review panel (see the ''*Monitoring Plan Peer Review*'' section for additional details). The revised plan is also available to the public (see **ADDRESSES**). The planned offshore drilling program incorporates both design features and operational procedures for minimizing potential impacts on marine mammals and on subsistence hunts. The design features and operational procedures have been described in the IHA and LOA applications submitted to NMFS and USFWS, respectively, and are summarized here. Survey design features include:

- Timing and locating drilling and support activities to avoid interference with the annual fall bowhead whale hunts from Kaktovik, Nuiqsut (Cross Island), and Barrow;
- Identifying transit routes and timing to avoid other subsistence use areas and communicating with coastal communities before operating in or passing through these areas;
- Conducting pre-season sound propagation modeling to establish the appropriate exclusion and behavioral radii; and
- Modifications to the *Kulluk* to reduce sound propagation into the water (as described in greater detail earlier in this document).

Shell indicates, and we agree, that the potential disturbance of marine mammals during operations will be minimized further through the implementation of several ship-based mitigation measures, which include establishing and monitoring safety and disturbance zones, vessel operation protocols, and shutting down activities for a portion of the open-water season.

Exclusion radii for marine mammals around sound sources are customarily defined as the distances within which received sound levels are greater than or equal to 180 dB re 1 μPa (rms) for cetaceans and greater than or equal to 190 dB re 1 μPa (rms) for pinnipeds. These exclusion criteria are based on an assumption that sounds at lower received levels will not injure these animals or impair their hearing abilities, but that higher received levels might have such effects. It should be understood that marine mammals inside these exclusion zones will not necessarily be injured, as the received sound thresholds which determine these zones were established prior to the current understanding that significantly higher levels of sound would be required before injury could occur (see Southall *et al.,* 2007). With respect to Level B harassment, NMFS' practice has been to apply the 120 dB re 1 μPa (rms) received level threshold for underwater continuous sound levels and the 160 dB re 1 μPa (rms) received level threshold for underwater impulsive sound levels.

Shell proposes to monitor the various radii in order to implement any mitigation measures that may be necessary. Initial radii for the sound levels produced by the *Kulluk* and *Discoverer,* the icebreaker, and the airguns have been modeled. Sounds from the *Kulluk* have previously been measured in the Beaufort Sea (Greene, 1987a; Miles *et al.,* 1987). The broadband back-propagated source level estimated by Greene (1987a) from these measurements was 185 dB re 1 μPa rms. These measurements were used as a proxy for modeling the sounds likely to be produced by exploration drilling activities from the *Kulluk* (Zykov and Hannay, 2007). Measurements taken by Austin and Warner (2010) indicated broadband source levels between 177 and 185 dB re 1 μPa rms for the *Discoverer.* Measurements of the icebreaking supply ship *Robert Lemeur* pushing and breaking ice during exploration drilling operations in the Beaufort Sea in 1986 resulted in an estimated broadband source level of 193 dB re 1 μPa rms (Greene, 1987a; Richardson *et al.,* 1995a). Based on a similar airgun array used in the shallow waters of the Beaufort Sea in 2008 by BP, the source level of the airgun is predicted to be 241.4 dB re 1 μPa rms. Once on location in Camden Bay, Shell will conduct SSV tests to establish safety zones for the previously mentioned sound level criteria. The objectives of the SSV tests are: (1) To quantify the absolute sound levels produced by drilling and to monitor their variations with time, distance, and direction from the drillship; and (2) to measure the sound levels produced by vessels operating in support of exploration drilling operations, which include crew change vessels, tugs, ice-management vessels, and spill response vessels. The methodology for conducting the SSV tests is fully described in Shell's 4MP (see **ADDRESSES**). Please refer to that document for further details. Upon completion of the SSV tests, the new radii will be established and monitored, and mitigation measures will be implemented in accordance with Shell's 4MP.

Based on the best available scientific literature, the source levels noted earlier in this document and in Shell's 4MP for the drillships are not high enough to cause a temporary reduction in hearing sensitivity or permanent hearing damage to marine mammals.

Consequently, Shell believes that mitigation as described for seismic activities including ramp ups, power downs, and shutdowns should not be necessary for drilling activities. NMFS has also determined that these types of mitigation measures, traditionally required for seismic survey operations, are not practical or necessary for this drilling activity. Seismic airgun arrays can be turned on slowly (*i.e.,* only turning on one or some guns at a time) and powered down quickly. The types of sound sources used for exploratory drilling have different properties and are unable to be ''powered down'' like airgun arrays or shutdown instantaneously without posing other risks to operational and human safety. However, Shell plans to use PSOs (formerly referred to as marine mammal observers) onboard the drillship and the various support vessels to monitor marine mammals and their responses to industry activities and to initiate mitigation measures should in-field measurements of the operations indicate that such measures are necessary. Additional details on the PSO program are described in the ''Monitoring and Reporting'' section found later in this document. Also, for the ZVSP activities, Shell will implement standard mitigation procedures, such as ramp ups, power downs, and shutdowns.

A ramp up of an airgun array provides a gradual increase in sound levels and involves a step-wise increase in the number and total volume of airguns firing until the full volume is achieved. The purpose of a ramp up (or ''soft start'') is to ''warn'' cetaceans and pinnipeds in the vicinity of the airguns and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the ZVSP surveys, Shell will ramp up the airgun arrays slowly. Full ramp ups (*i.e.,* from a cold start when no airguns have been firing) will begin by firing a single airgun in the array. A full ramp up will not begin until there has been a minimum of 30 minutes of observation of the 180-dB and 190-dB exclusion zones for cetaceans and pinnipeds, respectively, by PSOs to assure that no marine mammals are present. The entire exclusion zone must be visible during the 30-minutes lead-in to a full ramp up. If the entire exclusion zone is not visible, then ramp up from a cold start cannot begin. If a marine mammal(s) is sighted within the exclusion zone during the 30-minute watch prior to ramp up, ramp up will be delayed until the marine mammal(s) is sighted outside of the applicable exclusion zone or the animal(s) is not sighted for at least 15 minutes for small odontocetes and pinnipeds or 30 minutes for baleen whales.

A power down is the immediate reduction in the number of operating energy sources from all firing to some smaller number. A shutdown is the immediate cessation of firing of all energy sources. The arrays will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable exclusion zone of the full arrays but is outside the applicable exclusion zone of the single source. If a marine mammal is sighted within the applicable exclusion zone of the single energy source, the entire array will be shutdown (*i.e.,* no sources firing). The same 15 and 30 minute sighting times described for ramp up also apply to starting the airguns again after either a power down or shutdown.

Additional mitigation measures include: (1) Reducing speed and/or changing course if a whale is sighted within 300 yards (274 m) from a vessel; (2) reducing speed in inclement weather; (3) checking the water immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged; (4) resuming full activity (*e.g.,* full support vessel speed) only after marine mammals are confirmed to be outside the safety zone; (5) implementing flight restrictions prohibiting aircraft from flying below 1,500 ft (457 m) altitude (except during marine mammal monitoring, takeoffs and landings, or in emergency situations); and (6) keeping vessels anchored when approached by marine mammals to avoid the potential for avoidance reactions by such animals.

Shell will also implement additional mitigation measures to ensure no unmitigable adverse impact on the availability of affected species or stocks for taking for subsistence uses. Those measures are described in the ''Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses'' section found later in this document.

Oil Spill Response Plan

In accordance with BSEE regulations, Shell developed an OSRP for its Camden Bay exploration drilling program. A copy of this document can be found on the Internet at: *http://www.bsee.gov/OSRP/Beaufort-Sea-OSRP.aspx.* Additionally, in its POC, Shell has agreed to several mitigation measures in order to reduce impacts during the response efforts in the unlikely event of an oil spill. Those measures are detailed in the ''*Plan of Cooperation (POC)''* section found later in this document. In the unlikely event of a spill, Shell has also agreed to operate, to the maximum extent practicable, in accordance with NOAA's Marine Mammal Oil Spill Response Guidelines, which are available on the Internet at: *http://www.nmfs.noaa.gov/pr/pdfs/health/eis_appendixl.pdf.* BSEE issued approval of Shell's Beaufort Sea OSRP on March 28, 2012. That approval was issued after review of the plan by BSEE in cooperation with other Federal and state agency partners, including NOAA. Many of the changes to the approved OSRP reflect comments from NOAA, such as revising the worst case discharge scenario and providing trajectories of the worst case discharge over a 30-day period instead of a 72-hour period.

NMFS has carefully evaluated Shell'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;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Measures to ensure availability of such species or stock for taking for certain subsistence uses are discussed later in this document (see ''Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses'' section).

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, 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 action area.

Monitoring Measures

The monitoring plan proposed by Shell in the IHA application can be

found in the 4MP (Attachment C of Shell's application; see **ADDRESSES**). Shell's revised 4MP is also available to the public (see **ADDRESSES**). The plan was modified based on comments received from the peer review panel (see the ''*Monitoring Plan Peer Review''* section later in this document). A summary of the primary components of the plan can be found in the Notice of Proposed IHA (76 FR 68974, November 7, 2011). A shorter description is contained here, with only components of the 4MP that have been modified summarized in greater detail here.

(1) Vessel-Based PSOs

Vessel-based monitoring for marine mammals will be done by trained PSOs throughout the period of drilling operations on all vessels. PSOs will monitor the occurrence and behavior of marine mammals near the drillship during all daylight periods during operation and during most daylight periods when drilling operations are not occurring. PSO duties will include watching for and identifying marine mammals, recording their numbers, distances, and reactions to the drilling operations. A sufficient number of PSOs will be required onboard each vessel to meet the following criteria: (1) 100% monitoring coverage during all periods of drilling operations in daylight; (2) maximum of 4 consecutive hours on watch per PSO; and (3) maximum of 12 hours of watch time per day per PSO. Shell anticipates that there will be provision for crew rotation at least every 3–6 weeks to avoid observer fatigue.

PSOs will watch for marine mammals from the best available vantage point on the drillship and support vessels. Maximizing time with eyes on the water is strongly promoted during training and is a goal of the PSO program. Each ship will have voice recorders available to PSOs. This will allow PSOs to remain focused on the water in situations where a number of sightings occur together. Additionally, Shell has transitioned entirely to real-time electronic data recording and automated as much of the process as possible to minimize time spent recording data as opposed to focusing eyes on the water.

PSOs are instructed to identify animals as unknown when appropriate rather than strive to identify an animal when there is significant uncertainty. Shell also asks that they provide any sightings cues they used and any distinguishable features of the animal even if they are not able to identify the animal and record it as unidentified. Emphasis is also placed on recording what was not seen, such as dorsal features.

PSOs will be able to plot sightings in near real-time for their vessel. Significant sightings from key vessels (drill rigs, ice management, anchor handlers and aircraft) will be relayed between platforms to keep observers aware of animals that may be in or near the area but may not be visible to the observer at any one time. Emphasis will be placed on relaying sightings with the greatest potential to involve mitigation or reconsideration of a vessel's course (*e.g.,* large group of bowheads, walruses on ice). Data will also be collected to further evaluate night vision equipment.

(2) Aerial Survey Program

Shell proposes to conduct an aerial survey program in support of the drilling program in the Beaufort Sea during the summer and fall of 2012. Shell's objectives for this program include:

(A) To advise operating vessels as to the presence of marine mammals (primarily cetaceans) in the general area of operation;

(B) To collect and report data on the distribution, numbers, movement and behavior of marine mammals near the exploration drilling operations with special emphasis on migrating bowhead whales;

(C) To support regulatory reporting related to the estimation of impacts of exploration drilling operations on marine mammals;

(D) To investigate potential deflection of bowhead whales during migration by documenting how far east of exploration drilling operations a deflection may occur and where whales return to normal migration patterns west of the operations;

(E) To collect marine mammal sighting data using both PSOs and digital media, and after the field season, to compare the data recorded by the two methods; and

(F) To monitor the accessibility of bowhead whales to Inupiat hunters.

Aerial survey flights will begin 5 to 7 days before operations at the exploration well sites get underway. Surveys will be flown daily throughout drilling operations, weather and flight conditions permitting, and continue for 5 to 7 days after all activities at the site have ended. Since drafting the original 4MP in May 2011, Shell has agreed to add digital cameras and high definition (HD) video cameras on the survey aircraft to capture imagery that can later be compared to data collected by the PSOs.

Two primary observers will be seated at bubble windows on either side of the aircraft, and a third observer will observe part time and record data the rest of the time. In a change to the original 4MP, Shell will place a fourth observer on the aircraft. That PSO will rest when not at one of the three positions noted here. PSOs will rotate among the four positions so that individual observers do not observe for longer than 2 hrs continuously. All observers will be seated at bubble windows to facilitate downward viewing. The fifth observer will serve as an ice observer and will record data pertinent to Shell's ice observation program. For each marine mammal sighting, the observer will dictate the species, number, size/age/sex class when determinable, activity, heading, swimming speed category (if traveling), sighting cue, ice conditions (type and percentage), and inclinometer reading to the marine mammal into a digital recorder. The inclinometer reading will be taken when the animal's location is 90° to the side of the aircraft track, allowing calculation of lateral distance from the aircraft trackline.

DSLR and video cameras will be operated during all aerial surveys in the Beaufort Sea during 2012 and will collect imagery along the trackline concurrent with observations being made by PSOs. Data collected during these surveys will permit comparisons between data obtained by PSOs vs. those that can be obtained from digital still images and video. The rationale for this component of the study is to validate the ability of the sensors to collect high quality data that will be collected using unmanned aerial surveys (UAS) in the future and to obtain information on possible biases of future UAS-collected data in comparison to manned surveys. The cameras will also provide high resolution information on sea and ice conditions during the survey, which can be used to supplement and validate data recorded by PSOs.

(3) Acoustic Monitoring

Shell will conduct SSV tests to establish the isopleths for the applicable exclusion radii, mostly to be employed during the ZVSP surveys. In addition, Shell will use acoustic recorders to study bowhead deflections.

Drilling Sound Measurements—Drilling sounds are expected to vary significantly with time due to variations in the level of operations and the different types of equipment used at different times onboard the *Kulluk* or *Discoverer.* The objectives of these measurements are to:

(1) Quantify the absolute sound levels produced by drilling and to monitor their variations with time, distance, and direction from the drilling vessel;

(2) Measure the sound levels produced by vessels operating in support of exploration drilling operations. These vessels will include crew change vessels, tugs, icebreakers, and OSRVs; and

(3) Measure the sound levels produced by an end-of-hole ZVSP survey, using a stationary sound source.

The *Kulluk* or *Discoverer,* support vessels, and ZVSP sound measurements will be performed using one of two methods, both of which involve real-time monitoring. Since drafting the original 4MP in 2011, Shell and NMFS have agreed that spectrograms will be calculated daily, and all information will be included in a weekly report that discusses drillship and vessel activities that occurred during the week.

Vessel sound characterizations will be performed using dedicated recorders deployed at sufficient distance from drilling operations so that sound produced by those activities does not interfere. Three AMAR autonomous acoustic recorders will be deployed on and perpendicular to a sail track on which all Shell vessels will transit. The deployment geometry will be as shown in Figure 4 in Shell's April 2012 4MP. This geometry is designed to obtain sound level measurements as a function of distance and direction. The fore and aft directions are sampled continuously over longer distances to 3.1 and 6.2 mi (5 and 10 km) respectively, while broadside and other directions are sampled as the vessels pass closer to the recorders. Additional details can be found in Shell's 4MP.

Acoustic Study of Bowhead Call Distribution—Shell plans to deploy arrays of acoustic recorders in the Beaufort Sea in 2012, similar to that which was done in 2007–2011 using Directional Autonomous Seafloor Acoustic Recorders (DASARs). These directional acoustic systems permit localization of bowhead whale and other marine mammal vocalizations. The purpose of the array will be to further understand, define, and document sound characteristics and propagation resulting from vessel-based exploration drilling operations that may have the potential to cause deflections of bowhead whales from their migratory pathway. Of particular interest will be the east-west extent changes in call distribution, if any. In other words, how far east or west of a sound source can changes in the distribution of calls be detected? Similarly, will the presence of a sound source result in a shift of calling whales offshore or toward shore?

Using passive acoustics with directional autonomous recorders, the locations of calling whales will be observed for a 6- to 10-week continuous monitoring period at five coastal sites (subject to favorable ice and weather conditions). Essential to achieving this objective is the continuous measurement of sound levels near the drillship.

Shell plans to conduct the whale migration monitoring using the passive acoustics techniques developed and used successfully since 2001 for monitoring the migration past Northstar production island northwest of Prudhoe Bay and from Kaktovik to Harrison Bay during the 2007–2011 migrations. Those techniques involve using DASARs to measure the arrival angles of bowhead calls at known locations, then triangulating to locate the calling whale.

In attempting to assess the responses of bowhead whales to the planned industrial operations, it will be essential to monitor whale locations at sites both near and far from industry activities. Shell plans to monitor at five sites along the Alaskan Beaufort coast as shown in Figure 8 of Shell's April 2012 4MP. The sites are the same as used since 2007, but the layout of the DASAR recorders will be somewhat different from previous years in order to improve the ability to detect calls during the drilling operations. The eastern-most site (#5 in Figure 8 of the April 2012 4MP) is just east of Kaktovik (approximately 62 mi [100 km] west of the Sivulliq drilling area) and the western-most site (#1 in Figure 8 of the 4MP) is in the vicinity of Harrison Bay (approximately 112 mi [180 km] west of Sivulliq). Site 2 is located west of Prudhoe Bay (approximately 73 mi [117 km] west of Sivulliq). Site 4 is approximately 10 mi (16 km) east of the Sivulliq drilling area, and site 3 is approximately 20 mi (32 km) west of Sivulliq.

In 2007–2011, each array was comprised of seven DASARs oriented in a north-south pattern so that five equilateral triangles with 4.3-mi (7-km) element spacing was achieved. In 2012, the following changes are planned in the DASAR layout of sites 1 and 4:

- At site 1 the three adjacent DASARs that have detected the most calls in 2007–2011 (1D, 1E, and 1F) will be kept in place to continue collecting data that can be compared with previous years. The remaining four DASARs (1A, 1B, 1C, and 1G) will be moved to site 4. These four low-performance DASAR locations have, on average (2007–2011), detected as little as 1/100th of the calls detected at high-performance locations; and
- At site 4 the four central DASARs (4A, 4C, 4E, and 4G) will be moved to their mirror-image position east of DASARs 4B, 4D, and 4F. This is shown in Figures 8 and 9 of Shell's April 2012 4MP. The main reason for doing this is to improve the ability to detect whale calls by placing these DASARs farther away from the drilling operation, where background sound levels will likely be lower. The four DASARs removed from site 1 will be added to the northern end of site 4 (4J, 4K, 4L, and 4M in Figure 9 in Shell's 4MP). This will improve the detection of calls from whales that choose a more northern route while migrating westward past the drilling operation.

In another change from the original 4MP, a small array of three DASARs with 1.25 mi (2 km) spacing—referred to as a triplet—will be deployed northwest of each drillsite, with the closest DASAR 3.7 mi (6 km) from the drillship. When and if the drillship is moved to another site, the triplet of DASARs will be retrieved and redeployed in the same relative locations. The triplets are shown in Figure 9 of Shell's April 2012 4MP as small brown triangles. Additional details are contained in Shell's April 2012 4MP (see **ADDRESSES**).

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, comprised of experts in the fields of marine mammal ecology and underwater acoustics, to review Shell's 4MP for Exploration Drilling of Selected Lease Areas in the Alaskan Beaufort Sea in 2012. The panel met on January 5–6, 2012, and provided their final report to NMFS on January 27, 2012. The full panel report can be viewed on the Internet at: *http://www.nmfs.noaa.gov/pr/pdfs/permits/openwater/peer_review_report_shell_beaufort.pdf.*

NMFS provided the panel with Shell's 4MP and asked the panel to answer the following questions regarding the plan:

(1) 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?

(2) Can the applicant achieve the stated objectives based on the methods described in the plan?

(3) 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?

(4) 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?

(5) 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)?

Prior to meeting with the panel, Shell reviewed the final reports of the 2010 and 2011 peer review panels, as Shell's 2010 proposed drilling activities were reviewed by the 2010 panel before the program was ultimately cancelled and both reports contained general recommendations. In its presentation to the 2012 panel, Shell discussed suggested modifications and revisions to the 4MP submitted to NMFS in September 2011 and provided to the panel for review. The panel's final report includes recommendations both on the contents of the September 2011 4MP and the modifications presented at the meeting in January 2012.

NMFS has reviewed the report and evaluated all recommendations made by the panel and has determined there are several measures that Shell can incorporate into its 2012 Camden Bay exploratory drilling program 4MP to improve it. The panel recommendations determined by NMFS that are appropriate for inclusion in the 2012 program have been discussed with Shell and are included in the IHA, as appropriate. A summary of the recommendations that have been incorporated into Shell's revised Camden Bay 4MP is provided next.

(1) Vessel-Based Monitoring Measures

- Within safe limits, the PSOs should be stationed where they have the best possible viewing. Viewing may not always be best from the ship bridge, and in some cases may be best from higher positions with less visual obstructions (*e.g.,* flying bridge).
- The PSOs should be instructed to identify animals as unknown where appropriate rather than strive to identify a species if there is significant uncertainty.
- Sampling of the relative near-field around operations must be corrected for effort to provide the best possible estimates of marine mammals in safety and exposure zones.
- The PSOs should maximize their time with eyes on the water. This may require new means of recording data (*e.g.,* audio recorder) or the presence of a data recorder so that the observers can simply relay information to them.
- It would be useful if the PSOs or recorders have GIS software available to plot marine mammals sighted and vessel position on a real-time basis.
- Shell should develop a plan for real-time, inter-vessel communication of animal positions when multiple vessels are operating in an area.
- Continued testing and development to improve marine mammal detection capabilities when sighting conditions are poor is needed (*e.g.,* nighttime, high sea states, inclement weather).
- Apply appropriate statistical procedures for probability estimation of marine mammals missed based on observational data acquired during some period of time before and after night and fog events.
- Panel members made a recommendation regarding independence in the hiring, training, and debriefing of PSOs. In support of that recommendation, NMFS recommends that Shell provide its daily PSO logs to NMFS throughout the operating season.

(2) Acoustic Monitoring

- If a mitigation gun is used during the stationary zero-offset vertical seismic surveys around the drilling sites, a reduced duty cycle (*e.g.,* 1 shot/min) would be appropriate.
- Once source characterization and verification measurements are obtained (including better resolution on directionality, as discussed below), propagation models should be rerun to provide better spatial footprints on which to base mitigation zones.
- Shell should consider the potential integration of visual and acoustic data from the Beaufort and Chukchi Seas monitoring programs and the Joint Science Program to produce estimates of bowhead, beluga, and walrus density using methods developed in the DECAF project by the Center for Research into Ecological and Environmental Modeling (CREEM) at the University of St. Andrews in Scotland.
- The panel supports the rearrangement of the DASARs and addition of targeted triplets around the (changing) location of drilling operations that was presented to the panel on January 5, 2012. This arrangement differs from what is described in the September 2011 monitoring plan.

(3) Aerial Survey Program

- Aerial surveys should maintain line transects and not circle to verify cow/calf pairs.
- Conditions allowing, it is recommended that the direction of flight be determined randomly instead of always flying west-to-east. A randomized approach of where to start flying line transects is suggested.
- In terms of the experimental use of photography and video to augment human observers in aerial surveys, the panel emphasizes the use of similar methods and equipment throughout the season to ensure data consistency and comparability. The panel also recommends that, if the aircraft is able to fly at 1,000 ft (305 m) or below, the surveys always use 20 mm lenses (rather than 100 mm) to ensure an adequate strip width.

(4) Presentation of Data in Reports

- It is important that the required reports are useful summaries and interpretations of the results of the various elements of the monitoring plans as opposed to merely regurgitations of all of the raw results. They should thus represent a first derivative level of summary/interpretation of the efficacy, measurements, and observations rather than raw data or fully processed analysis. A clear summary timeline and spatial (map) representation/summary of operations and important observations should be given. Any and all mitigation measures (*e.g.,* vessel course deviations for animal avoidance, operational shutdown) should be summarized. Additionally, an assessment of the efficacy of monitoring methods should be provided.

Reporting Measures

The Notice of Proposed IHA (76 FR 68974, November 7, 2011) described the reporting requirements that would be required of Shell, including an SSV report, technical reports, a comprehensive report, and reports of sightings of injured or dead marine mammals. Please refer to that notice for the full description. Slight changes have been made to the submission of the SSV report, as described in the response to *Comment 69* earlier in this document. Because of the nature of the sounds that will be produced during Shell's operations, it is more appropriate to have a ''rolling'' schedule of submission

of sound signatures. Additionally, in response to a recommendation from the peer review panel, NMFS will receive the daily PSO sighting logs.

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 drilling program. Noise propagation from the drillship, associated support vessels (including during ice management/icebreaking if needed), and the airgun array are expected to harass, through behavioral disturbance, affected marine mammals species or stocks. Additional disturbance to marine mammals may result from aircraft overflights and visual disturbance of the drillship or support vessels. However, based on the flight paths and altitude, impacts from aircraft operations are anticipated to be localized and minimal in nature.

The full suite of potential impacts to marine mammals from various industrial activities was described in detail in the ''Potential Effects of the Specified Activity on Marine Mammals'' section in the proposed IHA. The potential effects of sound from the exploratory drilling program might include one or more of the following: tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.,* 1995a). NMFS estimates that Shell's activities will most likely result in behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of one or more marine mammals. For reasons discussed in the proposed IHA, hearing impairment (TTS and PTS) is highly unlikely to occur based on the fact that most of the equipment to be used during Shell's drilling program does not have source levels high enough to elicit even mild TTS and/or the fact that certain species are expected to avoid the ensonified areas close to the operations. Additionally, non-auditory physiological effects are anticipated to be minor, if any would occur at all. Finally, based on the required mitigation and monitoring measures described earlier in this document and the fact that the back-propagated source levels for the drillships proposed to be used are estimated to be between 177 and 185 dB re 1 μPa (rms), no injury or mortality of marine mammals is anticipated as a result of Shell's exploratory drilling program.

For continuous sounds, such as those produced by drilling operations and during icebreaking activities, NMFS uses a received level of 120-dB (rms) to indicate the onset of Level B harassment. For impulsive sounds, such as those produced by the airgun array during the ZVSP surveys, NMFS uses a received level of 160-dB (rms) to indicate the onset of Level B harassment. Shell provided calculations for the 120-dB isopleths produced by both the *Kulluk* and the *Discoverer* and by the icebreaker during icebreaking activities and then used those isopleths to estimate takes by harassment. Additionally, Shell provided calculations for the 160-dB isopleth produced by the airgun array and then used that isopleth to estimate takes by harassment. Shell provides a full description of the methodology used to estimate takes by harassment in its IHA application (see **ADDRESSES**), which is also provided in the Notice of Proposed IHA (76 FR 68974, November 7, 2011). Please refer to those documents for the full explanation, as only a short summary is provided here. Additional information on the revised 120-dB isopleth and take estimates from use of the *Kulluk* based on the installation of the quieting technologies is provided here. The method for calculating the take estimates has not changed, merely the extent of the 120-dB isopleth that was used to derive the final take estimates.

Shell requested authorization to take bowhead, gray, and beluga whales, harbor porpoise, and ringed, spotted, bearded, and ribbon seals incidental to exploration drilling, ice management/icebreaking, and ZVSP activities. Additionally, Shell provided exposure estimates and requested takes of narwhal. However, as stated previously in this document, sightings of this species are rare, and the likelihood of occurrence of narwhals in the drilling area is minimal. Therefore, NMFS has not authorized take for narwhals.

Basis for Estimating ''Take by Harassment''

''Take by Harassment'' is described in this section and was calculated in Shell's application by multiplying the expected densities of marine mammals that may occur near the exploratory drilling operations by the area of water likely to be exposed to continuous, non-pulse sounds ≥120 dB re 1 μPa (rms) during drillship operations or icebreaking activities and impulse sounds ≥160 dB re 1 μPa (rms) created by seismic airguns during ZVSP activities. The single exception to this method is for the estimation of exposures of bowhead whales during the fall migration where more detailed data were available, allowing an alternate approach to be used. NMFS evaluated and critiqued the methods provided in Shell's application and determined that they were appropriate.

Marine mammal densities near the operation are likely to vary by season and habitat. However, sufficient published data allowing the estimation of separate densities during summer (July and August) and fall (September and October) are only available for beluga and bowhead whales. As noted above, exposures of bowhead whales during the fall are not calculated using densities. Therefore, summer and fall densities have been estimated for beluga whales, and a summer density has been estimated for bowhead whales. Densities of all other species have been estimated to represent the duration of both seasons.

Marine mammal densities are also likely to vary by habitat type. In the Alaskan Beaufort Sea, where the continental shelf break is relatively close to shore, marine mammal habitat is often defined by water depth. Bowhead and beluga occurrence within nearshore (0–131 ft, 0–40 m), outer continental shelf (131–656 ft, 40–200 m), slope (656–6,562 ft, 200–2000 m), basin (>6,562 ft, 2000 m), or similarly defined habitats have been described previously (Moore *et al.,* 2000; Richardson and Thomson, 2002). The presence of most other species has generally only been described relative to the entire continental shelf zone (0–656 ft, 0–200 m) or beyond. Sounds produced by the drilling vessel and the seismic airguns are expected to drop below 120 dB and 160 dB, respectively, within the nearshore zone (0–131 ft, 0–40 m, water depth) while sounds produced by ice management/icebreaking activities, if they are necessary, are likely to also be present in the outer continental shelf (131–656 ft, 40–200 m).

In addition to water depth, densities of marine mammals are likely to vary with the presence or absence of sea ice. At times during either summer or fall, pack-ice may be present in some of the area around the drilling operation. However, the retreat of sea ice in the

Alaskan Beaufort Sea has been substantial in recent years, so Shell has assumed that only 33% of the area exposed to sounds ≥120 dB or ≥160 dB by the activities will be in ice margin habitat. Therefore, ice-margin densities of marine mammals in both seasons have been multiplied by 33% of the area exposed to sounds by the drilling vessel and ZVSP activities, while open-water (nearshore) densities have been multiplied by the remaining 67% of the area.

To provide some allowance for the uncertainties, ''maximum estimates,'' as well as ''average estimates,'' of the numbers of marine mammals potentially affected have been derived. For a few marine mammal species, several density estimates were available, and in those cases the mean and maximum estimates were determined from the survey data. In other cases, no applicable estimate (or perhaps a single estimate) was available, so correction factors were used to arrive at ''average'' and ''maximum'' estimates. These are described in detail in Shell's application and the proposed IHA. NMFS has determined that the average density data of marine mammal populations will be used to calculate estimated take numbers because these numbers are based on surveys and monitoring of marine mammals in the vicinity of the project area. Table 6–12 in Shell's application indicates that the ''average estimate'' for gray whales, harbor porpoise, and ribbon seal is zero. Therefore, to account for the fact that these species listed as being potentially taken by harassment in this document may occur in Shell's drilling sites during active operations, NMFS either used the ''maximum estimates'' or made an estimate based on typical group size for a particular species.

Detectability bias, quantified in part by *f*(0), is associated with diminishing sightability with increasing lateral distance from the trackline. Availability bias [*g*(0)] refers to the fact that there is <100% probability of sighting an animal that is present along the survey trackline. Some sources of densities used here included these correction factors in their reported densities. In other cases the best available correction factors were applied to reported results when they had not been included in the reported data (*e.g.,* Moore *et al.,* 2000).

Estimated Area Exposed to Sounds >120 dB or >160 dB re 1 μPa rms

(1) Estimated Area Exposed to Continuous Sounds ≥120 dB rms from the Drillship

Shell proposes that exploration drilling in Camden Bay would be conducted from either the *Kulluk* or the *Discoverer* but not both. As mentioned earlier in this document, the *Kulluk* is the primary vessel to be used for drilling operations in Camden Bay. The *Discoverer* would only be used if the primary vessel is unavailable for any reason. The two vessels are likely to introduce somewhat different levels of sound into the water during exploration drilling activities. Descriptions of the expected source levels and propagation distances from the two vessels are provided in this section. These distances and associated ensonified areas are then used in the following section to calculate separate estimates of potential exposures.

Sounds from the *Kulluk* were measured in the Beaufort Sea in 1986 and reported by Greene (1987a). The back propagated broadband source level from the measurements (185.5 dB re 1 μPa · rms; calculated from the reported 1/3-octave band levels), which included sounds from a support vessel operating nearby, were used to model sound propagation at the Sivulliq prospect near Camden Bay. However, as mentioned earlier in this document, the *Kulluk* has been retrofitted with two technologies intended to quiet the vessel. Based on the installation of those technologies, Shell recommends and NMFS' acoustic experts agree that a 5 dB reduction of modeled noise source is a reasonable estimate of the effectiveness of the quieting technologies being implemented. Using a 5 dB reduction, the model estimates that sounds would decrease to 120 dB rms at approximately 5.2 mi (8.4 km) from the *Kulluk* (Hannay and Ireland, 2012; see Table 2 here). As a precautionary approach, Shell multiplied that distance by 1.5, and the resulting radius of 7.8 mi (12.6 km) was used to estimate the total area that may be exposed to continuous sounds ≥120 dB re 1 μPa rms by the *Kulluk* at each drill site. Assuming one well site will be drilled in each season (summer and fall), the total area of water ensonified to ≥120 dB rms in each season would be 191 mi^2 (499 km^2). The revised 120-dB isopleth estimates are considerably lower than previously identified in the Notice of Proposed IHA (76 FR 68974, November 7, 2011) (*i.e.,* 8.2 mi [13.27 km] and 12.3 mi [19.91 km] with the 1.5 factor).

TABLE 2—SOUND PROPAGATION MODELING RESULTS OF EXPLORATION DRILLING, ICEBREAKING, AND ZVSP ACTIVITIES NEAR CAMDEN BAY IN THE ALASKAN BEAUFORT SEA

Source	Received level (dB re 1 μPa)	Modeling results (km)	Used in calculations (km)
Kulluk	120	8.4	12.6
Discoverer	120	3.32	4.98
Icebreaking	120	7.63	9.5
ZVSP	160	3.67	5.51

Sounds from the *Discoverer* have not previously been measured in the Arctic. However, measurements of sounds produced by the *Discoverer* were made in the South China Sea in 2009 (Austin and Warner, 2010). The results of those measurements were used to model the sound propagation from the *Discoverer* (including a nearby support vessel) at planned exploration drilling locations in the Chukchi and Beaufort seas (Warner and Hannay, 2011). Broadband source levels of sounds produced by the *Discoverer* varied by activity and direction from the ship but were generally between 177 and 185 dB re 1 μPa · m rms (Austin and Warner, 2010). Propagation modeling at the Sivulliq and Torpedo prospects yielded somewhat different results, with sounds expected to propagate shorter distances at the Sivulliq site (Warner and Hannay, 2011). As a precautionary approach, Shell used the larger distance to which sounds ≥120 dB (2.06 mi [3.32 km]) are expected to propagate at the Torpedo site to estimate the area of water potentially exposed at both locations. The estimated (2.06 mi [3.32 km]) distance was multiplied by 1.5 (= 3.09 mi [4.98 km]) as a further precautionary measure before calculating the total area that may be exposed to continuous

sounds ≥120 dB re 1 μPa rms by the *Discoverer* at each drill site (see Table 6–3 in Shell's application). Assuming one well would be drilled in each season (summer and fall), the total area of water ensonified to ≥120 dB rms in each season would be 30 mi^2 (78 km^2). The 160-dB radii for the *Kulluk* and the *Discoverer* were estimated to be approximately 180 ft (55 m) and 33 ft (10 m), respectively. Again, because source levels for the two drillships were measured to be between 177 and 185 dB, the 180 and 190-dB radii were not needed.

The acoustic propagation model used to estimate the sound propagation from both vessels in Camden Bay is JASCO's Marine Operations Noise Model (MONM). MONM computes received sound levels in rms units when source levels are specified also in those units. MONM treats sound propagation in range-varying acoustic environments through a wide-angled parabolic equation solution to the acoustic wave equation. The specific parabolic equation code in MONM is based on the Naval Research Laboratory's Range-dependent Acoustic Model. This code has been extensively benchmarked for accuracy and is widely employed in the underwater acoustics community (Collins, 1993).

For analysis of the potential effects on migrating bowhead whales Shell calculated the total distance perpendicular to the east-west migration corridor ensonified to ≥120 dB rms in order to determine the number of migrating whales passing the activities that might be exposed to that sound level. For the *Kulluk,* that distance is 2 × 7.8 mi (12.6 km) (the estimated radius of the 120 dB rms zone), or 15.6 mi (25.2 km) (*i.e.* 7.8 mi [12.6 km] north and 7.8 mi [12.6 km] south of the drill site); for the *Discoverer,* that distance is 2 × 3.09 mi, or 6.19 mi, (4.98 km or 9.96 km). At the two Sivulliq sites (G and N, which are located close together and positioned similarly relative to the 131 and 656 ft [40 and 200 m] bathymetric contours), the 15.6 mi (25.2 km) distance from the *Kulluk* covers all of the 23 mi (37 km) wide 0–131 ft (0–40 m) water depth category, and approximately 11% of the 22.1 mi (35.5 km) wide 131–656 ft (40–200 m) water depth category. The 9.96 km distance from the *Discoverer* covers 27% of the 0–131 ft (0–40 m) category and none of the 131–656 ft (40–200 m) category at the Sivulliq sites.

The two drill sites on the Torpedo prospect (designated as H and J) are not as close together as the Sivulliq sites, but their position relative to the 131 ft (40 m) and 656 ft (200 m) bathymetric contours are similar. For simplicity, Shell provided and used only the slightly greater estimates resulting from calculations at the Torpedo ''H'' site to represent activities at either of the two Torpedo sites. At the Torpedo ''H'' site, the 15.6 mi (25.2 km) distance from the *Kulluk* covers approximately 74% of the 37 km wide 0–131 ft (0–40 m) water depth category and approximately 35% of the 22.1 mi (35.5 km) wide 131–656 ft (40–200 m) water depth category. The 6.19 mi (9.96 km) distance from the *Discoverer* covers 27% of the 0–131 ft (0–40 m) category and none of the 131–656 ft (40–200 m) category at either of the Torpedo sites.

The percentages of water depth categories described in the previous two paragraphs were multiplied by the estimated proportion of the whales passing within those categories on each day to estimate the number of bowheads that may be exposed to sounds ≥120 dB if they showed no avoidance of the exploration drilling operations.

(2) Estimated Area Exposed to Continuous Sounds >120 dB rms From Ice Management/Icebreaking Activities

Measurements of the icebreaking supply ship *Robert Lemeur* pushing and breaking ice during exploration drilling operations in the Beaufort Sea in 1986 resulted in an estimated broadband source level of 193 dB re 1 μPa · m (Greene, 1987a; Richardson *et al.,* 1995a). Measurements of the icebreaking sounds were made at five different distances and those were used to generate a propagation loss equation [$RL = 141.4 - 1.65R - 10Log(R)$ where R is range in kilometers (Greene, 1987a); converting R to meters results in the following equation: $R = 171.4 - 10log(R) - 0.00165R$]. Using that equation, the estimated distance to the 120 dB threshold for continuous sounds from icebreaking is 4.74 mi (7.63 km). Since the measurements of the *Robert Lemeur* were taken in the Beaufort Sea under presumably similar conditions as would be encountered in 2012, an inflation factor of 1.25 was selected to arrive at a precautionary 120 dB distance of 5.9 mi (9.5 km) for icebreaking sounds (see Table 6–3 in Shell's application).

If ice is present, ice management/icebreaking activities may be necessary in early July and towards the end of operations in late October, but it is not expected to be needed throughout the proposed exploration drilling season. Icebreaking activities would likely occur in a 40° arc up to 3.1 mi (5 km) upwind of the *Kulluk* or *Discoverer* (see Figure 1–3 and Attachment B in Shell's application for additional details). This activity area plus a 5.9 mi (9.5 km) buffer around it results in an estimated total area of 162 mi^2 (420 km2) that may be exposed to sounds ≥120 dB from ice management/icebreaking activities in each season. Icebreaking is not expected to occur during the bowhead migration since it is only anticipated to be needed either in early July or late October, so additional take estimates during the migration period have not been calculated.

(3) Estimated Area Exposed to Impulsive Sounds ≥160 dB rms From Airguns

Shell proposes to use the ITAGA eight-airgun array for the ZVSP surveys in 2012, which consists of four 150-in^3 airguns and four 40-in^3 airguns for a total discharge volume of 760 in^3. The ≥160 dB re 1 μPa rms radius for this source was estimated from measurements of a similar seismic source used during the 2008 BP Liberty seismic survey (Aerts *et al.,* 2008). The BP liberty source was also an eight-airgun array but had a slightly larger total volume of 880 in^3. Because the number of airguns is the same, and the difference in total volume only results in an estimated 0.4 dB decrease in the source level of the ZVSP source, the 100th percentile propagation model from the measurements of the BP Liberty source is almost directly applicable. However, the BP Liberty source was towed at a depth of 5.9 ft (1.8 m), while Shell's ZVSP source would be lowered to a target depth of 13 ft (4 m) (from 10–23 ft [3–7 m]). The deeper depth of the ZVSP source has the potential to increase the source strength by as much as 6 dB. Thus, the constant term in the propagation equation from the BP Liberty source was increased from 235.4 to 241.4 while the remainder of the equation ($-18 * LogR - 0.0047 * R$) was left unchanged. NMFS reviewed the use of this equation and the similarities between the 2008 BP Liberty project and Shell's proposed drilling sites and determined that it is appropriate to base the sound isopleths on those results. This equation results in the following estimated distances to maximum received levels: 190 dB = 0.33 mi (524 m); 180 dB = 0.77 mi (1,240 m); 160 dB = 2.28 mi (3,670 m); 120 dB = 6.52 mi (10,500 m). The ≥160 dB distance was multiplied by 1.5 (see Table 6–3 in Shell's application) for use in estimating the area ensonified to ≥160 dB rms around the drilling vessel during ZVSP activities. Therefore, the total area of water potentially exposed to received sound levels ≥160 dB rms by ZVSP operations at one exploration well site during each season (*i.e.,* summer and

fall) is estimated to be 73.7 mi² (190.8 km²).

For analysis of potential effects on migrating bowhead whales, the ≥120 dB distance for exploration drilling activities was used on all days during the bowhead migration as described previously. This is a precautionary approach in the case of the *Kulluk* since the ≥160 dB zone for the relatively brief ZVSP surveys is expected to be less than the ≥120 dB distance from the *Kulluk.* If the *Discoverer* were to be used, the slightly greater distance to the ≥160 dB threshold from the ZVSP airguns than the ≥120 dB distance from the *Discoverer* (see Table 6–3 in Shell's application) would result in only 3% more of the 0–131 ft (0–40 m) depth category being ensonified on up to 2 days. This would result in an estimated increase of approximately 10 bowhead whales compared to the estimates shown in (see Table 6–7 in Shell's application).

Shell intends to conduct sound propagation measurements on the *Kulluk* or *Discoverer* (whichever is used) and the airgun source in 2012 once they are on location near Camden Bay. The results of those measurements would then be used during the season to implement mitigation measures.

Potential Number of ''Takes by Harassment''

Although a marine mammal may be exposed to drilling or icebreaking sounds ≥120 dB (rms) or airgun sounds ≥160 dB (rms), not all animals react to sounds at this low level, and many will not show strong reactions (and in some cases any reaction) until sounds are much stronger. There are several variables that determine whether or not an individual animal will exhibit a response to the sound, such as the age of the animal, previous exposure to this type of anthropogenic sound, habituation, etc.

Numbers of marine mammals that might be present and potentially disturbed (*i.e.,* Level B harassment) are estimated below based on available data about mammal distribution and densities at different locations and times of the year as described previously. Exposure estimates have been calculated based on the use of either the *Kulluk* or *Discoverer* operating in Camden Bay beginning in July, as well as ice management/icebreaking activities, if needed, and minimal airgun usage (see estimates below). Shell will not conduct any activities associated with the exploration drilling program in Camden Bay during the 2012 Kaktovik and Nuiqsut (Cross Island) fall bowhead whale subsistence harvests. Shell will suspend exploration activities on August 25, prior to the beginning of the hunts, will resume activities in Camden Bay after conclusion of the subsistence harvests, and complete exploration activities on or about October 31, 2012. Actual drilling may occur on approximately 78 days in Camden Bay (which includes the 20–28 hours total needed for airgun operations), approximately half of which would occur before and after the fall bowhead subsistence hunts.

The number of different individuals of each species potentially exposed to received levels of continuous sound ≥120 dB re 1 μPa (rms) or to pulsed sounds ≥160 dB re 1 μPa (rms) within each season and habitat zone was estimated by multiplying:

- The anticipated area to be ensonified to the specified level in the time period and habitat zone to which a density applies, by
- The expected species density.

The estimate for bowhead whales during the migration period was calculated differently as described previously. The numbers of exposures were then summed for each species across the seasons and habitat zones.

At times during either summer (July–August) or fall (September–October), pack-ice may be present in some of the area around the exploration drilling operation. However, the retreat of sea ice in the Alaskan Beaufort Sea has been substantial in recent years, so Shell assumed that only 33% of the area exposed to sounds ≥120 dB or ≥160 dB by the exploration drilling program and ZVSP activities will be in ice-margin habitat. Therefore, ice-margin densities of marine mammals in both seasons have been multiplied by 33% of the area exposed to sounds by the drilling and ZVSP activities, while open-water (nearshore) densities have been multiplied by the remaining 67% of the area. Since any icebreaking activities would only occur in ice-margin habitat, the entire area exposed to sounds ≥120 dB from icebreaking was multiplied by the ice-margin densities.

Estimates from use of the *Discoverer* and during ice management/icebreaking and the ZVSP surveys are the same as in the Notice of Proposed IHA (76 FR 68974, November 7, 2011). Only estimates from use of the *Kulluk* have changed since publication of that notice. The change is based on an estimated 5 dB reduction in the sound level of the *Kulluk* with the installation of the new quieting technologies, which were described previously in this document. Revised take estimate tables are provided here for use of the *Kulluk* (see Tables 3 and 4).

TABLE 3—ESTIMATES OF THE NUMBER OF BELUGA AND BOWHEAD WHALES IN AREAS WHERE MAXIMUM RECEIVED SOUND LEVELS IN THE WATER WOULD BE ≥120 dB FROM OPERATIONS CONDUCTED BY THE KULLUK DURING SHELL'S PROPOSED EXPLORATION DRILLING PROGRAM IN SUMMER (JULY–AUGUST) AND FALL (SEPTEMBER–OCTOBER) NEAR CAMDEN BAY IN THE BEAUFORT SEA, ALASKA, 2012

Season: Species	Number of individuals exposed to sound levels ≥120 dB from *Kulluk*					
	Nearshore		Ice margin		Total	
	Avg.	Max.	Avg.	Max.	Avg.	Max.
Summer:						
Beluga	1	4	0	2	1	6
Bowhead	6	24	3	12	9	35
Fall:						
Beluga	1	5	1	5	2	9
Bowhead	3,483	6,966	N/A	N/A	3,483	6,966

TABLE 4—ESTIMATES OF THE NUMBERS OF MARINE MAMMALS (EXCLUDING BELUGA AND BOWHEAD WHALES) IN EACH OFFSHORE AREA WHERE MAXIMUM RECEIVED SOUND LEVELS IN THE WATER WOULD BE ≥120 dB FROM THE KULLUK DURING SHELL'S PROPOSED EXPLORATION DRILLING PROGRAM NEAR CAMDEN BAY IN THE BEAUFORT SEA, ALASKA, 2012

Species	Number of individuals exposed to sound levels ≥120 dB from *Kulluk*					
	Nearshore		Ice margin		Total	
	Avg.	Max.	Avg.	Max.	Avg.	Max.
Harbor porpoise	0	0	0	0	0	5
Gray whale	0	0	0	0	0	5
Bearded seal	12	48	4	17	16	65
Ribbon seal	0	0	0	0	0	5
Ringed seal	235	939	82	327	317	1,267
Spotted seal	2	10	0	0	2	10

Estimated Take Conclusions

As stated previously, NMFS' practice has been to apply the 120 dB re 1 μPa (rms) received level threshold for underwater continuous sound levels and the 160 dB re 1 μPa (rms) received level threshold for underwater impulsive sound levels to determine whether take by Level B harassment occurs. However, not all animals react to sounds at these low levels, and many will not show strong reactions (and in some cases any reaction) until sounds are much stronger.

Although the 120-dB isopleth for the drillships may seem fairly expansive (*i.e.,* 7.8 mi [12.6 km] for the *Kulluk* or 4.6 mi [7.4 km] for the *Discoverer,* which include the 50 percent inflation factor), the zone of ensonification begins to shrink dramatically with each 10-dB increase in received sound level. The 160-dB rms zones for the *Kulluk* and *Discoverer* are estimated to extend approximately 180 ft (55 m) and 33 ft (10 m) from the ship, respectively. As stated previously, source levels for the two different drillships are expected to be between 177 and 185 dB (rms). For an animal to be exposed to received levels between 177 and 185 dB, it would have to be within several meters of the vessel, which is unlikely, especially given the fact that certain species are likely to avoid the area.

For impulsive sounds, such as those produced by the airguns, studies reveal that baleen whales show avoidance responses, which would reduce the likelihood of them being exposed to higher received sound levels. The 180-dB zone (0.77 mi [1.24 km]) is one-third the size of the 160-dB zone (2.28 mi [3.67 km], which is the modeled distance before the 1.5 inflation factor is included). In the limited studies that have been conducted on pinniped responses to pulsed sound sources, they seem to be more tolerant and do not exhibit strong behavioral reactions (see Southall *et al.,* 2007).

NMFS is authorizing the average take estimates provided in Shell's application and Table 5 here for bowhead whales and bearded, ringed, and spotted seals. The only exceptions to this are for the gray whale, harbor porpoise, and ribbon seal since the average estimate is zero for those species and for the beluga whale to account for group size. Therefore, for the 2012 Beaufort Sea drilling season, NMFS has authorized the take of 65 beluga whales, 3,502 bowhead whales, 15 gray whales, 15 harbor porpoise, 30 bearded seals, 588 ringed seals, 7 spotted seals, and 5 ribbon seals. For beluga and gray whales and harbor porpoise, this represents 0.2% of the Beaufort Sea population of approximately 39,258 beluga whales (Allen and Angliss, 2011), 0.08% of the Eastern North Pacific stock of approximately 18,017 gray whales (Allen and Angliss, 2011), and 0.03% of the Bering Sea stock of approximately 48,215 harbor porpoise (Allen and Angliss, 2011). This represents 23% of the BCB bowhead population of 15,232 individuals assuming 3.4% annual population growth from the 2001 estimate of 10,545 animals (Zeh and Punt, 2005). The take estimates presented for bearded, ringed, and spotted seals represent 0.01%, 0.2%, and 0.01% of the Bering-Chukchi-Beaufort populations for each species, respectively. The take estimate for ribbon seals represents 0.01% of the Alaska stock of this species. These take numbers are based on Shell utilizing the *Kulluk.* Table 5 here also presents the take numbers and percentages of the population if Shell utilizes the *Discoverer* instead, which has a smaller 120-dB radius. If the *Discoverer* is used for drilling operations instead of the *Kulluk,* the take estimates for bowhead whales and ringed and bearded seals drop substantially.

With the exception of the subsistence mitigation measure of shutting down during the Nuiqsut and Kaktovik fall bowhead whale hunts, these take estimates do not take into account any of the mitigation measures described previously in this document. Additionally, if the fall bowhead hunts end after September 15, and Shell still concludes activities on October 31, then fewer animals will be exposed to drilling sounds, especially bowhead whales, as more of them will have migrated past the area in which they would be exposed to continuous sound levels of 120 dB or greater or impulsive sound levels of 160 dB or greater prior to Shell resuming active operations. These take numbers also do not consider how many of the exposed animals may *actually* respond or react to the exploration drilling program. Instead, the take estimates are based on the presence of animals, regardless of whether or not they react or respond to the activities.

TABLE 5—POPULATION ABUNDANCE ESTIMATES, TOTAL AUTHORIZED LEVEL B TAKE (WHEN COMBINING TAKES FROM DRILLSHIP OPERATIONS, ICE MANAGEMENT/ICEBREAKING, AND ZVSP SURVEYS) FOR THE KULLUK AND DISCOVERER, AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN FOR THE POTENTIALLY AFFECTED SPECIES, DEPENDENT UPON WHICH DRILLSHIP IS USED

Species	Abundance [1]	Total authorized level B take with the *Kulluk* [2]	Percentage of stock or population	Total authorized level B take with the *Discoverer* [3]	Percentage of stock or population
Bowhead Whale	[4] 15,232	3,502	23	1,398	9.2
Gray Whale	18,017	15	0.08	15	0.08
Beluga Whale	39,258	65	0.2	37	0.1
Harbor Porpoise	48,215	15	0.03	15	0.03
Ringed Seal	249,000	588	0.2	320	0.1
Bearded Seal	250,000	30	0.01	17	0.01
Spotted Seal	59,214	7	0.01	7	0.01
Ribbon Seal	49,000	5	0.01	5	0.01

[1] Abundance estimates taken from Allen and Angliss (2011) unless otherwise stated.
[2] This includes take from operation of the *Kulluk,* ice management/icebreaking, and the airguns.
[3] This includes take from operation of the *Discoverer,* ice management/icebreaking, and the airguns.
[4] Estimate from George *et al.* (2004) with an annual growth rate of 3.4%.

Negligible Impact and Small Numbers Analysis and 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 Shell's Camden Bay exploratory drilling program, and none are authorized. Injury, serious injury, or mortality could occur if there were a large or very large oil spill. However, as discussed previously in this document, the likelihood of a spill is extremely remote. Shell has implemented many design and operational standards to minimize the potential for an oil spill of any size. NMFS has not authorized take from an oil spill, as it is not part of the specified activity. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. Instead, any impact that could result from Shell's activities is most likely to be behavioral harassment and is expected to be of limited duration. Although it is possible that some individuals may be exposed to sounds from drilling operations more than once, during the migratory periods it is less likely that this will occur since animals will continue to move westward across the Beaufort Sea. This is especially true for bowhead whales that will be migrating past the drilling operations beginning in mid- to late September (depending on the date Shell resumes activities after the shutdown period for the fall bowhead subsistence hunts by the villages of Kaktovik and Nuiqsut).

Some studies have shown that bowhead whales will continue to feed in areas of seismic operations (*e.g.,* Richardson, 2004). Therefore, it is possible that some bowheads may continue to feed in an area of active drilling operations. It is important to note that the sounds produced by drilling operations are of a much lower intensity than those produced by seismic airguns. Should bowheads choose to feed in the ensonified area instead of avoiding the sound, individuals may be exposed to sounds at or above 120 dB (rms) for several hours to days, depending on how long the individual animal chooses to remain in the area to feed. Should bowheads choose to feed in Camden Bay during the ZVSP surveys, this activity will occur only twice during the entire drilling season and will not last more than 10–14 hours each time. It is anticipated that one such survey would occur prior to the migration period and one during the migration period. Therefore, feeding or migrating bowhead whales would only be exposed to airgun sounds for a total of 10–14 hours throughout the entire open-water season. Many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hr cycle). As discussed here, some bowhead whales may decide to remain in Camden Bay for several days to feed; however, they are not expected to be feeding for 24 hours straight each day. Additionally, if an animal is excluded from Camden Bay for feeding because it decides to avoid the ensonified area, this may result in some extra energy expenditure for the animal to find an alternate feeding ground. However, as noted in the response to *Comment 14,* Camden Bay is only one of several feeding areas for bowhead whales in the U.S. Arctic Ocean. NMFS anticipates that bowhead whales could find feeding opportunities in other parts of the Beaufort Sea.

The sounds produced by the drillship are of lower intensity than those produced by seismic airguns. Therefore, if animals remain in ensonified areas to feed, they would be in areas where the sound levels are not high enough to cause injury (based on the fact that source levels are not expected to reach levels known to cause even slight, mild TTS, a non-injurious threshold shift). Additionally, if bowhead whales come within the 180-dB (rms) radius when the airguns are operational, Shell will shutdown the airguns until the animals are outside of the required exclusion zone. Although the impact resulting from the generation of sound may cause a disruption in feeding activities in and around Camden Bay, this disruption is not reasonably likely to adversely affect rates of recruitment and survival of the BCB bowhead whale population.

Shell's exploration drilling program is not expected to negatively affect the bowhead whale westward migration through the U.S. Beaufort Sea. The migration typically starts around the last week of August or first week of September. Shell will cease operations on August 25 for the fall bowhead whale

hunts at Kaktovik and Cross Island (for the village of Nuiqsut). Operations will not resume until both communities have announced the close of the fall hunt, which typically occurs around September 15 each year. Therefore, whales that migrate through the area the first few weeks of the migration period will not be exposed to any acoustic or non-acoustic stimuli from Shell's operations. Only the last 6 weeks of Shell's operations would occur during the migratory period. Cow/calf pairs typically migrate through the area later in the season (*i.e.,* late September/October) as opposed to the beginning of the season (*i.e.,* late August/early September). Shell's activities are not anticipated to have a negative effect on the migration or on the cow/calf pairs migrating through the area. If cow/calf pairs migrate through during airgun operations, required power down and shutdown procedures would reduce impacts further.

Beluga whales are more likely to occur in the project area after the recommencement of activities in September than in July or August. Should any belugas occur in the area of active drilling, it is not expected that they would remain in the area for a prolonged period of time, as their westward migration usually occurs further offshore (more than 37 mi [60 km]) and in deeper waters (more than 656 ft [200 m]) than that planned for the location of Shell's Camden Bay well sites. Gray whales do not occur frequently in the Camden Bay area of the Beaufort Sea. Additionally, there are no known feeding grounds for gray whales in the Camden Bay area. The most northern feeding sites known for this species are located in the Chukchi Sea near Hanna Shoal and Point Barrow. Based on these factors, exposures of gray whales to industrial sound are not expected to last for prolonged periods (*i.e.,* several days or weeks) since they are not known to remain in the area for extended periods of time. Since harbor porpoise are considered extralimital in the area with recent sightings not occurring east of Prudhoe Bay, no adverse impacts that could affect important life functions are anticipated for this species.

Some individual pinnipeds may be exposed to drilling sounds more than once during the time frame of the project. This may be especially true for ringed seals, which occur in the Beaufort Sea year-round and are the most frequently encountered pinniped species in the area. However, as stated previously, pinnipeds appear to be more tolerant of anthropogenic sound, especially at lower received levels, than other marine mammals, such as mysticetes.

Ringed seals construct lairs for pupping in the Beaufort Sea. However, this species typically does not construct lairs until late winter/early spring on the landfast ice. Because Shell will cease operations by October 31, they will not be in the area during the ringed seal pupping season. Bearded seals breed in the Bering and Chukchi Seas, as the Beaufort Sea provides less suitable habitat for the species. Spotted and ribbon seals are even less common in the Camden Bay area. These species do not breed in the Beaufort Sea. Shell's exploration drilling program is not anticipated to impact breeding or pupping for any of the ice seal species.

Of the eight marine mammal species likely to occur in the drilling area, only the bowhead whale is listed as endangered under the ESA. The species is also designated as ''depleted'' under the MMPA. Despite these designations, the BCB stock of bowheads has been increasing at a rate of 3.4% annually for nearly a decade (Allen and Angliss, 2011), even in the face of ongoing industrial activity. 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, 2011). Certain stocks or populations of gray and beluga whales and spotted seals are listed as endangered or are proposed for listing under the ESA; however, none of those stocks or populations occur in the activity area. On December 10, 2010, NMFS published a notice of proposed threatened status for subspecies of the ringed seal (75 FR 77476) and a notice of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register**. Neither of these two ice seal species is currently considered depleted under the MMPA. There is currently no established critical habitat in the project area for any of these eight species.

Potential impacts to marine mammal habitat were discussed in detail in the Notice of Proposed IHA (76 FR 68974, November 7, 2011; see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, any impacts to affected marine mammal stocks or species are anticipated to be minor. Based on the vast size of the Arctic Ocean where feeding by marine mammals occurs versus the localized area of the drilling program, any missed feeding opportunities in the direct project area would be of little consequence, as marine mammals would have access to other feeding grounds.

If the *Kulluk* is the drillship used, the estimated takes proposed to be authorized represent 0.2% of the Beaufort Sea population of approximately 39,258 beluga whales (Allen and Angliss, 2011), 0.08% of the Eastern North Pacific stock of approximately 18,017 gray whales (Allen and Angliss, 2011), 0.03% of the Bering Sea stock of approximately 48,215 harbor porpoise (Allen and Angliss, 2011), and 23% of the Bering-Chukchi-Beaufort population of 15,232 individuals assuming 3.4% annual population growth from the 2001 estimate of 10,545 animals (Zeh and Punt, 2005). The take estimates presented for bearded, ringed, and spotted seals represent 0.01%, 0.2%, and 0.01% of the Bering-Chukchi-Beaufort populations for each species, respectively. The take estimate for ribbon seals represents 0.01% of the Alaska stock of this species. If the *Discoverer* is the drillship used, the estimated takes proposed to be authorized represent 0.1% of the Beaufort Sea population of approximately 39,258 beluga whales (Allen and Angliss, 2011), 0.08% of the Eastern North Pacific stock of approximately 18,017 gray whales (Allen and Angliss, 2011), 0.03% of the Bering Sea stock of approximately 48,215 harbor porpoise (Allen and Angliss, 2011), and 9.2% of the Bering-Chukchi-Beaufort population of 15,232 individuals assuming 3.4% annual population growth from the 2001 estimate of 10,545 animals (Zeh and Punt, 2005). The take estimates presented for bearded, ringed, and spotted seals represent 0.01%, 0.1%, and 0.01% of the Bering-Chukchi-Beaufort populations for each species, respectively. The take estimate for ribbon seals represents 0.01% of the Alaska stock of this species. 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.

The estimated take numbers are likely an overestimate for several reasons. First, these take numbers were calculated using a 50% inflation factor of the 120-dB and 160-dB radii, which is a precautionary approach recommended by some acousticians when modeling a new sound source in a new location. SSV tests could reveal that the Level B harassment zone is either smaller or larger than that used to estimate take. If the SSV tests reveal that the Level B harassment zones are

slightly larger than those modeled, the 50% inflation factor should cover the discrepancy; however, based on recent SSV tests of seismic airguns (which showed that the measured 160-dB isopleths was in the area of the modeled value), the 50% correction factor likely results in an overestimate of takes. Additionally, the mitigation and monitoring measures (described previously in this document) included in the IHA are expected to reduce even further any potential disturbance to marine mammals. Last, some marine mammal individuals, including mysticetes, have been shown to avoid the ensonified area around airguns at certain distances (Richardson *et al.,* 1999), and, therefore, some individuals would not likely enter into the Level B harassment zones for the various types of activities.

The take estimates for the *Kulluk* are approximately 2.5 times those for the *Discoverer.* One explanation for this is that the *Kulluk's* original rigid structure does little to dampen vibration as it moves through the structure to the hull. This past year, Shell has invested in retrofitting the *Kulluk.* As described earlier in this document, this retrofit includes changing out the engines and installing sound dampening mounts for the new engines. This retrofit is expected to help lower the sound levels emitted by the *Kulluk.* As stated previously, Shell intends to conduct SSV tests for all vessels, including the drillship, once on location in the Beaufort Sea in 2012. Therefore, there is the potential that fewer animals will be taken than previously estimated if the SSV tests indicate smaller isopleths. Based on the best available information, the mitigation and monitoring protocols that will be implemented by Shell, and the extremely low likelihood of a major oil spill occurring, NMFS has determined that Shell's activities would have no more than a negligible impact on the affected marine mammal species and stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Relevant Subsistence Uses

The disturbance and potential displacement of marine mammals by sounds from drilling activities are the principal concerns related to subsistence use of the area. Subsistence remains the basis for Alaska Native culture and community. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities. Additionally, the animals taken for subsistence provide a significant portion of the food that will last the community throughout the year. The main species that are hunted include bowhead and beluga whales, ringed, spotted, and bearded seals, walruses, and polar bears. (As mentioned previously in this document, both the walrus and the polar bear are under the USFWS' jurisdiction.) The importance of each of these species varies among the communities and is largely based on availability.

The subsistence communities in the Beaufort Sea that have the potential to be impacted by Shell's Camden Bay drilling program include Kaktovik, Nuiqsut, and Barrow. Kaktovik is a coastal community 60 mi (96.6 km) east of the project area. Nuiqsut is 118 mi (190 km) west of the project area and about 20 mi (32 km) inland from the coast along the Colville River. Cross Island, from which Nuiqsut hunters base their bowhead whaling activities, is 47 mi (75.6 km) southwest of the project area. Barrow, the community farthest from the project area, lies 298 mi (479.6 km) west of Shell's Camden Bay drill sites.

(1) Bowhead Whales

Of the three communities, Barrow is the only one that currently participates in a spring bowhead whale hunt. However, this hunt is not anticipated to be affected by Shell's activities, as the spring hunt occurs in late April to early May, and Shell's Camden Bay drilling program will not begin prior to July 1.

All three communities participate in a fall bowhead hunt. In autumn, westward-migrating bowhead whales typically reach the Kaktovik and Cross Island (Nuiqsut hunters) areas by early September, at which point the hunts begin (Kaleak, 1996; Long, 1996; Galginaitis and Koski, 2002; Galginaitis and Funk, 2004, 2005; Koski *et al.,* 2005). Around late August, the hunters from Nuiqsut establish camps on Cross Island from where they undertake the fall bowhead whale hunt. The hunting period starts normally in early September and may last as late as mid-October, depending mainly on ice and weather conditions and the success of the hunt. Most of the hunt occurs offshore in waters east, north, and northwest of Cross Island where bowheads migrate and not inside the barrier islands (Galginaitis, 2007). Hunters prefer to take bowheads close to shore to avoid a long tow, but Braund and Moorehead (1995) report that crews may (rarely) pursue whales as far as 50 mi (80 km) offshore. Whaling crews use Kaktovik as their home base, leaving the village and returning on a daily basis. The core whaling area is within 12 mi (19.3 km) of the village with a periphery ranging about 8 mi (13 km) farther, if necessary. The extreme limits of the Kaktovik whaling grounds would be the middle of Camden Bay to the west. The timing of the Kaktovik bowhead whale hunt roughly parallels the Cross Island whale hunt (Impact Assessment Inc., 1990b; SRB&A, 2009:Map 64). In recent years, the hunts at Kaktovik and Cross Island have usually ended by mid-to-late-September.

Westbound bowheads typically reach the Barrow area in mid-September and are in that area until late October (Brower, 1996). However, over the years, local residents report having seen a small number of bowhead whales feeding off Barrow or in the pack ice off Barrow during the summer. Recently, autumn bowhead whaling near Barrow has normally begun in mid-September to early October, but in earlier years it began as early as August if whales were observed and ice conditions were favorable (USDI/BLM, 2005). The recent decision to delay harvesting whales until mid-to-late September has been made to prevent spoilage, which might occur if whales were harvested earlier in the season when the temperatures tend to be warmer. Whaling near Barrow can continue into October, depending on the quota and conditions.

Shell anticipates arriving on location in Camden Bay around July 10 and continuing operations until August 25. Shell will suspend all operations on August 25 for the Nuiqsut (Cross Island) and Kaktovik subsistence bowhead whale hunts. The drillship and support vessels will leave the Camden Bay project area, will move to a location at or north of 71.25° N. latitude and at or west of 146.4° W. longitude, and will return to resume activities after the Nuiqsut (Cross Island) and Kaktovik bowhead hunts conclude. Depending on when Nuiqsut and Kaktovik declare their hunts closed, drilling operations may resume in the middle of the Barrow fall bowhead hunt.

(2) Beluga Whales

Beluga whales are not a prevailing subsistence resource in the communities of Kaktovik and Nuiqsut. Kaktovik hunters may harvest one beluga whale in conjunction with the bowhead hunt; however, it appears that most households obtain beluga through exchanges with other communities. Although Nuiqsut hunters have not hunted belugas for many years while on

Cross Island for the fall hunt, this does not mean that they may not return to this practice in the future. Data presented by Braund and Kruse (2009) indicate that only 1% of Barrow's total harvest between 1962 and 1982 was of beluga whales and that it did not account for any of the harvested animals between 1987 and 1989.

There has been minimal harvest of beluga whales in Beaufort Sea villages in recent years. Additionally, if belugas are harvested, it is usually in conjunction with the fall bowhead harvest. Shell will not be operating during the Kaktovik and Nuiqsut fall bowhead harvests.

(3) Ice Seals

Ringed seals are available to subsistence users in the Beaufort Sea year-round, but they are primarily hunted in the winter or spring due to the rich availability of other mammals in the summer. Bearded seals are primarily hunted during July in the Beaufort Sea; however, in 2007, bearded seals were harvested in the months of August and September at the mouth of the Colville River Delta. An annual bearded seal harvest occurs in the vicinity of Thetis Island (which is a considerable distance from Shell's Camden Bay drill sites) in July through August. Approximately 20 bearded seals are harvested annually through this hunt. Spotted seals are harvested by some of the villages in the summer months. Nuiqsut hunters typically hunt spotted seals in the nearshore waters off the Colville River delta, which is more than 100 mi (161 km) from Shell's drill sites.

Although there is the potential for some of the Beaufort villages to hunt ice seals during the summer and fall months while Shell is conducting exploratory drilling operations, the primary sealing months occur outside of Shell's operating time frame. Additionally, some of the more established seal hunts that do occur in the Beaufort Sea, such as the Colville delta area hunts, are located a significant distance (in some instances 100 mi [161 km] or more) from the project area.

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.''

Noise and general activity during Shell's drilling program 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) is avoidance of the ensonified area. In the case of bowhead whales, this often means that the animals divert from their normal migratory path by several kilometers. Helicopter activity also has the potential to disturb cetaceans and pinnipeds by causing them to vacate the area. Additionally, general vessel presence in the vicinity of traditional hunting areas could negatively impact a hunt. Native knowledge indicates that bowhead whales become increasingly ''skittish'' in the presence of seismic noise. Whales are more wary around the hunters and tend to expose a much smaller portion of their back when surfacing (which makes harvesting more difficult). Additionally, natives report that bowheads exhibit angry behaviors in the presence of seismic, such as tail-slapping, which translate to danger for nearby subsistence harvesters.

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.

In the unlikely event of an oil spill, marine mammals could become contaminated and therefore unavailable to subsistence users. Additionally, perception could also affect availability of marine mammals for subsistence uses. Even if whales or seals are not oiled or contaminated by an oil spill, the mere perception that they could be contaminated could reduce the availability of marine mammals for subsistence uses.

Plan of Cooperation (POC)

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. Shell developed a POC for its 2012 Camden Bay, Beaufort Sea, Alaska, exploration drilling program to minimize any adverse impacts on the availability of marine mammals for subsistence uses. A copy of the Draft POC was provided to NMFS with the IHA Application as Attachment D (see **ADDRESSES** for availability). Meetings with potentially affected subsistence users began in 2009 and continued into 2010 and 2011 (see Table 4.2–1 in Shell's POC for a list of all meetings conducted through April 2011). During these meetings, Shell focused on lessons learned from prior years' activities and presented mitigation measures for avoiding potential conflicts, which are outlined in the 2012 POC and this document. For the 2012 Camden Bay drilling program, Shell's POC with Chukchi Sea villages primarily addresses the issue of transit of vessels, whereas the POC with Beaufort Sea villages addresses vessel transit, drilling, and associated activities. Communities that were consulted regarding Shell's 2012 Arctic Ocean operations include: Barrow, Kaktovik, Wainwright, Kotzebue, Kivalina, Point Lay, Point Hope, Kiana, Gambell, Savoonga, and Shishmaref.

Beginning in early January 2009 and continuing into 2011, Shell held one-on-one meetings with representatives from the North Slope Borough (NSB) and Northwest Arctic Borough (NWAB), subsistence-user group leadership, and Village Whaling Captain Association representatives. Shell's primary purpose in holding individual meetings was to inform and prepare key leaders, prior to the public meetings, so that they would be prepared to give appropriate feedback on planned activities.

Shell presented the proposed project to the NWAB Assembly on January 27, 2009, to the NSB Assembly on February 2, 2009, and to the NSB and NWAB Planning Commissions in a joint meeting on March 25, 2009. Meetings were also scheduled with representatives from the AEWC, and presentations on proposed activities were given to ICAS, and the Native Village of Barrow. On December 8, 2009, Shell held consultation meetings with representatives from the various marine mammal commissions. Prior to drilling in 2012, Shell will also hold additional consultation meetings with the affected communities and subsistence user groups, NSB, and NWAB to discuss the mitigation measures included in the POC. Shell presented information regarding the proposed operations and marine mammal monitoring plans at the 2012 Arctic Open Water Meeting in Anchorage, Alaska, which was held

March 6–8, 2012. Shell also attended the 2011 CAA negotiation meetings in support of a limited program of marine environmental baseline activities in 2011 taking place in the Beaufort and Chukchi seas. Shell has stated that it is committed to a CAA process and will demonstrate this by making a good-faith effort to negotiate a CAA every year it has planned activities. To that end, Shell attended the 2012 CAA negotiation meetings and signed the 2012 CAA on March 26, 2012.

The following mitigation measures, plans and programs, are integral to the POC and were developed during consultation with potentially affected subsistence groups and communities. These measures, plans, and programs will be implemented by Shell during its 2012 exploration drilling operations in both the Beaufort and Chukchi Seas to monitor and mitigate potential impacts to subsistence users and resources. The mitigation measures Shell has adopted and will implement during its 2012 Camden Bay exploration drilling operations are listed and discussed below. The most recent version of Shell's planned mitigation measures was presented to community leaders and subsistence user groups starting in January of 2009 and has evolved since in response to information learned during the consultation process.

To minimize any cultural or resource impacts to subsistence whaling activities from its exploration operations, Shell will suspend drilling activities on August 25, 2012, prior to the start of the Kaktovik and Cross Island bowhead whale hunting season. The drillship and associated vessels will remain outside of the Camden Bay area during the hunt. Shell will resume drilling operations after the conclusion of the hunt and, depending on ice and weather conditions, continue its exploration activities through October 31, 2012. In addition to the adoption of this project timing restriction, Shell will implement the following additional measures to ensure coordination of its activities with local subsistence users to minimize further the risk of impacting marine mammals and interfering with the subsistence hunts for marine mammals:

(1) The drillship and support vessels will transit through the Chukchi Sea along a route that lies offshore of the polynya zone. In the event the transit outside of the polynya zone results in Shell having to break ice (as opposed to managing ice by pushing it out of the way), the drillship and support vessels will enter into the polynya zone far enough so that ice breaking is not necessary. If it is necessary to move into the polynya zone, Shell will notify the local communities of the change in the transit route through the Com Centers;

(2) Shell has developed a Communication Plan and will implement the plan before initiating exploration drilling operations to coordinate activities with local subsistence users as well as Village Whaling Associations in order to minimize the risk of interfering with subsistence hunting activities and keep current as to the timing and status of the bowhead whale migration, as well as the timing and status of other subsistence hunts. The Communication Plan includes procedures for coordination with Com and Call Centers to be located in coastal villages along the Chukchi and Beaufort Seas during Shell's proposed activities in 2012;

(3) Shell will employ local Subsistence Advisors from the Beaufort and Chukchi Sea villages to provide consultation and guidance regarding the whale migration and subsistence hunt. There will be a total of nine subsistence advisor-liaison positions (one per village), to work approximately 8-hours per day and 40-hour weeks through Shell's 2012 exploration project. The subsistence advisor will use local knowledge (Traditional Knowledge) to gather data on subsistence lifestyle within the community and advise on ways to minimize and mitigate potential impacts to subsistence resources during the drilling season. Responsibilities include reporting any subsistence concerns or conflicts; coordinating with subsistence users; reporting subsistence-related comments, concerns, and information; and advising how to avoid subsistence conflicts. A subsistence advisor handbook will be developed prior to the operational season to specify position work tasks in more detail;

(4) Shell will implement flight restrictions prohibiting aircraft from flying within 1,000 ft (305 m) of marine mammals or below 1,500 ft (457 m) altitude (except during takeoffs and landings or in emergency situations) while over land or sea;

(5) The drilling support fleet will avoid known fragile ecosystems, including the Ledyard Bay Critical Habitat Unit and will include coordination through the Com Centers;

(6) All vessels will maintain cruising speed not to exceed 9 knots while transiting the Beaufort Sea;

(7) Collect all drilling mud and cuttings with adhered mud from all well sections below the 26-inch (20-inch casing) section, as well as treated sanitary waste water, domestic wastes, bilge water, and ballast water and transport them outside the Arctic for proper disposal in an Environmental Protection Agency licensed treatment/disposal site. These waste streams shall not be discharged into the ocean;

(8) Drilling mud shall be cooled to mitigate any potential permafrost thawing or thermal dissociation of any methane hydrates encountered during exploration drilling if such materials are present at the drill site; and

(9) Drilling mud shall be recycled to the extent practicable based on operational considerations (*e.g.,* whether mud properties have deteriorated to the point where they cannot be used further) so that the volume of the mud disposed of at the end of the drilling season is reduced.

The POC also contains measures regarding ice management procedures, critical operations procedures, the blowout prevention program, and oil spill response. Some of the oil spill response measures to reduce impacts to subsistence hunts include: Having the primary OSRV on standby at all times so that it is available within 1 hour if needed; the remainder of the OSR fleet will be available within 72 hours if needed and will be capable of collecting oil on the water up to the calculated Worst Case Discharge; oil spill containment equipment will be available in the unlikely event of a blowout; capping stack equipment will be stored aboard one of the ice management vessels and will be available for immediate deployment in the unlikely event of a blowout; and pre-booming will be required for all fuel transfers between vessels.

Unmitigable Adverse Impact Analysis and Determination

Shell has adopted a spatial and temporal strategy for its Camden Bay operations that should minimize impacts to subsistence hunters. First, Shell's activities will not commence until after the spring hunts have occurred. Additionally, Shell will traverse the Chukchi Sea far offshore, so as to not interfere with July hunts in the Chukchi Sea and will communicate with the Com Centers to notify local communities of any changes in the transit route. Once Shell is on location in Camden Bay, Beaufort Sea, whaling will not commence until late August/early September. Shell has agreed to cease operations on August 25 to allow the villages of Kaktovik and Nuiqsut to prepare for the fall bowhead hunts, will move the drillship and all support vessels out of the hunting area so that there are no physical barriers between the marine mammals and the hunters, and will not recommence activities until

the close of both villages' hunts. The location has been agreed to by both Shell and the AEWC so as not to interfere with preparations for hunting at Barrow.

Kaktovik is located 60 mi (96.6 km) east of the project area. Therefore, westward migrating whales would reach Kaktovik before reaching the area of Shell's activities or any of the ensonified zones. Although Cross Island and Barrow are west of Shell's drill sites, sound generating activities from Shell's drilling program will have ceased prior to the whales passing through the area. Additionally, Barrow lies 298 mi (479.6 km) west of Shell's Camden Bay drill sites, so whalers in that area would not be displaced by any of Shell's activities.

Adverse impacts are not anticipated on sealing activities since the majority of hunts for seals occur in the winter and spring, when Shell will not be operating. Sealing activities in the Colville River delta area occur more than 100 mi (161 km) from Shell's Camden Bay drill sites.

Shell will also support the village Com Centers in the Arctic communities and employ local SAs from the Beaufort and Chukchi Sea villages to provide consultation and guidance regarding the whale migration and subsistence hunt. The SAs will provide advice to Shell on ways to minimize and mitigate potential impacts to subsistence resources during the drilling season.

In the unlikely event of a major oil spill in the Beaufort Sea, there could be major impacts on the availability of marine mammals for subsistence uses (such as displacement from traditional hunting grounds and contaminated animals taken for harvests). However, as discussed earlier in this document, the probability of a major oil spill occurring over the life of the project is low (Bercha, 2008). As a condition of the 2012 CAA that Shell signed on March 26, 2012, any company engaged in drilling operations agrees to enter into a binding oil spill mitigation agreement with the AEWC, NSB, and ICAS to provide for hunter transport to alternate hunting locations in the unlikely event of an oil spill. Additionally, Shell developed an OSRP, which was recently approved by BSEE after review and comment by DOI and several Federal agencies and the public. Shell has also incorporated several mitigation measures into its operational design to reduce further the risk of an oil spill. Based on the information available, the mitigation measures that Shell will implement, and the extremely low likelihood of a major oil spill occurring, NMFS has determined that Shell's activities will not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses.

Endangered Species Act (ESA)

There is one marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the project area: The bowhead whale. There are two marine mammal species proposed for listing as threatened with confirmed or possible occurrence in the project area: Ringed and bearded seals. NMFS' Permits and Conservation Division conducted consultation with NMFS' Endangered Species Division under section 7 of the ESA on the issuance of an IHA to Shell under section 101(a)(5)(D) of the MMPA for this activity. In April, 2012, NMFS finished conducting its section 7 consultation and issued a Biological Opinion, and concluded that the issuance of the IHA associated with Shell's 2012 Beaufort Sea drilling program is not likely to jeopardize the continued existence of the endangered bowhead whale, the Arctic sub-species of ringed seal, or the Beringia distinct population segment of bearded seal. No critical habitat has been designated for these species, therefore none will be affected.

National Environmental Policy Act (NEPA)

NMFS prepared an EA that includes an analysis of potential environmental effects associated with NMFS' issuance of an IHA to Shell to take marine mammals incidental to conducting an exploratory drilling program in Camden Bay, Beaufort Sea, Alaska. NMFS has finalized the EA and prepared a FONSI for this action. Therefore, preparation of an Environmental Impact Statement is not necessary. NMFS' EA was available to the public for a 30-day comment period before it was finalized.

Authorization

As a result of these determinations, NMFS has issued an IHA to Shell for the take of marine mammals, by Level B harassment, incidental to conducting an offshore exploratory drilling program in Camden Bay in the Beaufort Sea during the 2012 open-water season, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 2, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–11084 Filed 5–8–12; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 90 May 9, 2012

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to an Exploration Drilling Program in the Chukchi Sea, Alaska; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA811

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to an Exploration Drilling Program in the Chukchi Sea, Alaska

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) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Shell Gulf of Mexico Inc. (Shell) to take marine mammals, by harassment, incidental to offshore exploration drilling on Outer Continental Shelf (OCS) leases in the Chukchi Sea, Alaska.

DATES: Effective July 1, 2012, through October 31, 2012.

ADDRESSES: A copy of the issued IHA, application with associated materials, and NMFS' Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing 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, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, 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 June 30, 2011, from Shell for the taking, by harassment, of marine mammals incidental to offshore exploration drilling on OCS leases in the Chukchi Sea, Alaska. NMFS reviewed Shell's application and identified a number of issues requiring further clarification. After addressing comments from NMFS, Shell modified its application and submitted a revised application on September 12, 2011. NMFS carefully evaluated Shell's application, including their analyses, and deemed the application complete. The September 12, 2011, application is the one available for public comment (see **ADDRESSES**) and considered by NMFS for this IHA. NMFS published a Notice of Proposed IHA in the **Federal Register** on November 9, 2011 (76 FR 69958). That notice contained in depth descriptions and analyses that are generally not repeated in this document. Only in cases where descriptions or analyses changed is that information updated here. The most notable changes include: (1) Modifications to the aerial monitoring program presented in the marine mammal monitoring plan; and (2) updated information regarding Shell's Oil Spill Response Plan (OSRP).

Shell plans to drill up to three exploration wells at three possible drill sites and potentially a partial well at a fourth drill site on OCS leases offshore in the Chukchi Sea, Alaska, during the 2012 Arctic open-water season (July through October). Impacts to marine mammals may occur from noise produced by the drillship, zero-offset vertical seismic profile (ZVSP) surveys, and supporting vessels (including icebreakers) and aircraft. Shell requested authorization to take 13 marine mammal species by Level B harassment. However, the narwhal (*Monodon monoceros*) is not expected to be found in the activity area. Therefore, NMFS has authorized take of 12 marine mammal species, by Level B harassment, incidental to Shell's offshore exploration drilling in the Chukchi Sea. These species include: beluga whale (*Delphinapterus leucas*); bowhead whale (*Balaena mysticetus*); gray whale (*Eschrichtius robustus*); killer whale (*Orcinus orca*); minke whale (*Balaenoptera acutorostrata*); fin whale (*Balaenoptera physalus*); humpback whale (*Megaptera novaeangliae*); harbor porpoise (*Phocoena phocoena*); bearded seal (*Erignathus barbatus*); ringed seal (*Phoca hispida*); spotted seal (*P. largha*); and ribbon seal (*Histriophoca fasciata*).

Description of the Specified Activity and Specified Geographic Region

Shell plans to conduct an offshore exploration drilling program on U.S. Department of the Interior, Bureau of Ocean Energy Management (BOEM, formerly the Minerals Management Service) Alaska OCS leases located greater than 64 mi (103 km) from the Chukchi Sea coast during the 2012 open-water season. The leases were acquired during the Chukchi Sea Oil and Gas Lease Sale 193 held in February 2008. During the 2012 drilling program, Shell plans to drill up to three exploration wells at three drill sites and potentially a partial well at a fourth drill site at the prospect known as Burger. See Figure 1–1 in Shell's application for the lease block and drill site locations

(see **ADDRESSES**). All drilling is planned to be vertical.

The Notice of Proposed IHA (76 FR 69958, November 9, 2011) contained a full description of Shell's planned operations. That notice describes the equipment to be used for the different operational activities, the timeframe of activities, and the sound characteristics of the associated equipment. Except to clarify changes to the information contained in the proposed IHA notice, the information is not repeated here; therefore, please refer to the proposed IHA for the full description of the specified activity and specified geographic region.

Drilling Vessel

Shell intends to use the ice strengthened drillship *Discoverer* to drill the wells. The Notice of Proposed IHA (76 FR 69958, November 9, 2011) included the incorrect maximum anchor radius for the 8-point anchored mooring system. While on location at the Burger prospect drill sites, the maximum anchor radius is anticipated to be 2,609–2,904 ft (795–885 m).

Comments and Responses

A Notice of Proposed IHA published in the **Federal Register** on November 9, 2011 (76 FR 69958) for public comment. During the 30-day public comment period, NMFS received 10 comment letters from the following: the Alaska Eskimo Whaling Commission (AEWC); Inupiat Community of the Arctic Slope (ICAS); the Marine Mammal Commission (MMC); State of Alaska Department of Natural Resources; Consumer Energy Alliance; Resource Development Council; the North Slope Borough (NSB); BOEM; Shell; and Alaska Wilderness League (AWL), Audubon Alaska, Center for Biological Diversity, Defenders of Wildlife, Earthjustice, Natural Resources Defense Council, Northern Alaska Environmental Center, Ocean Conservancy, Oceana, Pacific Environment, Resisting Environmental Destruction on Indigenous Lands, Sierra Club, the Wilderness Society, and World Wildlife Fund (collectively ''AWL''), along with an attached letter from David E. Bain, Ph.D.

AWL submitted several journal articles and documents as attachments to their comment letter. NMFS acknowledges receipt of these articles and documents but does not intend to address each one specifically in the responses to comments. All of the public comment letters received on the Notice of Proposed IHA (76 FR 69958, November 9, 2011) are available on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are the public comments and NMFS' responses.

General Comments

Comment 1: Shell notes that the proposed IHA states that the IHA application was submitted by Shell Offshore Inc. when in fact it was submitted by Shell Gulf of Mexico Inc.

Response: NMFS has corrected this error. It does not change any analyses.

Comment 2: Shell notes that the proposed IHA contained the wrong anchor radius information for the *Discoverer* at the Burger prospect.

Response: NMFS has updated that information in the description found earlier in this document. Because the radius is smaller than what was contained in the proposed IHA, it does not alter the analysis.

Comment 3: Shell notes that the community of Point Hope is located approximately 206 mi (332 km) from the Burger prospect, not 180 mi (290 km) as indicated in the proposed IHA.

Response: NMFS has updated that information in this notice. Because the distance is farther, it does not alter the analysis.

Comment 4: The State of Alaska Department of Natural Resources, Consumer Energy Alliance, and Resource Development Council all urge NMFS to finalize Shell's IHA since NMFS has issued the proposed IHA.

Response: After careful evaluation of all comments and the data and information available regarding potential impacts to marine mammals and their habitat and to the availability of marine mammals for subsistence uses, NMFS has issued the final authorization to Shell to take marine mammals incidental to conducting an exploration drilling program in the Chukchi Sea during the 2012 Arctic open-water season.

Comment 5: ICAS incorporates the comments made by the AEWC into its letter by reference and urges NMFS to address the concerns of AEWC and its whaling captains.

Response: All comments made by the AEWC are addressed in this document.

Comment 6: The NSB stated in their letter that comments made previously on Shell's IHA applications for seismic and drilling are still applicable and are incorporated by reference into their letter dated December 9, 2011.

Response: NMFS has responded to comments on Shell's seismic IHA requests in previous **Federal Register** notices. Those responses are incorporated into this document by reference (*e.g.*, 73 FR 66106, November 6, 2008; 74 FR 55368, October 27, 2009; 75 FR 49710, August 13, 2010). The NSB submitted letters regarding Shell's proposed Camden Bay exploration drilling programs for the years 2007, 2008, and 2010. Shell did not request (and NMFS did not propose to issue or issue) IHAs for exploratory drilling programs in the Chukchi Sea in 2007 and 2008. Shell did request an IHA (and NMFS published a Notice of Proposed IHA) for a 2010 exploratory drilling program in the Chukchi Sea. However, the NSB did not submit a letter regarding that program. NMFS has only provided responses to comments contained in the 2007, 2008, and 2010 letters that are different from comments in the NSB's 2011 letter on this IHA. Additionally, some of the comments in those three earlier letters are no longer relevant to Shell's program as currently proposed in this document.

MMPA Statutory Concerns

Comment 7: The NSB states that the proposed IHA does not demonstrate that Shell's activities will take only a small number and have only a negligible impact on the species or stock. Additionally, the proposed IHA fails to distinguish between these two standards.

Response: NMFS is required to authorize the take of ''small numbers'' of a species or stock if the taking by harassment will have a negligible impact on the affected species or stocks and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence purposes. See 16 U.S.C. 1371(a)(5)(D). In determining whether to authorize ''small numbers'' of a species or stock, NMFS determines that the taking will be small relative to the estimated population size and relevant to the behavior, physiology, and life history of the species or stock. With the exception of killer and minke whales, less than 1% of each species stock or population would be taken by Level B harassment incidental to Shell's activities. The modeling results indicate that only 1.2–1.85% of the minke whale population and 2.3% of the killer whale population would be taken by Level B harassment. NMFS is confident that takes resulting from Shell's activities will constitute only a ''small number'' of affected species or stocks for the following reasons:

(1) In all of the modeling submitted by Shell, a 1.5x correction factor was included;

(2) The estimated take levels do not mean that those numbers will *actually* be ''taken'' by Level B behavioral harassment. Some marine mammal species, such as bowheads, may engage

in avoidance behavior preventing their exposure to these levels of sound, and, even if exposed, may not exhibit a behavioral reaction; and

(3) The modeling results do not take into account the implementation of mitigation measures, which will lower the number of animals taken even further.

In making a negligible impact determination, NMFS considers a variety of factors, including: (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. NMFS has determined that Shell's activities will not result in injury or mortality of marine mammals. The proposed IHA analyzed the number, nature, intensity, and duration of the Level B harassment that may occur and the context in which it may occur. That analysis led us to make a negligible impact finding.

Comment 8: The AEWC and AWL state that NMFS cannot make a negligible impact determination without considering other activities planned for this year and future years in the U.S. Arctic Ocean and Russian and Canadian waters. AWL states that NMFS should also evaluate the potential impacts of future activities in both oceans and the acknowledged uncertainty regarding the effects of noise in the marine environment in the context of subsistence hunting.

Response: NMFS considered the cumulative effects analysis contained in NMFS' Draft Environmental Impact Statement (EIS) on the ''Effects of Oil and Gas Activities in the Arctic Ocean'' (NMFS, 2011), NMFS' EA for the ''Issuance of Incidental Harassment Authorizations for the Take of Marine Mammals by Harassment Incidental to Conducting Exploratory Drilling Programs in the U.S. Beaufort and Chukchi Seas,'' and other relevant data to inform its MMPA determination here. Pursuant to the National Environmental Policy Act (NEPA), those documents contained a cumulative impacts assessment, as well as an assessment of the impacts of the proposed exploratory drilling program on marine mammals and other protected resources.

Section 101(a)(5)(D) of the MMPA and its implementing regulations require NMFS to consider a request for the taking of marine mammals incidental to *a specified activity* within a specified geographical region and, assuming certain findings can be made, to authorize the taking of small numbers of marine mammals while engaged in that activity. NMFS has defined ''specified activity'' in 50 CFR 216.103 as ''any activity, other than commercial fishing, that takes place in a specified geographical region and potentially involves the taking of small numbers of marine mammals.'' When making a negligible impact determination, NMFS considers the total impact during each 1-year period resulting from the specified activity only and supports its determination by relying on factors such as: (1) The number of anticipated mortalities from the activity; (2) the number and nature of anticipated injuries from the activity; (3) the number, nature, intensity, and duration of Level B harassment resulting from the activity; (4) the context in which the takes occur; (5) the status of the species or stock; (6) environmental features that may significantly increase the potential severity of impacts from the proposed action; (7) effects on habitat that could affect rates of recruitment or survival; and (8) how the mitigation measures are expected to reduce the number or severity of takes or the impacts to habitat. When making its finding that there will be no unmitigable adverse impact on the availability of the affected species or stock for taking for subsistence uses, NMFS analyzes the measures contained in the applicant's Plan of Cooperation (POC). Additionally, Shell signed the 2012 Conflict Avoidance Agreement (CAA) with the AEWC. NMFS included all necessary measures from both documents in the IHA to ensure no unmitigable adverse impacts to subsistence.

NMFS considered the impacts analyses (*i.e.,* direct, indirect, and cumulative) contained in the previously mentioned EIS and EA in reaching its conclusion that any marine mammals exposed to the sounds produced by the drillship, ice management/icebreaking vessels, support vessels and aircraft, and airguns would be disturbed for only a short period of time and would not be harmed or killed. Furthermore, the required mitigation and monitoring measures are expected to reduce the likelihood or severity of any impacts to marine mammals or their habitats over the course of the activities.

Moreover, NMFS gave careful consideration to a number of other issues and sources of information. In particular, NMFS relied upon a number of scientific reports, including the 2010 U.S. Alaska Marine Mammal Stock Assessment Reports (SARs) to support its findings. The SARs contain a description of each marine mammal stock, its geographic range, a minimum population estimate, current population trends, current and maximum net productivity rates, optimum sustainable population levels and allowable removal levels, and estimates of annual human-caused mortality and serious injury through interactions with commercial fisheries and subsistence harvest data. NMFS also used data from the annual and final Bowhead Whale Aerial Survey Program (BWASP) and Chukchi Offshore Monitoring in Drilling Area (COMIDA) reports.

After careful consideration of the proposed activities, the context in which Shell's proposed activities would occur, the best available scientific information, and all effects analyses (including cumulative effects), NMFS has determined that the specified activities: (1) Would not result in more than the behavioral harassment (*i.e.,* Level B harassment) of small numbers of marine mammal species or stocks; (2) the taking by harassment would not result in more than a negligible impact on affected species or stocks; and (3) the taking by harassment would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses. Therefore NMFS has decided to issue an IHA to Shell to take, by no more than Level B harassment, small numbers of marine mammals incidental to its Chukchi Sea exploratory drilling program.

Comment 9: The MMC recommends that NMFS require Shell to evaluate the source levels of the *Discoverer* at the proposed drilling location and recalculate the 120-dB re 1 μPa harassment zone and estimated takes, as appropriate.

Response: As conditioned in the IHA, Shell is required to conduct sound source verification and characterization of the equipment to be used, including the drilling rig. Shell is required to report received levels down to 120 dB re 1 μPa. Upon completion of those tests, Shell will then use the new sound radii for estimating take throughout the season. While new take estimates will not be calculated to replace those in the application, Shell will use the new radii for reporting estimated take levels in the 90-day report.

Comment 10: The NSB and AWL state that NMFS must consider whether the increase in vessel presence and vessel noise around the drill sites and during transit across the Arctic have the potential to disturb marine mammals.

Response: Shell's application and NMFS' Notice of Proposed IHA (76 FR 69958, November 9, 2011) outline all of the vessels intended for use to support the exploratory drilling program. While the application and proposed IHA do not include source levels or take estimates for those vessels, their

presence is considered and accounted for in several of the mitigation measures. For example, vessel speed and maneuvering conditions apply to all vessels, not just the drill ship and icebreakers. Therefore, while NMFS contemplated the use of all vessels during activities and has included mitigation measures during operation of these vessels to reduce potentially disturbing marine mammals in the vicinity, NMFS does not consider the transit or operation of these vessels to rise to a level that would result in take.

Comment 11: The NSB (in its 2008 letter) and AWL state that a lack of adequate information precludes NMFS from complying with the MMPA standards. AWL states that NMFS should defer all oil and gas-related IHAs while the necessary information is gathered.

Response: As required by the MMPA implementing regulations at 50 CFR 216.102(a), NMFS has used the best scientific information available in assessing potential impacts and whether the activity will have no more than a negligible impact on the affected marine mammal species or stock (see response to *Comment 7*). However, while NMFS agrees that there may be some uncertainty regarding behavior of animals that have been previously exposed to industrial sounds and how that may impact survival and reproduction, the best available information supports our findings.

Industrial activities have been occurring (at varying rates) in the U.S. Arctic Ocean for decades, and the available measurable indicators do not suggest that these activities are having long-term impacts. For example, bowhead whales continued to increase in abundance during periods of intense seismic activity in the Chukchi Sea in the 1980s (Raftery *et al.,* 1995; Angliss and Outlaw, 2007), even without implementation of current mitigation requirements. Additionally, industry has been collecting data and conducting monitoring in the region for many years and will continue to do so under this IHA. Therefore, NMFS has determined that a negligible impact finding is rational.

Comment 12: AWL and the NSB (in its 2008 letter) note that Shell's activities have the potential to result in serious injury. AWL also states that in the proposed IHA, NMFS conflated two different regulatory provisions governing the issuance of IHAs when it stated that for there to be the potential for serious injury or mortality an activity must be ''reasonably expected or likely'' to result in serious injury or mortality. AWL's letter states: ''There is no indication that NMFS considered the dire consequences of a spill when determining whether the 'potential' for serious harm exists * * * Applying the proper standard, NMFS cannot conclude that Shell may proceed with an IHA.''

Response: As analyzed in the proposed IHA, NMFS has determined that Shell's activities are not likely to result in injury, serious injury, or mortality. The activities for which Shell is authorized to take marine mammals would most likely result in behavioral harassment. The mitigation and monitoring measures analyzed in the proposed IHA and required in the authorization are designed to ensure the least practicable impact on marine mammals and their habitat and the availability of marine mammals for subsistence uses.

AWL cites to NMFS' definition of ''negligible impact'' to argue that the agency has improperly conflated separate regulatory standards. ''Negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103).

NMFS believes its decision-making should be informed by whether impacts are actually reasonably likely to occur. This principle is recognized in multiple contexts, and this does not represent the conflation of separate regulatory standards (in this instance, ''negligible impact'' and ''potential to result in serious injury or mortality''). It is well recognized in the cases interpreting NEPA. For example see *Ground Zero Ctr. for Non-Violent Action* v. *United States Dept of the Navy,* 383 F.3d 1082, 1090–91 (9th Cir. 2004) (concluding that where Navy had concluded that risk was extremely remote, ''such remote possibilities do not in law require environmental evaluation.'') As explained later in this document, this interpretation reflects NMFS' longstanding practice of issuing IHAs in cases where the agency found that the potential for serious injury or mortality was ''highly unlikely'' (*See* 73 FR 40512, 40514, July 15, 2008; 73 FR 45969, 45971, August 7, 2008; 73 FR 46774, 46778, August 11, 2008; 73 FR 66106, 66109, November 6, 2008; 74 FR 55368, 55371, October 27, 2009). Interpreting ''potential'' to include impacts with any probability of occurring (*i.e.,* speculative or extremely low probability events) would be administratively unworkable and inconsistent with Congressional intent. NMFS' proposed IHA considered the risks of an oil spill in its analysis and used that analysis to make the final determinations here.

Comment 13: BOEM asks that NMFS clarify how Shell will avoid violating condition 3(b) in the IHA, which specifies that take of any species not listed in the IHA is prohibited and that such take ''may result in the modification, suspension or revocation'' of the IHA, given that Shell will be flying marine mammal monitoring flights below 1,500 ft (457 m) in areas where walrus or polar bears might be present.

Response: NMFS only has the authority to prescribe IHA conditions on species for which it has jurisdiction. Both the walrus and the polar bear are managed by the U.S. Fish and Wildlife Service (USFWS). Therefore, condition 3(b) does not refer to those two species. Moreover, NMFS' requirement to conduct marine mammal monitoring aerial surveys does not preclude Shell from complying with more stringent restrictions and conditions imposed by other Federal agencies. NMFS' IHA states that flights cannot be flown below 1,500 ft (457 m) except in certain circumstances. The IHA does not require that the flights must be flown below 1,500 ft (457 m) in those circumstances.

Comment 14: BOEM notes that the draft IHA does not provide limits of incidental take to species nor require Shell to not exceed those limits. BOEM recommends that NMFS clarify to what extent Shell would or should monitor/report their incidental take on a more regular basis so to not exceed a specified authorized incidental take prior to submission of the draft 90-day report.

Response: Table 8 in the Notice of Proposed IHA (76 FR 69958, November 9, 2011) outlined the levels of proposed take. The final table of the authorized take levels is included as an attachment to the issued IHA. Additionally, the IHA also includes a condition requiring Shell to submit daily marine mammal observation logs to NMFS.

Marine Mammal Impact Concerns

Comment 15: The MMC recommends that NMFS require Shell to collect all new and used drilling muds and cuttings and either reinject them or transport them to an Environmental Protection Agency licensed treatment/disposal site outside the Arctic. The NSB and AWL also note that Shell should be required to have a near zero discharge policy in the Chukchi Sea, similar to what Shell will employ in the Beaufort Sea, in order to ensure the least practicable impact to marine mammals, their habitat, and subsistence hunters.

Response: Shell's collection of drilling mud and cuttings and certain other waste streams is a voluntary decision on the part of the company for its Beaufort Sea exploratory drilling program. Shell will not be conducting such a program in the Chukchi Sea, a practice that is consistent with both the current Arctic Oil and Gas Exploration General Permit and the draft General Permit being considered by the U.S. Environmental Protection Agency. The discharge of drilling related effluents has been extensively studied in both temperate and Arctic regions (Neff, 2010) and, when employing water based muds, is generally considered to be of slight environmental impact. The removal of muds, cuttings, and other effluent streams from exploration drilling requires additional vessels, which results in additional vessel traffic and related noise (which can in turn increase the potential for vessel-marine mammal interactions and vessel-related air emissions). Given the concerns raised with respect to the cumulative impacts of vessel traffic in the Arctic, the speculative benefits of waste stream removal do not warrant imposing such a requirement on Shell in the Chukchi Sea. Shell will, however, collect water and other samples in both seas before, during, and after the drilling programs in order to study sediment and water chemistry, the biotic community, deposition, and bioaccumulation. The collection of these samples will repeat evaluations at the localized drill sites that have been conducted as part of the Joint Industry Monitoring Program for several years. NMFS has determined that even without requiring such a measure, Shell's activities will have a negligible impact on marine mammal species or stocks and will not have an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses.

Comment 16: AWL states that NMFS' uniform marine mammal harassment thresholds do not consider documented reactions of specific species in the Arctic to much lower received levels. The letter notes reactions of bowhead and gray whales to certain activities emitting impulse sounds below 160 dB and of beluga and bowhead whales and harbor porpoise reacting to other sound sources below 120 dB. The letter also states: ''At a minimum, any final IHA cannot apply thresholds that fail to accurately capture potential marine mammal harassment, as required by the standards imposed by the MMPA.'' Similarly, Dr. Bain notes marine mammal reactions, and especially those of beluga whales and harbor porpoises, to sounds below NMFS' 160 dB and 120 dB thresholds.

Response: For continuous sounds, such as those produced by drilling operations and during icebreaking activities, NMFS uses a received level of 120-dB (rms) to indicate the onset of Level B harassment. For impulsive sounds, such as those produced by the airgun array during the ZVSP surveys, NMFS uses a received level of 160-dB (rms) to indicate the onset of Level B harassment. Therefore, while a level of 160-dB was used to estimate take for a portion of the operations that will only occur for a total of 10–56 hours, depending on how many wells are drilled, during the entire 4-month open-water season, a threshold of 120-dB was used to estimate potential takes for all species from the drilling operations and ice management/icebreaking activities.

While some published articles indicate that certain marine mammal species may avoid seismic airguns (an impulsive sound source) at levels below 160 dB, NMFS does not consider that these responses rise to the level of a take, as defined in the MMPA. While studies, such as Miller *et al.* (1999), have indicated that some bowhead whales may have started to deflect from their migratory path 21.7 mi (35 km) from the seismic source vessel, it should be pointed out that these minor course changes are during migration and have not been seen at other times of the year and during other activities. To show the contextual nature of this minor behavioral modification, recent monitoring studies of Canadian seismic operations indicate that feeding, non-migratory bowhead whales do not move away from a noise source at a sound pressure level (SPL) of 160 dB. Therefore, while bowheads may avoid an area of 12.4 mi (20 km) around a noise source, when that determination requires a post-survey computer analysis to find that bowheads have made a 1 or 2 degree course change, NMFS does not consider that deviation to rise to a level of a ''take,'' as the change in bearing is due to animals sensing the noise and avoiding passage through the ensonified area during their migration and should not be considered as being displaced from their habitat. NMFS therefore continues to estimate ''takings'' under the MMPA from impulse noises, such as seismic, as being at a distance of 160 dB (re 1 μPa).

Although it is possible that marine mammals could react to any sound levels detectable above the ambient noise level within the animals' respective frequency response range, this does not mean that such reaction would be considered a take. According to experts on marine mammal behavior, whether a particular stressor could potentially disrupt the migration, breathing, nursing, breeding, feeding, or sheltering, etc., of a marine mammal, *i.e.,* whether it would result in a take, is complex and context specific, and it depends on several variables in addition to the received level of the sound by the animals. These additional variables include: other source characteristics (such as frequency range, duty cycle, continuous vs. impulse vs. intermittent sounds, duration, moving vs. stationary sources, etc.); specific species, populations, and/or stocks; prior experience of the animals (naive vs. previously exposed); habituation or sensitization of the sound by the animals; and behavior context (whether the animal perceives the sound as predatory or simply annoyance), etc. (Southall *et al.* 2007). The 120-dB and 160-dB acoustic criteria are generalized thresholds based on the available data that is intended to assist in the accurate assessment of take while acknowledging that sometimes animals will respond at received levels below that and sometimes they will not respond in a manner considered a take at received levels above 120 dB.

Comment 17: AWL notes that there is a lack of information regarding bowhead aggregations and feeding in the area. ''Given the lack of information, the proposed IHA should not simply assume that the 'closest primary feeding ground' is near Point Barrow.'' They state that there is evidence of bowheads frequenting the area around Point Franklin. Dr. Bain also states that excluding whales from feeding areas effectively reduces the carrying capacity, which in turn reduces the rate of population increase and is equivalent to removing individuals from the population; therefore, a shift in feeding locations would not be harmless.

Response: Most bowhead whales will be in the Canadian Beaufort Sea when Shell begins operations in July. The fall westward migration begins in late August/early September through the Beaufort Sea and then into the Chukchi Sea. The Barrow area is commonly used as a feeding area during spring and fall, with a higher proportion of photographed individuals displaying evidence of feeding in fall rather than spring (Mocklin, 2009). A bowhead whale feeding ''hotspot'' (Okkonen *et al.,* 2011) commonly forms on the western Beaufort Sea shelf off Point Barrow in late summer and fall. Favorable conditions concentrate euphausiids and copepods, and bowhead whales congregate to exploit the dense prey (Ashjian *et al.,* 2010,

Moore *et al.,* 2010; Okkonen *et al.,* 2011). Bowheads will reach this feeding ground in the fall prior to entering the area ensonified by Shell's Chukchi Sea operations. Although Shell will be conducting a similar operation in the Camden Bay area of the Beaufort Sea, whales that begin their migration into U.S. waters earlier in the season, will avoid sounds from Shell's operations, as activities will cease in the Beaufort Sea on August 25 until the close of the fall hunts at Kaktovik and Cross Island.

The COMIDA 2008–2010 Final Report (Clarke *et al.,* 2011) notes sightings of bowhead whales in the Chukchi Sea in all months that surveys were flown (June through November), except November. Sighting rates were highest in October; however, there were no specific areas where whales were concentrated each year (Clarke *et al.,* 2011). All feeding was observed close to shore between Point Franklin and Barrow, Alaska, in June, July, and September of 2009 (Clarke *et al.,* 2011), which is more than 65 mi (105 km) from Shell's Burger prospect. There were no observations of feeding in the areas near Shell's proposed drill sites.

Moreover, while some whales may avoid the area around Shell's drilling program because of the increased sound levels while operations are ongoing, there has also been evidence that some bowheads continued feeding in close proximity to seismic sources (*e.g.,* Richardson, 2004). The sounds produced by the drillship are of lower intensity than those produced by seismic airguns. Therefore, if animals remain in ensonified areas to feed, their feeding opportunity would not be missed, and they would be in areas where the sound levels are not high enough to cause injury (as discussed in greater detail later in this document). In accordance with NMFS' implementing regulations at 50 CFR 216.102(a), NMFS used the best available science to make the requisite findings for issuance of the IHA. That information indicates that there will not be concentrated feeding at the Burger prospect and that Shell's activities will not negatively affect bowhead feeding in the vicinity of Shell's proposed activities.

Comment 18: Dr. Bain states that the increase in vessel traffic associated with Shell's project increases the risk of ship strike. AWL also notes that the risk of a vessel strike or the effects of a large oil spill could lead to serious injury. Additionally, missing information precludes full assessment of the effects of a large oil spill on bowheads may alter how NMFS assesses the potential for serious injury or death.

Response: NMFS acknowledges that there is always some risk of a ship strike whenever a vessel transits the ocean. However, the IHA requires Shell to implement several mitigation measures applicable to vessel operation (*e.g.,* speed restrictions in the presence of marine mammals or in inclement weather, avoiding multiple changes in direction when within 300 yards [274 m] of whales) to reduce further the low probability of a ship strike.

Again, in accordance with NMFS implementing regulations, we used the best information available to assess potential impacts from an oil spill in the proposed IHA. NMFS' EA also assesses impacts from a large oil spill and incorporates information by reference from other recently released NEPA documents by BOEM regarding the potential for and impacts of a large oil spill on the marine environment. Also, please see the response to *Comment 12* regarding the ''potential'' impact from activities. NMFS determined that there is not a risk of serious injury or death to occur from Shell's *specified activity* and therefore issuance of an IHA under the MMPA is appropriate.

Comment 19: AWL and Dr. Bain note that potential impacts on females and calves merit ''special consideration,'' as they will migrate through the Chukchi Sea during the fall migration. NMFS must examine whether bowhead cow/calf pairs will suffer from Shell's activities and whether that could result in a greater degree of harm that would warrant specific mitigation measures.

Response: NMFS discussed potential impacts to bowhead whales, including cow/calf pairs in the Notice of Proposed IHA (76 FR 69958, November 9, 2011). In the section that discussed potential impacts to marine mammals from the specified activity, NMFS described data from studies that included observations and reactions (or lack thereof) of cow/calf pairs to different anthropogenic activities. Mitigation measures are required in the IHA during vessel transits (*e.g.,* speed restrictions, avoiding multiple changes in direction when within 300 yards [274 m] of whales) through the Chukchi Sea and from shore to the drill sites. These measures will ensure that potential impacts are reduced to the lowest level practicable. Moreover, Shell will not enter the Chukchi Sea prior to July 1, after the conclusion of the spring bowhead whale migration.

As noted earlier in this document, the fall migration westward through the Beaufort Sea and into the Chukchi Sea does not begin until late August/early September. Koski and Miller (2004) found that mother/calf bowhead pairs were the last to enter the U.S. Beaufort Sea during the fall migration (typically arriving in September and lasting into October). Therefore, if mother/calf pairs are not arriving in the central Beaufort Sea until later in the migration, they would not reach the Chukchi Sea lease sale area until later in the season. Therefore, it is likely that Shell's activities will be nearing completion, if not already completed for the season before the majority of the mother/calf pairs reach that area of the Chukchi Sea.

AWL cites to previous NMFS and BOEM documents, which include mitigation measures specifically applicable to bowhead cow/calf pairs. However, these pertained to seismic surveys or other programs in the Beaufort Sea. As has been noted elsewhere in this document and the proposed IHA, sounds produced during seismic surveys are different than those produced during drilling operations. It was determined that such measures were not necessary for these operations. Additionally, as has been noted for previous actions in the Chukchi Sea lease sale area, conducting such mitigation measures is impracticable for applicant implementation. Based on the fact that few cow/calf pairs are likely to occur within the 120-dB ensonified area of Shell's operations and the protection afforded by the already required mitigation measures, additional measures are not necessary to ensure the least practicable impact on bowhead cow/calf pairs.

Comment 20: AWL states that NMFS must consider potential effects on beluga mothers and calves and must evaluate whether enough is known about beluga habitat use to accurately predict the degree of harm expected from Shell's operations. The proposed IHA's negligible impact assessment provides very little discussion of beluga whales. Moreover, the proposed IHA appears to rely on a population estimate for the Beaufort Sea stock rather than the significantly smaller Chukchi Sea stock even though both stocks are found in the Chukchi Sea during the fall. Dr. Bain also notes that work will be underway while belugas are nursing and caring for calves.

Response: As noted in responses to earlier comments in this document, as required by the MMPA implementing regulations at 50 CFR 216.102(a), NMFS has used the best scientific information available in assessing potential impacts and whether the activity will have no more than a negligible impact on the affected marine mammal species or stock. While NMFS agrees that there may be some uncertainty regarding spatial and temporal habitat needs of

belugas, the best available information supports our findings.

While Shell's exploratory drilling program will overlap temporally with the beluga calving season, it will not overlap spatially. Tagging data from the 1990s indicates that belugas from the eastern Beaufort Sea stock will be in Canadian waters (*i.e.,* Mackenzie Delta and Amundsen Gulf) in the summer (July and August) and do not start migrating through the Beaufort Sea until September but do so far offshore (Richard *et al.,* 2001; DFO, 2000). In the summer months, belugas from the eastern Chukchi Sea stock are typically found in Kasegaluk Lagoon and Kotzebue Sound (Suydam *et al.,* 2001), locations that are approximately 100 mi (161 km) or more south of the Burger prospect. Shell will transit far offshore so as not to disturb the summer beluga hunts conducted in Kasegaluk Lagoon and therefore will avoid interactions with mothers and calves. Tagging data of belugas from this stock have also indicated that they travel far offshore in the Beaufort Sea to Canadian waters later in the summer (Suydam *et al.,* 2001). Based on this information, it is unlikely that many beluga mother/calf pairs will pass within the 120-dB isopleths of Shell's Chukchi Sea exploratory drilling program. Mitigation and monitoring measures will ensure that impacts to any belugas that do occur in the vicinity of the program will be at the lowest level practicable.

Comment 21: AWL states that NMFS must consider whether Shell's ice management efforts have the potential to seriously injure or kill ringed seals resting on pack ice.

Response: NMFS considered the potential impacts of Shell's ice management efforts to ringed seals resting on pack ice in the Notice of Proposed IHA (76 FR 69958, November 9, 2011) in the section regarding anticipated effects on marine mammal habitat. AWL also references the MMS 2008 Draft EIS for the Beaufort Sea and Chukchi Sea Planning Areas Oil and Gas Lease Sales 209, 212, 217, and 221 (MMS, 2008), which includes a reference to Reeves (1998). Reeves (1998) noted that some ringed seals have been killed by icebreakers moving through fast-ice breeding areas. In the proposed IHA analysis, NMFS considered this information and noted that since Shell's use of the icebreakers would occur outside of the ringed seal breeding and pupping seasons in the Chukchi Sea, serious injury or mortality from use of the icebreakers would not occur.

Limited ice breaking might be needed to assist the fleet in accessing/exiting the project area if large amounts of ice pose a navigational hazard. Ice seals have variable responses to ice management activity. Alliston (1980, 1981) reported icebreaking activities did not adversely affect ringed seal abundance in the Northwest Territories and Labrador. Brueggeman *et al.* (1992) reported ringed seals and bearded seals diving into the water when an icebreaker was 0.58 mi (0.93 km) away. However, Kanik *et al.* (1980) reported that ringed seals remained on sea ice when an icebreaker was 0.62–1.24 mi (1–2 km) away.

The drill site is expected to be mostly ice-free during July, August, and September, and the need for ice management should be infrequent. The presence of an icebreaker is primarily a safety precaution to protect the drill ship from damage. Ice seals could be on isolated floes that may need to be managed for safety. Any ice seals on floes approaching the drill ship may be disturbed by ice management activities. Ringed seals on an ice floe are anticipated to enter the water before the icebreaker contacts the ice, remain in the water as the ice moves past the drill ship, and could reoccupy ice after it has moved safely past the drill ship. As was discussed in the proposed IHA, NMFS determined that this activity and these reactions would result in Level B harassment. NMFS did not determine that there was a potential for serious injury or morality to occur from Shell's ice management efforts.

Comment 22: Dr. Bain states that noise exposure can lead to stress, which can impair the immune system and result in an increase in mortality from disease. He also notes that impairing the energy balance can slow growth, delay onset of sexual maturity, and increase the interval between successful births, all of which can cause a reduction in the number of animals recruited to the population.

Response: While deflection may cause animals to expend extra energy, there is no evidence that deflecting around oil and gas exploration activities (or other anthropogenic activities) is causing a significant behavioral change that will adversely impact population growth. In fact, bowhead whales continued to increase in abundance during periods of intense seismic activity in the Chukchi Sea in the 1980s (Raftery *et al.,* 1995; Allen and Angliss, 2011). Additionally, as mentioned in the response to *Comment 17,* all feeding was observed close to shore between Point Franklin and Barrow, Alaska, in June, July, and September of 2009 (Clarke *et al.,* 2011), which is more than 65 mi (105 km) from Shell's Burger prospect. There were no observations of feeding in the areas near Shell's proposed drill sites. Regarding recruitment of calves to the population, the count of 121 calves during the 2001 census was the highest yet recorded and was likely caused by a combination of variable recruitment and the large population size (George *et al.,* 2004). The calf count provides corroborating evidence for a healthy and increasing population. Based on this information, NMFS does not expect Shell's activities to impact annual rates of recruitment or survival within the Western Arctic bowhead stock.

Comment 23: Dr. Bain states that hearing loss or masking from exposure to high levels of noise would impair bowhead whales' ability to hear vocalizations. He also states that hearing loss and masking would increase vulnerability to predation or ship strike, which in turn could increase mortality.

Response: As noted in the proposed IHA, the source level of the *Discoverer* is lower than the thresholds used by NMFS for the onset of auditory injury. Shutdown and power-down measures are required in the IHA when the airguns are in use to help reduce further the extremely low likelihood of temporary threshold shift (a Level B harassment). As noted in the proposed IHA, masking effects are anticipated to be limited. Annual acoustic monitoring near BP's Northstar production facility during the fall bowhead migration westward through the Beaufort Sea has recorded thousands of calls each year (for examples, see Richardson *et al.,* 2007; Aerts and Richardson, 2008). To compensate for and reduce masking, some mysticetes may alter the frequencies of their communication sounds (Richardson *et al.,* 1995a; Parks *et al.,* 2007). Additionally, if some individuals avoid the drilling area, impacts from masking will be even lower. There is no evidence to suggest that any masking would increase the likelihood of death.

Comment 24: Dr. Bain states that even though the bowhead population increased in the face of industry activity in the 1990s, an increase in disturbance now (while it appears close to carrying capacity) could result in slowed growth or a loss of individuals.

Response: Based on information provided in the responses to other comments in this section, NMFS does not agree that population growth would be slowed as a result of Shell's proposed activity or increase the numbers of individuals lost. There are no data indicating that the population cannot continue to grow (as it has for over a decade) in the face of such activities.

Shell's activities will occur in a small portion of the bowheads' range.

Comment 25: Dr. Bain notes that masking of beluga whale echolocation signals by noise, and temporary and permanent threshold shifts will impair the ability of belugas to find food. This mechanism is in addition to impaired abilities to find food due to displacement from high quality feeding areas.

Response: As noted in the proposed IHA, beluga whale echolocation signals have peak frequencies from 40–120 kHz, which are far above the frequency range of the sounds produced by the devices to be used by Shell during the Chukchi Sea exploratory drilling program. Therefore, those industrial sounds are not expected to interfere with echolocation. Additionally, the source level of the drillship is lower than the thresholds used by NMFS for the onset of auditory injury. Shutdown and power-down measures are required in the IHA when the airguns are in use to help reduce further the extremely low likelihood of temporary threshold shift (a Level B harassment). Lastly, there are no data indicating that the area surrounding Shell's Burger prospect is an important feeding area for beluga whales.

Acoustic Issues/Concerns

Comment 26: The MMC states that it is not clear which specific source level was used to model the size of the corrected 120-dB re 1 μPa harassment zone for the *Discoverer,* as the reported source levels for the *Discoverer* ranged from 177–185 re 1 μPa at 1 m. It also is not clear how the source level measurements taken in the South China Sea were incorporated in the model to estimate the 120-dB re 1 μPa harassment zone in the Chukchi Sea.

Response: The modeling analysis considered 1/3-octave band levels to account for frequency-dependent propagation effects that cannot adequately be characterized with broadband analysis. The 1/3-octave band source levels were obtained from dedicated measurements of the *Frontier Discover* (now *Noble Discoverer*) during drilling activities in the South China Sea. A plot showing these levels is provided in the response to *Comment 27,* and the corresponding broadband levels could be computed by summing those if required. The modeling approach applied by JASCO Applied Science was the MONM parabolic equation acoustic propagation model in each 1/3-octave band from 10 Hz to 2 kHz. The resulting received band levels were summed to compute the broadband received levels at many depths, distances and directions from the planned drillship location. Representative sound level threshold radii were determined by calculating the 95th percentile distance, over all azimuths, at which the maximum threshold over all depths was received. This approach considers that animals may sample multiple depths as they pass by the drilling operation.

Comment 27: Dr. Bain notes that sound propagation efficiency depends on conditions and that the modeling used by Shell does not capture the most efficient mode of propagation. He also states that there is great uncertainty with source levels based on single measurement locations, as was done for the *Discoverer.*

Response: The concern raised here about variability of profiles is addressed in the response to *Comment 29*. With regard to the question on which source levels were used for modeling, this study considered 1/3-octave band source levels from the *Discoverer* drillship obtained during dedicated measurements performed in 2009 in the South China Sea (Austin and Warner, 2010). The specific levels are representative of the drilling operation since that activity will occur for the majority of time. The source levels used for the ice management vessel are from surrogate measurements of the *Maersk Rover* transiting at 25% power.

Comment 28: Dr. Bain states that noise sources associated with thruster use may result in a significant increase in the ensonified area; however, it is unclear from the IHA application how often the thrusters would be used.

Response: Shell does not intend to use thrusters as part of its standard operating procedure throughout the drilling season. The *Discoverer* will be anchored in place. The only time thrusters would be used would be in the unlikely event that the *Discoverer* is blown off location and the drillship needs to be repositioned.

Comment 29: Dr. Bain states that the correction factor of 1.5 applied to the distance to the 120 dB contour is inadequate to conservatively account for the variability.

Response: The concern raised here is that the sound speed profile used for acoustic modeling of drill rig noise may not account for changes to the salinity and temperature profile that could influence and create variability in sound propagation, and the resulting variability might lead to conditions in which model estimates would not be conservative. The location-specific sound speed profiles considered for this modeling study were obtained from the GDEM database for conditions in July and October. A modeling study (Johnston *et al.,* 2009) investigated the difference in sound propagation for both months and showed longer-range sound propagation using the October profile. To be precautionary and to avoid underestimating the propagation, the modeling at the Burger prospect that was used for marine mammal effects assessment was conducted using the October profile (see Figure 2). Therefore, a correction factor of 1.5 is appropriate in this circumstance.

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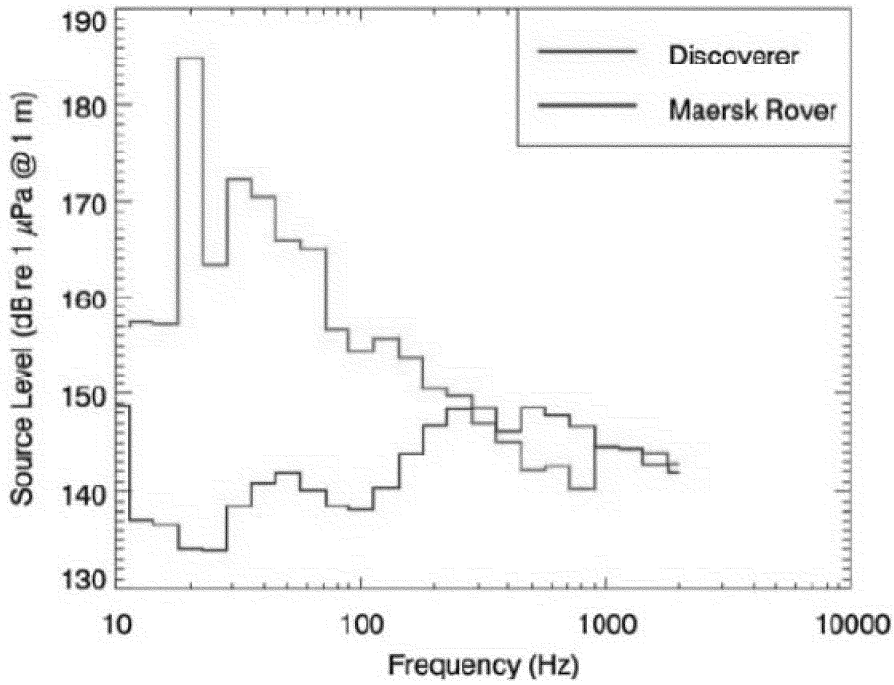

Figure 1. Source levels in 1/3-octave bands for the drillship Discoverer and ice management surrogate vessel (the ice handler Maersk Rover).

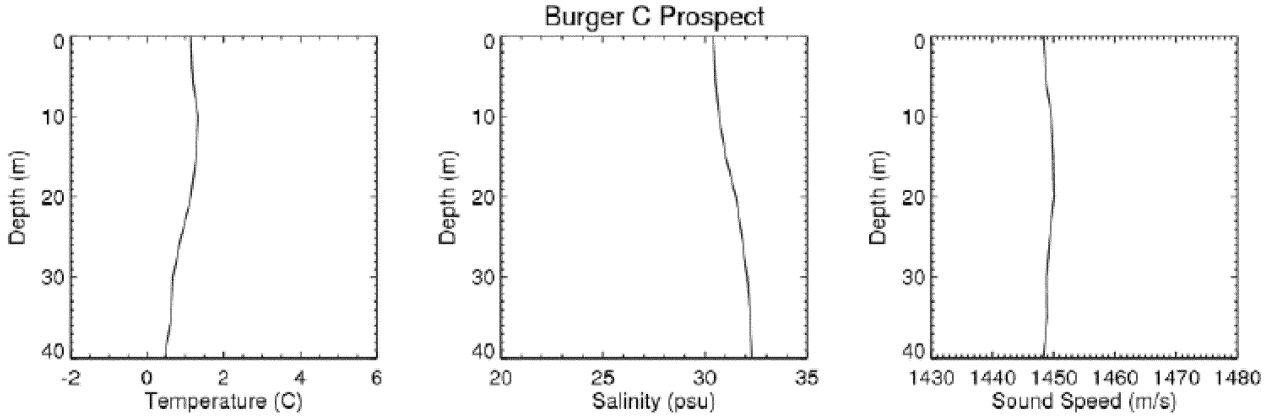

Figure 2. Temperature, salinity, and sound speed profiles at the Burger prospect obtained from the GDEM database for October.

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Comment 30: Dr. Bain notes that when multiple sources are involved, such as an ice management vessel and drillship, accurate characterization of the sound fields will be necessary to determine whether their sound fields overlap and whether marine mammals are likely to deflect around one or both sources. NMFS should perform a sensitivity analysis using a variety of propagation conditions.

Response: NMFS agrees that a modeling sensitivity analysis would provide a measure of expected variability. However, the acoustic modeling study that was performed to estimate Shell's drilling noise effects on marine mammals relied on environmental parameters that were expected to lead to better sound propagation, thereby providing overestimates of the generated noise field. That study considered the combined noise emissions of a support vessel and the drillship, and it would be representative of drilling operations during the vast majority of time while active ice management was not in progress. To better define the true noise levels and variability, Shell designed a field measurement program that monitors actual drilling sounds at several distances and at multiple directions over the full duration of drilling of the first well at Shell's Burger prospect in the Chukchi Sea. This monitoring will continuously sample the temporal variability of noise propagation due to changing oceanographic conditions over approximately one month. NMFS determined that this approach will

provide a better sampling of variability than a modeling sensitivity study.

Unlike the eastern Beaufort Sea, where the fall bowhead migration tends to occur across a relatively narrow depth/distance-from-shore corridor and where feeding concentrations are sometimes apparent, tagged bowhead whales migrate across the Chukchi over a broad area with little indication of concentration aside from offshore Barrow and the Chukotka coast (Quakenbush *et al.,* 2010). Because the 487 active leases in the Chukchi Sea contain only 2% of the total probable habitat used by bowheads in September and only 1% in both October and November, there are very limited indications of significant use of the few lease blocks involved in this exploration drilling program. As such, the number of potential exposures and deflections are expected to be both low in number and of limited biological consequence.

Marine Mammal Biology Concerns

Comment 31: AWL states that the Bering Sea stock of harbor porpoise is based on ''arbitrarily set geographic boundaries.'' AWL and Dr. Bain both note that the stock size is likely smaller than what is currently estimated and that smaller stocks tend to be more vulnerable to harm from human activities.

Response: Currently, there are insufficient samples to draw conclusions about stock structure of harbor porpoise within Alaska. While NMFS acknowledges that perhaps smaller stocks should be recognized in Alaska, the best available science indicates that take from Shell's activities will potentially impact only small numbers of harbor porpoise and will not have a negligible impact on the affected species or stock. Using the current estimated stock size of 48,215 individuals for the Bering Sea stock, only 0.03% is estimated to be taken by harassment. If the number should be 16,271 (as suggested by AWL), this would still represent less than 0.1% of the stock size. NMFS does not agree that just because a stock contains fewer individuals than originally estimated that it is far less able to tolerate takes than expected. Dr. Bain does not provide any scientific evidence for this statement.

Comment 32: AWL and Dr. Bain note that gray whales use Hanna Shoal for feeding and that Shell's operations may block gray whales' access to this habitat or cause them to abandon their feeding. Additionally, they note that since its Endangered Species Act (ESA) delisting in 1994, numbers have declined.

Response: The COMIDA 2008–2010 Final Report (Clarke *et al.,* 2011) notes 504 sightings of 835 gray whales during that time period, which were seen in every month of surveys each of the 3 years (*i.e.,* June to November) between Wainwright and Barrow within 31 mi (50 km) of shore. Clarke *et al.* (2011) note that sightings were also scattered throughout the study area more than 31 mi (50 km) offshore. The relative lack of gray whale sightings (and mud plumes, which are indicative of the presence of feeding gray whales) offshore was markedly different from that documented during surveys conducted from 1982–1991, when gray whales were frequently seen on Hanna Shoal (Moore and Clarke, 1992 cited in Clarke *et al.,* 2011). Gray whale sightings were most common in the survey blocks closer to shore in all months (Clarke *et al.,* 2011). Based on this information, it appears that currently nearshore locations are being used more frequently than Hanna Shoal for feeding by gray whales. Shell's operations (which are located more than 65 mi [105 km] from shore) are not expected to block gray whales' access to feeding grounds closer to shore. Additionally, even though it might require a slight deflection or deviation from the migration path, gray whales wanting to access the Hanna Shoal area would be able to do during Shell's operations.

Since 1994, NMFS has continued to monitor the status of the population consistent with its responsibilities under the ESA and the MMPA. In 1999, a NMFS review of the status of the eastern North Pacific stock of gray whales recommended the continuation of this stock's classification as non-threatened (Rugh *et al.,* 1999). Workshop participants determined the stock was not in danger of extinction, nor was it likely to become so in the foreseeable future.

In 2001, several organizations and individuals petitioned NMFS to re-list the eastern North Pacific gray whale population. NMFS concluded that there were several factors that may be affecting the gray whale population, but there was no information indicating that the population may be in danger of extinction or likely to become so in the foreseeable future. The population size of the Eastern North Pacific (ENP) gray whale stock has been increasing over the past several decades despite an unusual mortality event in 1999 and 2000. The estimated annual rate of increase, based on the unrevised abundance estimates between 1967 and 1988, is 3.3% with a standard error of 0.44% (Buckland *et al.,* 1993); using the revised abundance time series from Laake *et al.* (2009) leads to an annual rate of increase for that same period of 3.2% with a standard error of 0.5% (Punt and Wade, 2010). Prior to the revised abundance estimates of Laake *et al.* (2009), Wade (2002) conducted an assessment of the ENP gray whale stock using survey data through 1995–96. Wade and Perryman (2002) updated the assessment in Wade (2002) to incorporate the abundance estimates from 1997–1998, 2000–2001, and 2001–2002, as well as calf production estimates from the northward migration (1994 to 2001), into a more complete analysis that further increased the precision of the results. All analyses concluded that the population was within the stock's optimum sustainable population level (*i.e.,* there was essentially zero probability that the population was below the stock's maximum net population level), and estimated the population in 2002 was between 71% and 102% of current carrying capacity. NMFS continues to monitor the abundance of the stock through the MMPA stock assessment process, especially as it approaches its carrying capacity. If new information suggests a reevaluation of the ENP gray whales' listing status is warranted, NMFS will complete the appropriate reviews.

Comment 33: AWL states that any final IHA must analyze potential effects of all of Shell's operations on ribbon, ringed, spotted, and bearded seals and must do so considering the distinct habitats and life histories for each. AWL also notes that portions of the ringed and bearded seal populations are proposed for listing under the ESA and that those listings were prompted, in part, by the effects of climate change on ice seal habitat. The added stress of diminishing habitat should be considered in NMFS' analysis here.

Response: NMFS has considered the potential effects of Shell's activities on all four ice seal species in the context of the distinct habitats and life histories for each. In the proposed IHA, NMFS acknowledged the importance of sea ice to various life functions, such as breeding, pupping, and resting. Several of these species perform these functions on sea ice outside of the project area. Shell's activities would occur at a time of year when the ice seal species found in the region are not molting, breeding, or pupping. Therefore, these important life functions would not be impacted by Shell's activities. NMFS' EA for this action considers the impacts of climate change on ice seals in the region.

Comment 34: AWL notes the recent outbreak of skin lesions and sores among ringed seals. The letter states that

NMFS should consider the weakened state of the population as part of the analysis. They also note that some spotted and bearded seals have shown symptoms as well.

Response: NMFS began receiving reports of the outbreak in summer 2011 and declared an unusual mortality event in December 2011. An investigative team was established, and testing has been underway. Testing has ruled out numerous bacteria and viruses known to affect marine mammals, including Phocine distemper, influenza, Leptospirosis, Calicivirus, orthopoxvirus, and poxvirus. Foreign animal diseases and some domestic animal diseases tested for and found negative include foot and mouth disease, VES, pan picornavirus, and Rickettsial agents. Last month, preliminary radiation testing results were announced which indicate radiation exposure is likely not a factor in the illness. Further quantitative radionuclide testing is occurring this spring. Results will be made publicly available as soon as the analyses are completed.

Reports from the NSB indicate that hunters during early winter observed many healthy bearded and ringed seals. The seals behaved normally: They were playful, curious but cautious, and maintained distance from boats. No lesions were observed on any seals. During December 2011 and January 2012, 20–30 adult ringed seals were harvested from leads in the sea ice in the NSB. Based on local reports, these seals had neither hair loss nor lesions. However, during late February 2012, a young ringed seal with nodular and eroded flipper lesions but no hair loss was harvested. Additionally, necropsy results of the internal organs were consistent with animals with this disease that continues to affect ice seals in the NSB and Bering Strait regions. Chukotka hunters did not report any sightings or harvest of sick and/or hairless seals in December 2011 and January 2012.

NMFS has considered this information as part of its analysis in making the final determinations for this IHA. The data available to date do not indicate that this has weakened the population. Moreover, Shell's activities are anticipated to take less than 1% of the population of all of the stocks of all three species noted by the commenter. The sound that will be produced by Shell's activities is of a low level. Therefore, even if the population were weakened from this outbreak it would not change our evaluation of the impacts of this activity at the population level.

Comment 35: Dr. Bain states the population censuses for the eastern Chukchi Sea and Beaufort Sea stocks of belugas have not been conducted in the last 10 years and that population trends are unknown. No evidence of population growth was seen when censuses were still being conducted.

Response: In accordance with NMFS' implementing regulations at 50 CFR 216.102(a), NMFS used the best available science to make the requisite findings for issuance of the IHA. That science indicates that only small numbers of belugas will be taken and that those incidental takings will have no more than a negligible impact on the affected beluga stocks and will not have an unmitigable adverse impact on the availability of those belugas for taking for subsistence uses.

Density and Take Estimate Concerns

Comment 36: The AEWC, NSB, AWL, and Dr. Bain state that using a strict density approach to estimate take is unreasonable, as it does not account for the movement of animals through the drilling area during the time period over which the activities will occur. The NSB states that this approach likely results in take estimates that are biased low. The AEWC and Dr. Bain suggest that NMFS should draw a line across the ensonified area and estimate the number of marine mammals that would be expected to cross that line during Shell's activities.

Response: During migration, there are clear changes in the density of animals that pass through a particular area of ocean, and ''take'' estimates attempt to consider this. In other situations, it is difficult to account for the movements of individuals within a relatively small area of ocean. Using densities provides the best estimate of animals though it assumes that animals are distributed evenly in the environment, which is not correct. This approach has, however, been used for most statistical approaches to dealing with animals in such situations, and NMFS has determined it is the appropriate and most robust approach in this case. In most cases, it overestimates the number of animals actually ''taken'' by the activities because it assumes no avoidance of the area by individuals.

Other approaches to estimate take were explored, mostly notably application of Quakenbush *et al.* (2010), which produced similar low estimates. Application of probability of occurrence within a specific portion of an area as large as the Chukchi Sea over a period of a month is not the equivalent of estimating occurrence distribution along a cross transect of a migration. Quakenbush *et al.* (2010) do indicate that use of the central Chukchi area by bowhead whales during the fall is low (2% of the total probability of occurrence in September and 1% of the total probability of total occurrence in both October and November). Because Shell's exploration drilling would occur in only three of the 487 active leases in the Chukchi Sea, take estimates do not differ appreciably from those based upon density. Unless data from Quakenbush *et al.* (2010) are reanalyzed across narrow bands of the migration corridor, using density estimates provides a reliable method for estimating take.

Comment 37: The NSB and AWL note that the modeled 120-dB isopleths for the *Discoverer* are different in the Beaufort and Chukchi Seas (with the isopleth being slightly smaller in the Chukchi Sea). Additionally, they question if the 120-dB isopleth for the *Discoverer* is correct given its nearly identical source level to the *Kulluk* drill rig (proposed for use in the Beaufort Sea), for which sound propagates out to the 120-dB isopleth at a much farther distance. If the modeled propagation is incorrect for the *Discoverer,* then this would bias the take estimates low.

Response: The primary reason for the difference in the distance of the 120-dB isopleths for the *Discoverer* in the Beaufort Sea vs. the Chukchi Sea is due to differences in the geoacoustic parameters for the two seas that were input to the model. Water depth, seabed density, and seabed sound speed are generally the most important parameters that influence sound propagation.

Differences in sound propagation from the two rigs are real and are caused by differences in the design of the two vessels. While the broadband source levels for the *Discoverer* and *Kulluk* may be similar, their spectral properties differ considerably. Acoustic modeling considers the source levels in 1/3-octave frequency bands. Figures 3 and 4 show the band levels for both drillships during drilling. Of key importance are the significantly lower levels of the *Discoverer* in the 50 to 500 Hz bands that propagate well in the relatively shallow waters of these drilling operations. While the *Discoverer* apparently has higher band levels below 50 Hz, this energy is more rapidly attenuated than higher frequency sound energy. This characteristic of sound propagation in shallow waters leads to predominantly mid-frequency sounds (50–500 Hz) dominating the acoustic field at distance from the drillships. A further consideration is that the *Kulluk* source levels are known to include contributions from support vessels, and much of the mid-high frequency band

energy in its source levels may not originate entirely from the drillship itself, as acknowledged by Greene (1987). The *Discoverer* source level measurements by Austin and Warner (2010) were made at closer distances and do not include significant contributions from other vessels. Additionally, the IHA requires Shell to conduct sound source verification and characterization tests on all equipment used.

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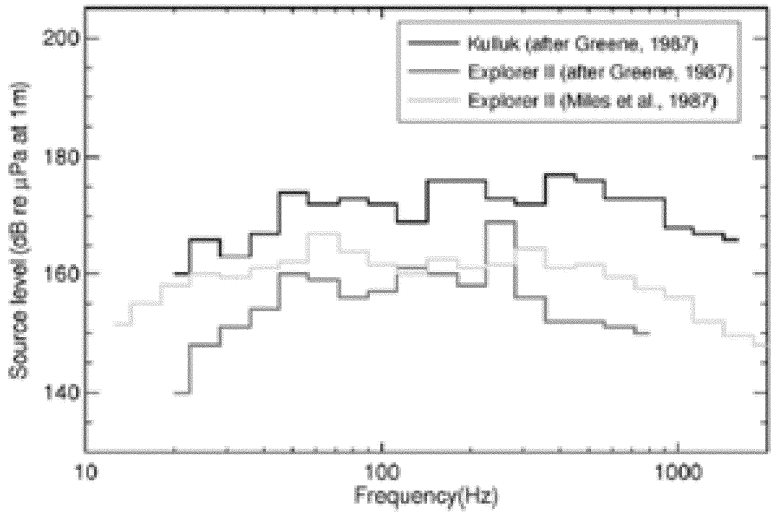

Figure 3. Band levels for the Kulluk during drilling.

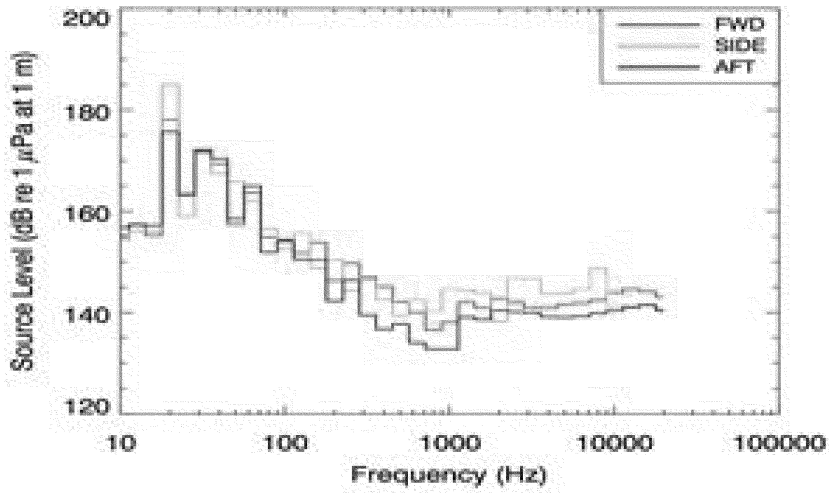

Figure 4. Band levels for the Discoverer during drilling.

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Comment 38: AWL notes that any final IHA must assess exactly when Shell's ice management/icebreaking will occur and also consider the effects of both ice management vessels operating simultaneously but at some distance apart. Because the fall migration through the Chukchi Sea can last late into October, any ice management during the fall could affect a large number of whales.

Response: Because it cannot be predicted with absolute certainty as to when ice may be present in the area that could pose a risk to drilling operations, it is difficult to state with absolute certainty when Shell's ice management/icebreaking will occur. Using data on Arctic sea ice presence from recent years, Shell estimated the most likely times that such activities would be required. Shell will also implement an Ice Management Plan (IMP) to ensure real-time ice and weather forecasting is conducted in order to identify conditions that might put operations at risk and will modify activities accordingly. The description of Shell's activities in the proposed IHA indicated that both ice management vessels could be operating simultaneously at different locations and was considered in the analysis.

Comment 39: Dr. Bain states that density estimates for harbor porpoise may be low since Shell determined densities based on industry vessel-based counts.

Response: No published densities or data on survey efforts or sightings were available for harbor porpoise, but estimates had been calculated from

industry survey data from 2006–2008, so those densities were used. The commenter is correct that the industry vessels did not conduct standard randomized line-transect surveys while operating (except for short periods in 2006). However, this information was considered the best scientific information available to determine a density estimate for harbor porpoise in the Chukchi Sea. NMFS reviewed the COMIDA 2008–2010 Final Report to see if newer data were available, but the report notes that harbor porpoise were not sighted (Clarke *et al.,* 2011), likely due to their small size, making it difficult to positively identify them from the aircraft.

Subsistence Use Concerns

Comment 40: The AEWC and ICAS state that they have expressed concerns about direct impacts to the subsistence hunts resulting from deflection of bowhead whales by vessel traffic and underwater noise, as well as from icebreaking and geophysical exploration. The letters note that concerns about direct and indirect threats to hunting arise from discharge and associated impacts on water quality, the risk of an oil spill, and the cumulative impacts from the sum of all commercial and industrial activities occurring in our waters. Under the MMPA, NMFS has an obligation to ensure that any proposed activities do not have an unmitigable adverse impact on our subsistence activities.

Response: NMFS analyzed the potential impacts from the activities noted here in the proposed IHA and the EA. Potential impacts to the availability of marine mammals for subsistence uses were included in those analyses. Based on the mitigation measures contained in the IHA to ensure the availability of marine mammals for subsistence uses, NMFS determined that Shell's activities would not have an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses. Additionally, Shell worked independently with the AEWC to develop and sign a CAA, which also includes measures to reduce impacts to bowhead whaling from their drilling operations and other activities.

Comment 41: The AEWC states that whaling has resumed in Wainwright, Point Hope, and Point Lay and that these communities have been allocated a quota to use for the fall hunt. The AEWC asks that NMFS correct the information in the notice and carry forward this information into all future analyses. The letter also states that NMFS' ''analysis should consider the specific timing and location of subsistence hunting for each community as compared to the specific timing and location of Shell's proposed operations.'' Lastly, the AEWC states that NMFS did not include a preliminary finding regarding whether or not Shell's activities would have an unmitigable adverse impact on the fall hunt in the Chukchi villages and must publish this preliminary finding for comment.

Response: NMFS used the updated information on fall hunting activities in the communities of Wainwright, Point Hope, and Point Lay in the Draft EA (NMFS, 2012) that was released for public comment and has also updated that information in this analysis and will use it in all future analyses. NMFS' analysis considered both location and timing of subsistence hunting activities, as well as location and timing of Shell's operations. Lastly, NMFS is not required to publish a preliminary finding regarding ''no unmitigable adverse impact to the availability of marine mammals for subsistence uses'' at the proposed IHA stage. The MMPA implementing regulations indicate that NMFS will publish any preliminary finding of ''negligible impact'' or ''no unmitigable adverse impact'' for public comment along with the proposed IHA if preliminary findings have been made at that time. 50 CFR 216.104(c). In this instance, at the proposed IHA stage NMFS was still evaluating the available information and believed it would be beneficial to review information and comments submitted by the public before making determinations regarding whether Shell's proposed action will have a negligible impact on the affected species or stocks of marine mammals and no unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses. Based on our review, we have made the requisite findings of small numbers, negligible impact, and no unmitigable adverse impact on the availability of the taking of marine mammals for subsistence uses.

Comment 42: The AEWC expressed concern about potential impacts to the subsistence hunt in the Bering Sea communities from end of season transits. Because the proposed IHA noted that Shell's IHA expires on October 31, they believe that this is adequate, at this time, to prevent any conflicts with Bering Sea communities so long as Shell begins transit towards the Bering Strait on October 31. The AEWC requests that NMFS consider late season transits to Bering Sea communities in all future **Federal Register** notices regarding IHAs for oil and gas activities in the Arctic. Shell should have plans in place to communicate with those communities if, for whatever reason, its ships are delayed in the leaving the Chukchi Sea.

Response: Shell signed the 2012 CAA with the AEWC on March 26, 2012. In the signed 2012 CAA, Shell agreed to establish Communication Centers in the Bering Sea communities and will conduct such communications in the manner laid out in the CAA. Shell's IHA is valid for drilling operations through October 31. Therefore, demobilization and transit out of the area must begin by that date. Information shared with NMFS from hunters on St. Lawrence Island in 2011 noted that the fall bowhead whale hunts typically occur the week of Thanksgiving. Shell will begin to demobilize and transit south towards Dutch Harbor beginning on October 31, and will avoid being in the area when hunters from Gambell and Savoonga (on St. Lawrence Island) are actively hunting bowhead whales.

Comment 43: The AEWC states that they are concerned about the potential for cumulative impacts to subsistence activities if Shell transits vessels back and forth between the Chukchi Sea and Beaufort Sea drill sites. The AEWC asks that NMFS specify whether and to what extent vessel traffic between the two locations is predicted, what impact that may have on the hunt at Barrow, and whether this vessel traffic may combine with deflection from the Beaufort Sea drill sites to create a large impact on the bowhead migration.

Response: Shell's Beaufort and Chukchi exploration drilling programs are designed and resourced to be independent and self sufficient. With the exception of the vessels that would be transiting for the purpose of supporting a spill response (in the unlikely event that one occurs), it is not expected that there will be regular transits of vessels related to Chukchi operations into, or out of, the Beaufort theater of operation.

BOEM included the following condition within its approval of Shell's Chukchi Exploration Plan: ''If Shell transits to the Chukchi Sea from the Beaufort Sea during the fall bowhead whale migration and before or during Barrow's fall bowhead whale subsistence hunt, Shell shall meet with the appropriate whaling captains to coordinate vessel transit routes westward through the Beaufort Sea to prevent any deflection of the bowhead whale migration and any conflicts with Barrow's fall whaling season. Emergency operations will take precedence over this condition.''

This condition is consistent with existing commitments made by Shell to

consult with subsistence hunters prior to and during vessel transits and other operations. Vessel transit and communication with subsistence hunters are addressed in the signed 2012 CAA. Shell will fund the operation of communication centers in each of the coastal communities throughout the period of exploration activities in the Chukchi Sea. Vessels will report their position and projected transit route and schedule to these communication centers every 6 hours. Information provided to these communication centers will be available to AEWC and other subsistence co-management organizations and to subsistence hunters within the communities for the purpose of supporting the avoidance or reduction of conflicts between industry and subsistence activities. Shell will also operate a network of Subsistence Advisors within each of the coastal communities. The role of the Subsistence Advisors is to actively consult with local hunters on a daily basis, to be aware of typical patterns of subsistence resource movements and behavior and patterns of subsistence harvest, to inform Shell of any potential for conflicts, and to aid in the adaptive resolution of potential for conflicts. Based on the fact that vessel transit between the two programs would only occur in extreme and unlikely circumstances, it is not anticipated that there will be additional impacts beyond those analyzed here.

Comment 44: The MMC states that negotiating and completing a CAA related to bowhead whales is useful but also prompts the question as to why such agreements are not being developed with subsistence hunters taking other species that might be affected by oil and gas operations. With that in mind, the MMC recommends that NMFS issue the requested IHA but also facilitate the development of CAAs that involve all potentially affected communities and co-management organizations and take into account all potential adverse effects on all marine mammal species taken for subsistence purposes including, but not limited to, bowhead whales.

Response: The signing of a CAA is not a requirement to obtain an IHA. The CAA is a document that is negotiated between and signed by the industry participant, AEWC, and the Village Whaling Captains' Associations. NMFS has no role in the development or execution of this agreement. Although the contents of a CAA may inform NMFS' no unmitigable adverse impact determination for bowhead (and to some extent beluga) whales, the signing of it is not a requirement. Regulations promulgated pursuant to the 1986 MMPA amendments require that for an activity that will take place near a traditional Arctic hunting ground, or may affect the availability of marine mammals for subsistence uses, an applicant for MMPA authorization must either submit a POC or information that identifies the measures that have been taken to minimize adverse impacts on subsistence uses. Shell submitted a POC with its IHA application, which was available during the public comment period. Additionally, as indicated earlier in this document, Shell signed the 2012 CAA with the AEWC on March 26, 2012.

NMFS (or other Federal agencies) has no authority to require agreements between third parties, and NMFS would not be able to enforce the provisions of CAAs because the Federal government is not a party to the agreements. Regarding the CAA signed with the AEWC, NMFS has reviewed that document, as well as Shell's POC. The majority of the conditions are identical between the two documents. NMFS has also included measures from the 2012 CAA between Shell and the AEWC relevant to ensuring no unmitigable adverse impact on the availability of marine mammals for subsistence uses. NMFS has also determined that the measures in the POC related to species other than the bowhead whale are sufficient to ensure no unmitigable adverse impact on the availability of those species for subsistence uses.

In the recently released Draft EIS on the Effects of Oil and Gas Activities in the Arctic Ocean (NMFS, 2011), NMFS began to examine both the CAA and POC processes. There are strengths and weaknesses in how both processes are currently executed. NMFS is committed to working with the AEWC, Alaska Beluga Whale Committee, and Ice Seal Committee and other stakeholders to improve upon and combine these processes, as appropriate.

Comment 45: The NSB appreciates Shell's effort to mitigate impacts to the bowhead hunt; however, Shell's proposed activities may adversely impact subsistence hunting of other species in the Chukchi Sea. Mitigation measures are needed to protect eastern Chukchi Sea belugas and beluga hunters. Restricting transit through the Chukchi Sea until the hunt is completed at Point Lay would be an effective measure. NMFS must also evaluate impacts to seals from the transit of vessels associated with Shell's planned activities and how that may impact seal hunts.

Response: In the proposed IHA, NMFS evaluated potential impacts to subsistence hunts of all species in the project area. Ringed seals are typically hunted from October through June, which is outside the time frame of Shell's operations. Although spotted and bearded seal hunts may overlap temporally with Shell's operations, the hunting grounds are located much closer to shore than where Shell will operate. When Shell conducts supply vessel and other transits between shore and the drill sites, Shell is required to implement mitigation measures to avoid unmitigable adverse impacts to subsistence hunts, including using the Communication Centers to find out about the timing and location of active hunting.

NMFS understands the NSB's concerns regarding vessel transit and how that may affect hunts in the Chukchi Sea communities, especially the summer beluga hunt at Point Lay. Shell has committed to transiting offshore of the hunt and to communicating with Point Lay via the Communication Center regarding vessel transits to ensure that they remain outside of the hunting areas. These measures were part of Shell's POC and are included in the IHA. Therefore, NMFS has determined that there will not be an unmitigable adverse impact on the availability of beluga whales and ice seals for taking for subsistence uses.

Mitigation and Monitoring Concerns

Comment 46: Shell states that the 1,500 ft (457 m) flight altitude restriction mitigation measure applies to all ''non-marine mammal observation'' flights, thus allowing for observer flights to fly lower as needed to afford the best possible marine mammal sightings and identifications.

Response: NMFS concurs. The measure was written in two different ways in several parts of the proposed IHA. One way only exempted takeoffs, landings, and emergency situations from the 1,500 ft (457 m) altitude restriction, while in other parts of the document marine mammal monitoring flights were also exempted. NMFS has eliminated the discrepancy in the final IHA. The exemption now applies to takeoffs, landings, emergency situations, and marine mammal monitoring flights.

Comment 47: The MMC recommends that NMFS require Shell to develop and employ a more effective means to monitor the entire corrected 120-dB re 1 μPa harassment zone for the presence and movements of all marine mammals and for estimating the actual number of takes, including aerial and acoustic surveys of the proposed drilling sites before, during, and after drilling operations. The NSB and AWL also

recommend that NMFS require Shell to fly aerial surveys in the area of the offshore drill sites.

Response: Shell's original monitoring plan included an acoustic component to record both equipment sounds and marine mammal vocalizations. Since submitting that monitoring plan, Shell has modified it to include an offshore aerial component. Shell will conduct a photographic aerial survey in 2012, which will serve as a pilot study for future surveys that could use an Unmanned Aerial System to capture the imagery. The proposed photographic surveys in the Chukchi and Beaufort Seas would collect data that will allow direct comparisons of photographic techniques for data collection with data collected by human observers aboard the aircraft in the Beaufort Sea. Additional details on the photographic survey can be found in Shell's revised monitoring plan (see **ADDRESSES**).

While the 120-dB harassment zone from the drill rig will likely extend beyond what the observers can effectively see from the drill rig, Shell will place Protected Species Observers (PSOs) on all vessels used for the drilling operations. Many of these vessels will be located several kilometers from the drill rig, thus expanding the visual observation zone. Moreover, Shell will supplement its vessel-based operations with marine mammal aerial observations, thus expanding the visual observation zone. PSOs will be stationed on the vessels to observe from the best vantage points available and will be equipped with ''Big-eyes'' and other binoculars to aid in detection. Additionally, NMFS does not contend that PSOs will be able to see every marine mammal within the harassment zone. Using the vessel-based and aerial platforms to detect and count marine mammal sightings and then to use those observations in conjunction with sightings from other surveys such as COMIDA is reasonable for estimating maximum take.

Comment 48: The MMC recommends that NMFS track and enforce Shell's implementation of mitigation and monitoring measures to ensure that they are executed as expected.

Response: During Shell's operating season, NMFS will meet weekly with staff from BOEM, the Bureau of Safety and Environmental Enforcement (BSEE), and the USFWS to review and analyze proprietary operations reports, including PSO logs to ensure environmental and regulatory compliance. Additionally, BSEE will have inspectors on the drilling platform 24 hours a day/7 days a week.

Comment 49: The NSB, MMC, and AWL state that NMFS should require Shell to make monitoring data available to the public. The NSB states that in addition to the monitoring data, locations and activities of drill rigs, icebreakers, and support vessels should also be made publicly available.

Response: In accordance with an agreement between NOAA, Shell, ConocoPhillips, and Statoil, data from Shell sponsored science and monitoring efforts and from those that are jointly funded by the signatory parties will be made available to NOAA and to the public. The manner of release, format of released data, site(s) of data repository, and rights of data use are currently being addressed by a working group. Public access to these data is being addressed through this process and would not be enhanced by conditions imposed through the IHA.

Shell has committed to the support and operation of communication centers in Kaktovik, Nuiqsut, Barrow, Wainwright, Point Lay, Point Hope, Kivalina, Kotzebue, St. Lawrence Island, and Wales. As required by the CAA (which Shell signed on March 26, 2012), all Shell vessels operating in the Beaufort and Chukchi Sea will contact the nearest communication center every 6 hours and provide the following information:

(A) Vessel name, operator of vessel, charter or owner of vessel, and the project the vessel is working on;

(B) Vessel location, speed, and direction; and

(C) Plans for vessel movement between the time of the call and the time of the next call. The final call of the day will include a statement of the vessel's general area of expected operations for the following day, if known at that time.

The vessels will also contact the nearest communications center in the event that operations change significantly from those projected during the prior 6 hour reporting period. The communication centers will be generally open and available to the public and will provide a capability for direct communications between subsistence hunters and Shell vessels. Shell will operate these centers for the entire duration of operations in the Chukchi and Beaufort Seas, rather than limiting operations to the periods of the bowhead subsistence hunt.

Since 2010, NMFS has required operators in the Arctic to provide vessel tracks during the season as a part of the required 90 day report. Given that the potentially impacted public are provided with multiple avenues with which they can acquire vessel location and activity data, and that vessel tracks will be made available to the general public at the end of the season, there is no additional need for real-time public access to vessel location information. Further, given that there are current and legitimate concerns with respect to security of vessels, crew, and operations, public access to vessel locations and activities may not be in the best interest of safe marine operations.

Cumulative Impact Concerns

Comment 50: The MMC noted that it is important to consider that some of the animals may already be in a compromised state as a result of climate disruption, stochastic variation in food resources, or variation in physiological state due to normal life history events (*e.g.,* molting or reproduction in pinnipeds).

Response: In the Notice of Proposed IHA (76 FR 69958, November 9, 2011), NMFS considered others factors, including when pinnipeds and cetaceans conduct varying life history functions and whether or not those activities overlap in time and space with Shell's Chukchi Sea exploratory drilling program. Pupping and breeding for some ice seals do not occur in the Chukchi Sea. Pupping of ringed and bearded seals, which do build subnivean lairs in the Chukchi Sea, occurs outside of Shell's operating timeframe in the Chukchi Sea. Additionally, in the EA for this action, NMFS analyzed impacts of other activities and factors, such as climate disruption. Based on this information, NMFS determined that Shell's activities would have no more than a negligible impact on the affected marine mammal species or stocks.

Comment 51: Dr. Bain states that cumulative effects are of concern and that the drilling in the Chukchi Sea cannot be considered separately from other planned activities, including similar activities by Shell in the Beaufort Sea, as well as work proposed by other companies. Further, if exploratory drilling results in future production, the cumulative effect of production in the core of the migration route needs to be considered.

Response: NMFS analyzed the combination of both of Shell's proposed 2012 drilling programs in its EA, as well as other seismic exploration and vessel transportation in the Beaufort and Chukchi Seas. Additionally, NMFS' response to *Comment 8* explains how other factors were taken into consideration when analyzing this proposal under the MMPA. Because it is unknown if Shell will successfully find

oil during its exploratory drilling program, it is premature and speculative to discuss potential impacts from building a production facility in the Chukchi Sea. If Shell finds oil, it would be several years before construction of a production facility would begin. Additional environmental analyses would be required at that time.

ESA Statutory Concerns

Comment 52: AWL and BOEM note that NMFS should consider ringed and bearded seals in the ESA section 7 consultation.

Response: The Notice of Proposed IHA (76 FR 69958, November 9, 2011) for this action noted that NMFS would initiate ESA section 7 consultation for bowhead, humpback, and fin whales. However, NMFS has included ringed and bearded seals in the Biological Opinion prepared for this action, which analyzes effects to ESA-listed species, as well as species proposed for listing.

Comment 53: AWL states that the conclusions reached in NMFS' 2008 and 2010 Biological Opinions for oil and gas activities in the Arctic regarding effects of oil spills must be reconsidered.

Response: NMFS' Office of Protected Resources Permits and Conservation Division requested consultation under section 7 of the ESA with the NMFS Alaska Regional Office Endangered Species Division. A new Biological Opinion has been prepared for this IHA. In April, 2012, NMFS finished conducting its section 7 consultation and issued a Biological Opinion, and concluded that the issuance of the IHA associated with Shell's 2012 Chukchi Sea drilling program is not likely to jeopardize the continued existence of the endangered bowhead, humpback, and fin whale, the Arctic sub-species of ringed seal, or the Beringia distinct population segment of bearded seal. No critical habitat has been designated for these species, therefore none will be affected.

Comment 54: BOEM recommends that NMFS consult with USFWS regarding the effects of the proposed action on resources under USFWS jurisdiction, including the compatibility of the joint industry research program that NMFS continues to require in IHAs with existing ESA section 7 consultation between BOEM and USFWS.

Response: NMFS has determined that issuance of the IHA to Shell will not affect species under USFWS jurisdiction and that formal consultation is not required. However, NMFS strives to work closely with other Federal agencies and would welcome any specific suggestions from BOEM or USFWS on future IHAs that would help to achieve coordinated and complementary mitigation and monitoring measures.

NEPA Statutory Concerns

Comment 55: The AEWC and NSB states that NMFS must include information regarding upcoming oil and gas activities planned for the Beaufort and Chukchi Seas in 2012 in U.S., Russian, and Canadian waters, as well as reasonably foreseeable future drilling activities. Both letters request that NMFS develop a method for assessing impacts from multiple drilling operations and to ascertain the significance of multiple exposures to underwater noise, ocean discharge, and air pollution and vessel traffic.

Response: NMFS' EA contains information on upcoming activities in U.S., Russian, and Canadian waters for the 2012 season, as well as reasonably foreseeable future drilling activities in the project area. The EA qualitatively describes how marine mammals could be impacted from multiple activities in a given season and what the results of those exposures might be.

Comment 56: NSB states that NMFS should be required to prepare an EIS, not an EA, to adequately consider the potentially significant impacts of the proposed IHAs, including the cumulative impacts of Shell's proposed activities.

Response: NMFS' 2012 EA was prepared to evaluate whether significant environmental impacts may result from the issuance of IHAs to Shell for the take of marine mammals incidental to conducting exploratory drilling programs in the U.S. Beaufort and Chukchi Seas, which is an appropriate application of NEPA. After completing the EA, NMFS determined that there would not be significant impacts to the human environment and accordingly issued a FONSI. Therefore, an EIS is not needed for this action.

Comment 57: The NSB states that NMFS should consider the cumulative impact of discharge and whether bioaccumulation of contaminants could have lethal or sub-lethal effects on bowhead whales and other marine mammals. NMFS should then synthesize that information into a health impact assessment looking at the overall combined effect to the health of the local residents.

Response: As explained by the Council on Environmental Quality, an EA is a concise document and should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. See NEPA's Forty Most Asked Questions, 46 FR 18026 (March 23, 1981); 40 CFR 1508.9(b). The EA prepared for this action contains a discussion of water quality, including contaminants, in sections 3.1.5.2 and 4.2.1.5 and incorporates additional material by reference. It also notes that contaminants have the potential to bioaccumulate in marine mammals, but that monitoring has shown that oil and gas developments in the Alaskan Beaufort Sea ''are not contributing ecologically important amounts of petroleum hydrocarbons and metals to the near-shore marine food web of the area'' (EA at 4.2.2.3). Given that the studies done so far have detected no bioaccumulation of contaminants as a result of oil and gas activity in the Beaufort Sea, it is only a remote and highly speculative possibility that discharges from Shell's exploration drilling program could contribute to cumulative impacts from contaminants that could ultimately result in health impacts to local residents. Agencies are not required to consider such remote or speculative impacts in an EA (see *Ground Zero Ctr. for Non-Violent Action* v. *United States Dept of the Navy,* 383 F.3d 1082, 1090 (9th Cir. 2004)). However, NMFS acknowledges the importance of this issue to residents of the NSB, and has included a more extensive discussion of environmental contamination and its potential effects in the Draft EIS on Effects of Oil and Gas Activities in the Arctic Ocean (NMFS, 2011).

Comment 58: AWL states that it would be illegal for NMFS to approve the IHA without completing the EIS that is in progress. NSB also states that it would be shortsighted to allow Shell to proceed on a 1-year IHA when the impacts could negatively affect arctic resources and preclude options that could be developed in the forthcoming EIS.

Response: While the Final EIS is still being developed, NMFS conducted a thorough analysis of the affected environment and environmental consequences from exploratory drilling in the Arctic in 2012 and prepared an EA specific to the two exploratory drilling programs proposed to be conducted by Shell. The analysis contained in that EA warranted a FONSI.

The analysis contained in the Final EIS will apply more broadly to multiple Arctic oil and gas operations over a period of five years. NMFS' issuance of IHAs to Shell for the taking of several

species of marine mammals incidental to conducting its exploratory drilling operations in the Beaufort and Chukchi Seas in 2012, as analyzed in the EA, is not expected to significantly affect the quality of the human environment. Additionally, the EA contained a full analysis of cumulative impacts.

Comment 59: BOEM requests that NMFS' EA fully evaluate the potential for the NMFS-required, periodic low-level aerial marine mammal surveys and vessel operations to impact marine and coastal resources within the Ledyard Bay Critical Habitat Unit (LBCHU) and adjacent areas. BOEM recommends that NMFS require observation reports to include the location and altitude of the aircraft at the time of each marine mammal observation and that NMFS require observations of marine and coastal birds using a systematic survey protocol during any NMFS-required vessel entries into the LBCHU, as well as requiring that these vessels not approach flocks of eiders and that vessel routing be the shortest distance within the LBCHU.

Response: NMFS' EA analyzes the impacts of all aspects of Shell's activities on all relevant resources in the area. Shell and its representatives maintain frequent communication with the Federal Aviation Administration and USFWS during the period included in the Chukchi aerial surveys program. During this time all notices to aviators are noted and observed, *e.g.* notices related to avoidance of Pacific walrus haul outs. The aerial flights either avoid flying through these areas, or move to a higher altitude when in close proximity to concentrations of sensitive resources. The aircraft also implements mitigation measures, such as changing the flight path or altitude, when the observers on board detect concentrations of sensitive resources or the presence of subsistence hunters.

The altitude and position of the aircraft during survey and transit and from vessels during transit are available from the flight and vessel tracks. Flight altitudes of 1,000 ft (305 m) or greater are of limited value for identification and counting of marine birds. Aerial overflights routinely increase their altitude to 1500 ft (457 m) when flying over the Ledyard Bay area during surveys along the Chukchi Sea coast (rather than the 1000 ft [305 m] altitude flown in other parts of the survey) to avoid disturbance of waterfowl that might be in the area. Any required vessel entries to the LBCHU have included survey protocols to record concentrations of seabirds, particularly eiders and to avoid such areas if concentrations were noted. However, because the IHA is issued pursuant to the MMPA, NMFS does not have the authority to include measures related to non-marine mammal species.

Oil Spill Concerns

Comment 60: The NSB and MMC state that Shell's application and NMFS' Notice of Proposed IHA (76 FR 68974, November 7, 2011) do not contain adequate information regarding effects of a major oil spill. The MMC notes that NMFS is too dismissive of the potential for a large oil spill. The NSB requests clarification on how NMFS considers the risk of an oil spill when issuing MMPA authorizations for exploratory drilling activities, and contends that NMFS must analyze the potential harm to marine mammals and subsistence activities. The NSB also states that Shell's application lacks any information about potential take resulting from a release of oil in any amount.

Response: NMFS' Notice of Proposed IHA contained information regarding measures Shell has instituted to reduce the possibility of a major oil spill during its operations, as well as potential impacts on cetaceans and pinnipeds, their habitats, and subsistence activities (see 76 FR 69976–69980, 69984, 70004, November 7, 2011). NMFS' EA also contains an analysis of the potential effects of an oil spill on marine mammals, their habitats, and subsistence activities. Much of that analysis is incorporated by reference from other NEPA documents prepared for activities in the region. There is no information regarding potential take from a release of oil because an oil spill is not a component of the ''specified activity.''

DOI's BOEM and BSEE are the agencies with expertise in assessing risks of an oil spill. In reviewing Shell's Chukchi Sea Exploration Plan and Regional OSRP, BOEM and BSEE determined that the risk was low and that Shell will implement adequate measures to minimize the risk. Shell's OSRP identifies the company's prevention procedures; estimates the potential discharges and describes the resources and steps that Shell would take to respond in the unlikely event of a spill; and addresses a range of spill volumes, ranging from small operational spills to the worst case discharge calculations required to account for the unlikely event of a blowout. Additionally, NOAA's Office of Response and Restoration reviewed Shell's OSRP and provided input to DOI requesting changes that should be made to the plan before it should be approved. Shell incorporated NOAA's suggested changes, which included updating the trajectory analysis and the worst case discharge scenario. Based on these revisions, NOAA Ocean Service's Office of Response and Restoration believes that Shell's plans to respond to an offshore oil spill in the U.S. Arctic Ocean are satisfactory, as described in a memorandum provided to NMFS by the Office of Response and Restoration. Lastly, in the unlikely event of an oil spill, Shell will conduct response activities in accordance with NOAA's Marine Mammal Oil Spill Response Guidelines.

Comment 61: The MMC notes that the risk of an oil spill is not simply a function of its probability of occurrence; it also must take into account the consequences if such a spill occurs. Those consequences are, in part, a function of the spill's characteristics and the ability of the industry and government to mount an effective response. The MMC states: ''The assertion that Shell would be able to respond adequately to any kind of major spill is simply unsupported by all the available evidence.'' The MMC asserts that the OSRP is still inadequate for addressing a large oil spill in the Arctic.

Response: As noted in the response to *Comment 60,* DOI approved Shell's OSRP on February 17, 2012. That approval came after an extensive review process, and changes were made to the plan based on comments from DOI, NOAA, and other Federal agencies. The plan calls for Shell to have several response assets near the drill sites for immediate response, while also having additional equipment available for quick delivery, if needed. DOI will also continue to provide oversight, with exercises, reviews, and inspections. NMFS' EA and recent BOEM NEPA analyses assess impacts to the environment from an oil spill.

Comment 62: The MMC recommends that NMFS require Shell to cease drilling operations in mid- to late September to reduce the possibility of having to respond to a large oil spill in ice conditions. AWL also states that NMFS should consider restrictions on late-season drilling.

Response: NMFS has not included such a measure in its IHA. In December 2011, BOEM conditionally approved Shell's Chukchi Sea Exploration Plan. One of the conditions of that approval is a measure designed to mitigate the risk of an end-of-season oil spill by requiring Shell to leave sufficient time to implement cap and containment operations as well as significant clean-up before the onset of sea ice, in the event of a loss of well control. Given current technology and weather

forecasting capabilities, Shell must cease drilling into zones capable of flowing liquid hydrocarbons 38 days before the first-date of ice encroachment over the drill site. In a press release issued by BOEM on December 16, 2011, the agency noted that based on a five-year analysis of historic weather patterns, BOEM anticipates November 1 as the earliest anticipated date of ice encroachment. The 38-day period would also provide a window for the drilling of a relief well, should one be required. However, Shell will be permitted to continue other operations, such as ZVSP surveys, after that date.

Comment 63: The MMC recommends that NMFS require Shell to develop and implement a detailed, comprehensive and coordinated Wildlife Protection Plan that includes strategies and sufficient resources for minimizing contamination of sensitive marine mammal habitats and that provides a realistic description of the actions that Shell can take, if any, to respond to oiled or otherwise affected marine mammals. The plan should be developed in consultation with Alaska Native communities (including marine mammal co-management organizations), state and Federal resource agencies, and experienced non-governmental organizations.

Response: As noted in the response to *Comment 60,* Shell will operate any needed oil spill response activities in accordance with NOAA's Marine Mammal Oil Spill Response Guidelines. These guidelines were released to the public as part of NMFS' Programmatic EIS on the Marine Mammal Health and Stranding Response Program and were available for public review at that time. Those guidelines also underwent legal and peer review before being released. Those guidelines are currently being updated based on lessons learned from the Deepwater Horizon spill in the Gulf of Mexico.

Proposed IHA Language Concerns

The comments and concerns contained in this grouping relate to the language that was contained in the Notice of Proposed IHA (76 FR 70004–70007, November 9, 2011) in the section titled ''Proposed Incidental Harassment Authorization.'' The commenters requested clarification or changes to some of the specific wording of the conditions that would be contained in the issued IHA. The referenced condition in the proposed IHA is noted in the comments here. Numbers of the conditions match the proposed IHA and may differ slightly from the issued IHA.

Comment 64: Regarding Condition 1, Shell asks that the IHA become effective on July 1 instead of July 4 since the company will begin transiting into the Chukchi Sea on July 1 (but not before), if weather permits, and could therefore arrive on location at the Burger prospect before July 4.

Response: NMFS has made the requested change. Changing the date from July 4 to July 1 does not alter any of the analyses contained in the proposed IHA.

Comment 65: Regarding Condition 2, Shell asks that the language of the IHA not limit the incidental takings from authorized sound sources to those made while only on Shell lease holdings because ice management activities may occur beyond the lease boundaries and the continuous noise of the drillship may extend beyond the limits of Shell's lease holdings.

Response: NMFS has retained the first sentence of Condition 2, as originally proposed, which states that only activities associated with Shell's 2012 Chukchi Sea exploration plan are covered by the IHA. Because the exploration plan describes the locations of activities, NMFS has determined that language is legally sufficient. NMFS understands, and did analyze, that ice management may at times occur 25 mi (40 km) from the actual drill site. Additionally, NMFS analyzed the propagation and sound isopleths of the drill rig, which may attenuate beyond the actual lease holding itself.

Comment 66: Regarding Condition 3(a), Shell requests that narwhal be included in the list of species for which incidental take is authorized.

Response: As noted in the Notice of Proposed IHA (76 FR 69958, November 9, 2011), NMFS determined that presence of narwhal in the U.S. Chukchi Sea is rare and extralimital. Encounters are unlikely.

Comment 67: Regarding Condition 4, BOEM recommends that aircraft associated with the marine mammal surveys be included in the list of sound sources for which taking is authorized.

Response: NMFS concurs and has added aircraft to the list of sound sources covered by the IHA.

Comment 68: Regarding Condition 7(a), Shell asks whether the response they provided to NMFS on July 29, 2011, for a definition of ''group'' is consistent with the intent meant by NMFS in the **Federal Register** notice. As a general practice, Shell will adopt a definition of a group as being three or more whales observed within a 547-yd (500-m) area and displaying behaviors of directed or coordinated activity (*e.g.,* group feeding).

Response: NMFS agrees with this definition and will add the following sentence to Condition 7(a): ''For purposes of this Authorization, a group is defined as being three or more whales observed within a 547-yd (500-m) area and displaying behaviors of directed or coordinated activity (*e.g.,* group feeding).

Comment 69: Shell requests that Condition 7(d) be modified to match with the language contained in Condition 9(f), which allows marine mammal monitoring flights to also fly below the 1,500-ft (457-m) altitude restriction. In the proposed IHA, those two conditions contradicted one another. BOEM also requested clarification of Condition 7(d).

Response: NMFS agrees that Condition 7(d) should be rewritten to match Condition 9(f). The condition now reads as follows: ''Aircraft shall not fly within 1,000-ft (305-m) of marine mammals or below 1,500-ft (457-m) altitude (except during marine mammal monitoring, takeoffs, landings, or in emergency situations) while over land or sea.''

Comment 70: Regarding Condition 7(e), Shell asks if the length of daily duty restrictions included in the measure apply only to the drillship and ice management vessels or to all vessels, including smaller support vessels. Shell's view is that the remainder of support vessels, not included as ''sound sources,'' will have fewer observers than either the drillship or ice management vessels (mainly due to bunk space), which will be sufficient to cover marine mammal observations.

Response: NMFS concurs that the watch requirements were meant to apply to the drillship and two ice management vessels. PSOs will be required to be stationed on the other support vessels. However, they will not need to be on watch 24 hours a day, as those vessels are not always active 24 hours a day. PSOs will need to be on watch when the smaller support vessels are active, such as for supply transport.

Comment 71: BOEM recommends that Condition 7(f), or a new similar section focusing on aerial observations, require that marine mammal observation reports include the location and altitude of the aircraft at the time of each observation.

Response: Aircraft altitude and location are available from the flight track logs. NMFS has added a requirement to include this information in the marine mammal sighting logs.

Comment 72: Regarding Condition 7(f)(iv), Shell requests that the requirement to measure water temperature be removed as a stipulation under this measure given that it lacks material value to the recording of

marine observations and adherence to other more salient mitigation measures.

Response: NMFS included the recording of water temperature along with other more salient data collection parameters in the proposed IHA because it was included in Shell's original monitoring plan. After further discussion with Shell, NMFS agrees that it is not necessary to record water temperature each time a marine mammal is sighted and has removed the requirement from the IHA.

Comment 73: Regarding Condition 9(a), Shell notes that the condition should mention the Burger Prospect and not the Camden Bay drill sites. BOEM recommends that NMFS provide a definition of the polynya zone so that Shell can effectively comply with this condition.

Response: NMFS has corrected the error and removed mention of the Camden Bay drill sites from the condition. NMFS does not have a definition of the polynya zone and does not believe it is necessary to include one in the IHA.

Comment 74: Regarding Condition 10, BOEM recommends inclusion of a brief description of the 4MP and similar programs as a part of the proposed action.

Response: NMFS has determined that such a description is unnecessary in the IHA, as it is described in this document and the associated Final EA.

Comment 75: Regarding Condition 10(c)(i), as well as Condition 11(a), Shell requests that NMFS include language reflecting the flexibility of providing the drilling sounds on a ''rolling'' basis. Shell states that sound source verifications for the drilling vessel will necessitate that recordings of the various sounds of the drilling program continue throughout the drilling season. Hence, all drilling program sounds will not be available within 5 days of initiating drilling. Instead, Shell volunteers to provide to NMFS a ''rolling'' transmission of recorded drilling program sounds throughout the drilling program.

Response: NMFS concurs that a ''rolling'' transmission of sound signatures is appropriate based on the fact that different activities will be conducted at various times throughout the open-water season. In order to capture all of the different sound signatures and for that data to be transmitted to NMFS, it is not appropriate to do it all in the first 5 days but rather to collect the data on a real-time basis. Spectrograms will be calculated daily, and all information will be included in a weekly report that discusses the drillship and vessel activities that occurred during the week. Language has been included in the IHA to reflect this weekly reporting requirement.

Comment 76: Regarding Condition 10(c)(ii), Shell asks that the phrase ''to the extent practical'' precede the last sentence of the measure. Shell fully intends to deploy and execute the study as designed. However, conditional temporal and spatial factors, such as ice at the locations for deployment of acoustic recorders could cause some recorders to not be deployed or to be deployed at alternate locations.

Response: NMFS has made the requested language change to the condition.

Comment 77: Regarding Condition 11(d), Shell requests that the IHA stipulate that the comprehensive report be due 240 days from the end of the drilling season instead of 240 days from the date of issuance, since the IHA is being issued months before the start of the program.

Response: NMFS agrees and has rewritten the condition to state that the comprehensive report is due 240 days from the date of expiration of the IHA (*i.e.,* 240 days from October 31, 2012).

Description of Marine Mammals in the Area of the Specified Activity

The Chukchi Sea supports a diverse assemblage of marine mammals, including: Bowhead, gray, beluga, killer, minke, humpback, and fin whales; harbor porpoise; ringed, ribbon, spotted, and bearded seals; narwhals; polar bears (*Ursus maritimus*); and walruses (*Odobenus rosmarus divergens;* see Table 4–1 in Shell's application). The bowhead, humpback, and fin whales are listed as ''endangered'' under the ESA and as depleted under the MMPA. Certain stocks or populations of gray, beluga, and killer whales and spotted seals are listed as endangered or are proposed for listing under the ESA; however, none of those stocks or populations occur in the activity area. On December 10, 2010, NMFS published a notice of proposed threatened status for subspecies of the ringed seal (75 FR 77476) and a notice of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register**. Neither of these two ice seal species is considered depleted under the MMPA. Additionally, the ribbon seal is considered a ''species of concern'' under the ESA. Both the walrus and the polar bear are managed by the USFWS and are not considered further in this IHA notice.

Of these species, 12 are expected to occur in the area of Shell's operations. These species include: The bowhead, gray, humpback, minke, fin, killer, and beluga whales; harbor porpoise; and the ringed, spotted, bearded, and ribbon seals. Beluga, bowhead, and gray whales, harbor porpoise, and ringed, bearded, and spotted seals are anticipated to be encountered more than the other marine mammal species mentioned here. The marine mammal species that is likely to be encountered most widely (in space and time) throughout the period of the drilling program is the ringed seal. Encounters with bowhead and gray whales are expected to be limited to particular seasons. Additional information about species occurrence in the project area was provided in the Notice of Proposed IHA (76 FR 69958, November 9, 2011). Where available, Shell used density estimates from peer-reviewed literature in the application. In cases where density estimates were not readily available in the peer-reviewed literature, Shell used other methods to derive the estimates. NMFS reviewed the density estimate descriptions and articles from which estimates were derived and requested additional information to better explain the density estimates presented by Shell in its application. This additional information was included in the revised IHA application. The explanation for those derivations and the actual density estimates are described later in this document (see the ''Estimated Take by Incidental Harassment'' section).

Shell's application contains information on the status, distribution, seasonal distribution, abundance, and life history of each of the species under NMFS jurisdiction mentioned in this document. When reviewing the application, NMFS determined that the species descriptions provided by Shell correctly characterized the status, distribution, seasonal distribution, and abundance of each species. 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 2010 and 2011 Draft SARs are available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2010.pdf* and *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2011_draft.pdf*, respectively.

Brief Background on Marine Mammal Hearing

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different

frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data. Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz (however, a study by Au *et al.* (2006) of humpback whale songs indicate that the range may extend to at least 24 kHz);
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, 12 marine mammal species (four pinniped and eight cetacean species) are likely to occur in the exploratory drilling area. Of the eight cetacean species likely to occur in Shell's project area, five are classified as low frequency cetaceans (*i.e.,* bowhead, gray, humpback, minke, and fin whales), two are classified as mid-frequency cetaceans (*i.e.,* beluga and killer whales), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise) (Southall *et al.,* 2007). Additional information regarding marine mammal hearing and sound production is contained in the Notice of Proposed IHA (76 FR 69958, November 9, 2011).

Potential Effects of the Specified Activity on Marine Mammals

The likely or possible impacts of the exploratory drilling program in the Chukchi Sea on marine mammals could involve both non-acoustic and acoustic effects. Potential non-acoustic effects could result from the physical presence of the equipment and personnel. Petroleum development and associated activities introduce sound into the marine environment. Impacts to marine mammals are expected to primarily be acoustic in nature. Potential acoustic effects on marine mammals relate to sound produced by drilling activity, vessels, and aircraft, as well as the ZVSP airgun array. The potential effects of sound from the exploratory drilling program might include one or more of the following: Tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.,* 1995a). However, for reasons discussed in the proposed IHA, it is unlikely that there would be any cases of temporary, or especially permanent, hearing impairment resulting from these activities.

In the ''Potential Effects of the Specified Activity on Marine Mammals'' section of the Notice of Proposed IHA (76 FR 69964–69976, November 9, 2011), NMFS included a qualitative discussion of the different ways that Shell's 2012 Chukchi Sea exploratory drilling program may potentially affect marine mammals. That discussion focused on information and data regarding potential acoustic and non-acoustic effects from drilling activities (*i.e.,* use of the drillship, icebreakers, and support vessels and aircraft) and use of airguns during ZVSP surveys. Marine mammals may experience masking and behavioral disturbance. The information contained in the ''Potential Effects of Specified Activities on Marine Mammals'' section from the proposed IHA has not changed. Please refer to the proposed IHA for the full discussion (76 FR 69958, November 9, 2011).

Exploratory Drilling Program and Potential for Oil Spill

As noted above, the specified activity involves the drilling of exploratory wells and associated activities in the Chukchi Sea during the 2012 open-water season. The impacts to marine mammals that are reasonably expected to occur will be acoustic in nature. In response to previous IHA applications submitted by Shell, various entities have asserted that NMFS cannot authorize the take of marine mammals incidental to exploratory drilling under an IHA. Instead, they contend that incidental take can be allowed only with a letter of authorization (LOA) issued under five-year regulations because of the potential that an oil spill will cause serious injury or mortality.

There are two avenues for authorizing incidental take of marine mammals under the MMPA. NMFS may, depending on the nature of the anticipated take, authorize the take of marine mammals incidental to a specified activity through regulations and LOAs or annual IHAs. *See* 16 U.S.C. 1371(a)(5)(A) and (D). In general, regulations (accompanied by LOAs) may be issued for any type of take (*e.g.,* Level B harassment (behavioral disturbance), Level A harassment (injury), serious injury, or mortality), whereas IHAs are limited to activities that result only in harassment (*e.g.,* behavioral disturbance or injury). Following the 1994 MMPA Amendments, NMFS promulgated implementing regulations governing the issuance of IHAs in Arctic waters. See 60 FR 28379 (May 31, 1995) and 61 FR 15884 (April 10, 1996). NMFS stated in the preamble of the proposed rulemaking that the scope of IHAs would be limited to '' * * * those authorizations for harassment involving incidental harassment that may involve *non-serious injury.''* See 60 FR 28380 (May 31, 1995; emphasis added); 50 CFR 216.107(a). (''[e]xcept for activities that have the potential to result in serious injury or mortality, which must be authorized under 216.105, incidental harassment authorizations may be issued, * * * to allowed activities that may result in only the incidental harassment of a small number of marine mammals.'') NMFS explained further that applications would be reviewed to determine whether the activity would result in more than harassment, and, if so, the agency would either (1) attempt to negate the potential for serious injury through mitigation requirements, or (2) deny the incidental harassment authorization and require the applicant to apply for incidental take regulations. See id. at 28380–81.

NMFS' determination of whether the type of incidental take authorization requested is appropriate occurs shortly after the applicant submits an application for an incidental take authorization. The agency evaluates the proposed action and all information contained in the application to determine whether it is adequate and complete and whether the type of taking requested is appropriate. See 50 CFR 216.104; see also 60 FR 28380 (May 31, 1995). Among other things, NMFS considers the specific activity or class of activities that can reasonably be *expected* to result in incidental take; the *type* of incidental take authorization that is being requested; and the *anticipated* impact of the activity upon

the species or stock and its habitat. See *id.* at 216.104(a). (emphasis added). Any application that is determined to be incomplete or inappropriate for the type of taking requested will be returned to the applicant with an explanation of why the application is being returned. See id. Finally, NMFS evaluates the best available science to determine whether a proposed activity is reasonably expected or likely to result in serious injury or mortality.

NMFS evaluated Shell's incidental take application for its proposed 2012 drilling activities in light of the foregoing criteria and has concluded that Shell's request for an IHA is warranted. Shell submitted information with its IHA Application indicating that an oil spill is a highly unlikely event that is not reasonably expected to occur during the course of exploration drilling or ZVSP surveys. *See* Chukchi Sea IHA Application, pp. 3 and Attachment E—Analysis of the Probability of an ''Unspecified Activity'' and Its Impacts: Oil Spill. In addition, Shell's 2012 Exploration Plan indicates there is a ''very low likelihood of a large oil spill event.'' See Shell Offshore, Inc.'s Revised Outer Continental Shelf Lease Exploration Plan, Chukchi Sea, Alaska (May 2011), at p. 8–1; see also, Appendix F to Shell's Revised Outer Continental Shelf Lease Exploration Plan, at p. 4–174.

The likelihood of a large or very large (i.e., ≥1,000 barrels or ≥150,000 barrels, respectively) oil spill occurring during Shell's proposed program has been estimated to be low. A total of 35 exploration wells have been drilled between 1982 and 2003 in the Chukchi and Beaufort seas, and there have been no blowouts. In addition, no blowouts have occurred from the approximately 98 exploration wells drilled within the Alaskan OCS (MMS, 2007a). Attachment E in Shell's IHA Application contains information regarding the probability of an oil spill occurring during the proposed program and the potential impacts should one occur. Based on modeling conducted by Bercha (2008), the predicted frequency of an exploration well oil spill in waters similar to those in the Chukchi Sea, Alaska, is 0.000612 per well for a blowout sized between 10,000 barrels (bbl) to 149,000 bbl and 0.000354 per well for a blowout greater than 150,000 bbl. Please refer to Shell's application for additional information on the model and predicted frequencies (see **ADDRESSES**).

Shell has implemented several design standards and practices to reduce the already low probability of an oil spill occurring as part of its operations. The wells proposed to be drilled in the Arctic are exploratory and will not be converted to production wells; thus, production casing will not be installed, and the well will be permanently plugged and abandoned once exploration drilling is complete. Shell has also developed and will implement the following plans and protocols: Shell's Critical Operations Curtailment Plan; IMP; Well Control Plan; and Fuel Transfer Plan. Many of these safety measures are required by the Department of the Interior's interim final rule implementing certain measures to improve the safety of oil and gas exploration and development on the Outer Continental Shelf in light of the Deepwater Horizon event (see 75 FR 63346, October 14, 2010). Operationally, Shell has committed to the following to help prevent an oil spill from occurring in the Chukchi Sea:

- Shell's Blow Out Preventer (BOP) was inspected and tested by an independent third party specialist;
- Further inspection and testing of the BOP have been performed to ensure the reliability of the BOP and that all functions will be performed as necessary, including shearing the drill pipe;
- Subsea BOP hydrostatic tests will be increased from once every 14 days to once every 7 days;
- A second set of blind/shear rams will be installed in the BOP stack;
- Full string casings will typically not be installed through high pressure zones;
- Liners will be installed and cemented, which allows for installation of a liner top packer;
- Testing of liners prior to installing a tieback string of casing back to the wellhead;
- Utilizing a two-barrier policy; and
- Testing of all casing hangers to ensure that they have two independent, validated barriers at all times.

NMFS has considered Shell's proposed action and has concluded that there is no reasonable likelihood of serious injury or mortality from the 2012 Chukchi Sea exploration drilling program. NMFS has consistently interpreted the term ''potential,'' as used in 50 CFR 216.107(a), to only include impacts that have more than a discountable probability of occurring, that is, impacts must be reasonably expected to occur. Hence, NMFS has regularly issued IHAs in cases where it found that the potential for serious injury or mortality was ''highly unlikely'' (*See* 73 FR 40512, 40514, July 15, 2008; 73 FR 45969, 45971, August 7, 2008; 73 FR 46774, 46778, August 11, 2008; 73 FR 66106, 66109, November 6, 2008; 74 FR 55368, 55371, October 27, 2009).

Interpreting ''potential'' to include impacts with any probability of occurring (*i.e.,* speculative or extremely low probability events) would nearly preclude the issuance of IHAs in every instance. For example, NMFS would be unable to issue an IHA whenever vessels were involved in the marine activity since there is always some, albeit remote, possibility that a vessel could strike and seriously injure or kill a marine mammal. This would also be inconsistent with the dual-permitting scheme Congress created and undesirable from a policy perspective, as limited agency resources would be used to issue regulations that provide no additional benefit to marine mammals beyond what can be achieved with an IHA.

Despite concluding that the risk of serious injury or mortality from an oil spill in this case is extremely remote, NMFS nonetheless evaluated the potential effects of an oil spill on marine mammals. While an oil spill is not a component of Shell's specified activity, potential impacts on marine mammals from an oil spill are discussed in more detail in the Notice of Proposed IHA (76 FR 69958, November 9, 2011) and NMFS' EA. Please refer to those documents for the discussion.

Anticipated Effects on Marine Mammal Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels produced by the exploratory drilling program (*i.e.* the drillship and the airguns). However, other potential impacts are also possible to the surrounding habitat from physical disturbance and an oil spill (should one occur). The proposed IHA contains a full discussion of the potential impacts to marine mammal habitat and prey species in the project area. No changes have been made to that discussion. Please refer to the proposed IHA for the full discussion of potential impacts to marine mammal habitat (76 FR 69958, November 9, 2011). NMFS has determined that Shell's exploratory drilling program is not expected to have any habitat-related effects that could cause significant or long-term consequences for marine mammals or on the food sources that they utilize.

Mitigation

In order to issue an incidental take authorization (ITA) under Sections 101(a)(5)(A) and (D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking

pursuant to such activity, and other means of effecting the least practicable 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 (where relevant). This section summarizes the contents of Shell's Marine Mammal Monitoring and Mitigation Plan (4MP).

Operational Mitigation Measures

Shell submitted a 4MP as part of its application (Attachment C; see **ADDRESSES**). Shell submitted a revised 4MP after they made voluntary changes to the plan and after the plan was reviewed by an independent peer review panel (see the ''*Monitoring Plan Peer Review*'' section for additional details). The revised plan is also available to the public (see **ADDRESSES**). The planned offshore drilling program incorporates both design features and operational procedures for minimizing potential impacts on marine mammals and on subsistence hunts. The design features and operational procedures have been described in the IHA and LOA applications submitted to NMFS and USFWS, respectively, and are summarized here. Survey design features include:

- Timing and locating drilling and support activities to avoid interference with the annual subsistence hunts by the peoples of the Chukchi villages;
- Identifying transit routes and timing to avoid other subsistence use areas and communicating with coastal communities before operating in or passing through these areas; and
- Conducting pre-season sound propagation modeling to establish the appropriate exclusion and behavioral radii.

Shell indicates, and we agree, that the potential disturbance of marine mammals during operations will be minimized further through the implementation of several ship-based mitigation measures, which include establishing and monitoring safety and disturbance zones.

Exclusion radii for marine mammals around sound sources are customarily defined as the distances within which received sound levels are greater than or equal to 180 dB re 1 μPa (rms) for cetaceans and greater than or equal to 190 dB re 1 μPa (rms) for pinnipeds. These exclusion criteria are based on an assumption that sounds at lower received levels will not injure these animals or impair their hearing abilities, but that higher received levels might have such effects. It should be understood that marine mammals inside these exclusion zones will not necessarily be injured, as the received sound thresholds which determine these zones were established prior to the current understanding that significantly higher levels of sound would be required before injury would likely occur (see Southall *et al.,* 2007). With respect to Level B harassment, NMFS' practice has been to apply the 120 dB re 1 μPa (rms) received level threshold for underwater continuous sound levels and the 160 dB re 1 μPa (rms) received level threshold for underwater impulsive sound levels.

Shell will monitor the various radii in order to implement necessary mitigation measures. Initial radii for the sound levels produced by the *Discoverer,* the icebreaker, and the airguns have been modeled. Measurements taken by Austin and Warner (2010) indicated broadband source levels between 177 and 185 dB re 1 μPa rms for the *Discoverer.* Measurements of the icebreaking supply ship *Robert Lemeur* pushing and breaking ice during exploration drilling operations in the Beaufort Sea in 1986 resulted in an estimated broadband source level of 193 dB re 1 μPa rms (Greene, 1987a; Richardson *et al.,* 1995a). Based on a similar airgun array used in the shallow waters of the Beaufort Sea in 2008 by BP, the source level of the airgun is predicted to be 241.4 dB re 1 μPa rms. Once on location in the Chukchi Sea, Shell will conduct SSV tests to establish safety zones for the previously mentioned sound level criteria. The objectives of the SSV tests are: (1) to quantify the absolute sound levels produced by drilling and to monitor their variations with time, distance, and direction from the drillship; and (2) to measure the sound levels produced by vessels operating in support of drilling operations, which include crew change vessels, tugs, ice management vessels, and spill response vessels. The methodology for conducting the SSV tests is fully described in Shell's 4MP (see **ADDRESSES**). Please refer to that document for further details. Upon completion of the SSV tests, the new radii will be established and monitored, and mitigation measures will be implemented in accordance with Shell's 4MP.

Based on the best available scientific literature, the source levels noted above for exploration drilling are not high enough to cause a temporary reduction in hearing sensitivity or permanent hearing damage to marine mammals. Consequently, Shell believes that mitigation as described for seismic activities including ramp ups, power downs, and shutdowns should not be necessary for drilling activities. NMFS has also determined that these types of mitigation measures, traditionally required for seismic survey operations, are not practical or necessary for this proposed drilling activity. Seismic airgun arrays can be turned on slowly (*i.e.,* only turning on one or some guns at a time) and powered down quickly. The types of sound sources used for exploratory drilling have different properties and are unable to be ''powered down'' like airgun arrays or shutdown instantaneously without posing other risks to operational and human safety. However, Shell plans to use PSOs (formerly referred to as marine mammal observers) onboard the drillship and the various support vessels to monitor marine mammals and their responses to industry activities and to initiate mitigation measures (for ZVSP activities) should in-field measurements of the operations indicate that such measures are necessary. Additional details on the PSO program are described in the ''Monitoring and Reporting'' section found later in this document. Also, for the ZVSP activities, Shell will implement standard mitigation procedures, such as ramp ups, power downs, and shutdowns.

A ramp up of an airgun array provides a gradual increase in sound levels and involves a step-wise increase in the number and total volume of airguns firing until the full volume is achieved. The purpose of a ramp up (or ''soft start'') is to ''warn'' cetaceans and pinnipeds in the vicinity of the airguns and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the ZVSP surveys, Shell will ramp up the airgun arrays slowly. Full ramp ups (*i.e.,* from a cold start when no airguns have been firing) will begin by firing a single airgun in the array. A full ramp up will not begin until there has been a minimum of 30 minutes of observation of the 180-dB and 190-dB exclusion zones for cetaceans and pinnipeds, respectively, by PSOs to assure that no marine mammals are present. The entire exclusion zone must be visible during the 30-minute lead-in to a full ramp up. If the entire exclusion zone is not visible, then ramp up from a cold start cannot begin. If a marine mammal(s) is sighted within the exclusion zone during the 30-minute watch prior to ramp up, ramp up will be delayed until the marine mammal(s) is sighted outside of the applicable exclusion zone or the animal(s) is not sighted for at least 15 minutes for small

odontocetes and pinnipeds or 30 minutes for baleen whales.

A power down is the immediate reduction in the number of operating energy sources from all firing to some smaller number. A shutdown is the immediate cessation of firing of all energy sources. The arrays will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable exclusion zone of the full arrays but is outside the applicable exclusion zone of the single source. If a marine mammal is sighted within the applicable exclusion zone of the single energy source, the entire array will be shutdown (*i.e.,* no sources firing). The same 15- and 30-minute sighting times described for ramp up also apply to starting the airguns again after either a power down or shutdown.

Additional mitigation measures include: (1) Reducing speed and/or changing course if a whale is sighted within 300 yards (274 m) from a vessel; (2) reducing speed in inclement weather; (3) checking the water immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged; (4) resuming full activity (*e.g.,* full support vessel speed) only after marine mammals are confirmed to be outside the safety zone; (5) implementing flight restrictions prohibiting aircraft from flying below 1,500 ft (457 m) altitude (except during marine mammal monitoring, takeoffs and landings, or in emergency situations); and (6) keeping vessels anchored when approached by marine mammals to avoid the potential for avoidance reactions by such animals.

Shell will also implement additional mitigation measures to ensure no unmitigable adverse impact on the availability of affected species or stocks for taking for subsistence uses. Those measures are described in the ''Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses'' section found later in this document.

Oil Spill Response Plan

In accordance with BSEE regulations, Shell has developed an OSRP for its Chukchi Sea exploration drilling program. A copy of this document can be found on the Internet at: *http://www.bsee.gov/OSRP/Shell-Chukchi-OSRP.aspx.* Additionally, in its POC, Shell has agreed to several mitigation measures in order to reduce impacts during the response efforts in the unlikely event of an oil spill. Those measures are detailed in the ''*Plan of Cooperation (POC)''* section found later in this document. In the unlikely event of a spill, Shell has also agreed to operate, to the maximum extent practicable, in accordance with NOAA's Marine Mammal Oil Spill Response Guidelines, which are available on the Internet at: *http://www.nmfs.noaa.gov/pr/pdfs/health/eis_appendixl.pdf.* BSEE issued approval of Shell's Chukchi Sea OSRP on February 17, 2012. That approval was issued after review of the plan by BSEE in cooperation with other Federal and state agency partners, including NOAA. Many of the changes to the approved OSRP reflect comments from NOAA, such as revising the worst case discharge scenario and providing trajectories of the worst case discharge over a 30-day period instead of a 72-hour period.

NMFS has carefully evaluated Shell'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;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Measures to ensure availability of such species or stock for taking for certain subsistence uses are discussed later in this document (see ''Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses'' section).

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, 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 action area.

Monitoring Measures

The monitoring plan proposed by Shell can be found in the 4MP (Attachment C of Shell's application; see **ADDRESSES**). Shell's revised 4MP is also available to the public (see **ADDRESSES**). The plan was modified based on comments received from the peer review panel (see the ''*Monitoring Plan Peer Review''* section later in this document) and based on voluntary changes committed to by Shell. A summary of the primary components of the plan can be found in the Notice of Proposed IHA (76 FR 69958, November 9, 2011). A shorter description is contained here, with only components of the 4MP that have been modified summarized in greater detail here.

(1) Vessel-Based PSOs

Vessel-based monitoring for marine mammals will be done by trained PSOs throughout the period of drilling operations on all vessels. PSOs will monitor the occurrence and behavior of marine mammals near the drillship during all daylight periods during operation and during most daylight periods when drilling operations are not occurring. PSO duties will include watching for and identifying marine mammals, recording their numbers, distances, and reactions to the drilling operations. A sufficient number of PSOs will be required onboard each vessel and specifically onboard the drillship and ice management vessels to meet the following criteria: (1) 100% monitoring coverage during all periods of drilling operations in daylight; (2) maximum of 4 consecutive hours on watch per PSO; and (3) maximum of 12 hours of watch time per day per PSO. Shell anticipates that there will be provision for crew rotation at least every 3–6 weeks to avoid observer fatigue.

PSOs will watch for marine mammals from the best available vantage point on the drillship and support vessels. Maximizing time with eyes on the water is strongly promoted during training and is a goal of the PSO program. Each ship will have voice recorders available to PSOs. This will allow PSOs to remain focused on the water in situations where a number of sightings occur together. Additionally, Shell has transitioned entirely to real-time electronic data recording and automated as much of the process as possible to minimize time spent recording data as opposed to focusing eyes on the water.

PSOs are instructed to identify animals as unknown when appropriate rather than strive to identify an animal when there is significant uncertainty. Shell also asks that they provide any sightings cues they used and any distinguishable features of the animal even if they are not able to identify the animal and record it as unidentified. Emphasis is also placed on recording

what was not seen, such as dorsal features.

PSOs will be able to plot sightings in near real-time for their vessel. Significant sightings from key vessels (drill rigs, ice management, anchor handlers and aircraft) will be relayed between platforms to keep observers aware of animals that may be in or near the area but may not be visible to the observer at any one time. Emphasis will be placed on relaying sightings with the greatest potential to involve mitigation or reconsideration of a vessel's course (*e.g.,* large group of bowheads, walruses on ice). Data will also be collected to further evaluate night vision equipment.

(2) Coastal and Offshore Aerial Survey Programs

In its original 4MP, Shell proposed conducting a coastal aerial survey program. Since drafting that original 4MP, Shell has agreed to conduct an offshore aerial photographic survey program. Slight changes to the originally proposed coastal aerial program are noted here, along with details on the newly included offshore photographic survey.

Coastal Aerial Survey—Recent aerial surveys of marine mammals in the Chukchi Sea were conducted over coastal areas to approximately 23 mi (37 km) offshore in 2006–2008 and 2010 in support of Shell's summer seismic exploration activities. These surveys were designed to provide data on the distribution and abundance of marine mammals in nearshore waters of the Chukchi Sea. Shell proposes to conduct an aerial survey program in the Chukchi Sea in 2012 that would be similar to the previous programs.

The current aerial survey program will be designed to collect data on cetaceans but will be limited in its ability to collect similar data on pinnipeds because they are difficult to identify at higher altitudes. Shell's objectives for this program include:

- To collect data on the distribution and abundance of marine mammals in coastal areas of the eastern Chukchi Sea;
- To collect and report data on the distribution, numbers, orientation and behavior of marine mammals, particularly beluga whales, near traditional hunting areas in the eastern Chukchi Sea; and
- To collect marine mammal sighting data using PSOs and digital media and to compare the data recorded by the two methods.

With agreement from hunters in the coastal villages, manned aerial surveys of coastal areas to approximately 23 mi (37 km) offshore between Point Hope and Point Barrow will begin in late June and will continue until drilling operations in the Chukchi Sea are completed. In past years, it has been required that no surveys be conducted in the southern part of the survey area until after the beluga hunt is confirmed to be over, which has been about mid-July. Weather and equipment permitting, nearshore surveys will be conducted once per week during this time period or more often, depending on Shell's ability to fly offshore (which is their first priority). A full description of Shell's survey procedures can be found in the 4MP of Shell's application (see **ADDRESSES**), with only pertinent changes noted next.

Five PSOs will be aboard the aircraft during surveys. Two primary observers will be looking for marine mammals within 1.6 mi (2.5 km) of the survey track line; one at a bubble window on each side of the aircraft. A third person will record data, and a fourth person will rest and alternate with the other PSOs throughout the flight so that none of the primary observers are on duty for more than 2 hrs at a time. The fifth observer will serve as an ice observer and will record data pertinent to Shell's ice observation program. The sighting information and additional data on each sighting will be entered into a digital voice recorder and entered into the database after the survey and will be used to check the data entry during the survey.

Offshore Aerial Photographic Survey—As an addition to the original May 2011 4MP, Shell will conducted an unmanned aerial photographic survey around the offshore drilling operations. During the 2012 field season, Shell will mount two cameras on the aircraft to record marine mammals around the Chukchi Sea drill sites. This survey will serve as a pilot study for future unmanned aerial systems (UAS). The photographic surveys in the Chukchi and Beaufort Seas would collect data that will allow direct comparisons of photographic techniques for data collection with data collected by human observers aboard the aircraft. The aerial survey program in the Beaufort Sea will provide side-by-side comparisons of data collected by PSOs on the survey aircraft with digital imagery collected at the same time by still and video cameras. Surveys in the Chukchi Sea will use only digital cameras when flying offshore but will have observers and digital data collection when the nearshore and coastline surveys are conducted.

These surveys would start as soon as the ice management, anchor handler, and drillship are at or near the first drilling location and would continue throughout the drilling period until the drilling-related vessels have left the drilling area. Therefore, surveys are anticipated to begin around July 3. The offshore photographic surveys will be flown twice a week, weather permitting. Additional details on the camera specifications, survey design, and data analyses can be found in Shell's revised April 2012 4MP (see **ADDRESSES**).

(3) Acoustic Monitoring

Shell will conduct SSV tests to establish the isopleths for the applicable exclusion radii, mostly to be employed during the ZVSP surveys. In addition, Shell will deploy an acoustic ''net'' array.

Drilling Sound Measurements—Drilling sounds are expected to vary significantly with time due to variations in the level of operations and the different types of equipment used at different times onboard the *Discoverer.* The objectives of these measurements are:

(1) To quantify the absolute sound levels produced by drilling and to monitor their variations with time, distance, and direction from the drilling vessel;

(2) To measure the sound levels produced by vessels operating in support of exploration drilling operations. These vessels will include crew change vessels, tugs, icebreakers, and OSRVs; and

(3) To measure the sound levels produced by an end-of-hole ZVSP survey, using a stationary sound source.

The *Discoverer,* support vessels, and ZVSP sound measurements will be performed using one of two methods, both of which involve real-time monitoring. Since drafting the original 4MP in 2011, Shell and NMFS have agreed that spectrograms will be calculated daily, and all information will be included in a weekly report that discusses drillship and vessel activities that occurred during the week.

Vessel sound characterizations will be performed using dedicated recorders deployed at sufficient distance from drilling operations so that sound produced by those activities does not interfere. Three AMAR autonomous acoustic recorders will be deployed on and perpendicular to a sail track on which all Shell vessels will transit. The deployment geometry will be as shown in Figure 3 in Shell's April 2012 4MP. This geometry is designed to obtain sound level measurements as a function of distance and direction. The fore and aft directions are sampled continuously over longer distances to 3.1 and 6.2 mi (5 and 10 km) respectively, while broadside and other directions are

sampled as the vessels pass closer to the recorders. Additional details can be found in Shell's 4MP.

Acoustic ''Net'' Array—The acoustic ''net'' array used by Shell during the 2006–2011 field seasons will be deployed in 2012. The array was designed to accomplish two main objectives:

- To collect information on the occurrence and distribution of marine mammals that may be available to subsistence hunters near villages located on the Chukchi Sea coast and to document their relative abundance, habitat use, and migratory patterns; and
- To measure the ambient soundscape throughout the eastern Chukchi Sea and to record received levels of sound from industry and other activities further offshore in the Chukchi Sea.

A net array configuration similar to that deployed in 2007–2011 is again proposed for 2012. The basic components of this effort consist of autonomous acoustic recorders deployed widely across the U.S. Chukchi Sea through the open-water and then winter seasons. The net array configuration will include a regional array of 24 AMAR recorders deployed from July-October off the four main transect locations: Cape Lisburne; Point Hope; Wainwright; and Barrow (as shown in Figure 8 of Shell's April 2012 4MP). These will be augmented by six AMAR recorders deployed from August 2012–August 2013 at Hanna Shoal. Six additional AMAR recorders will be deployed in a hexagonal geometry at 10 mi (16 km) from the nominal drillship location to monitor directional variations of drilling-related sounds and to examine marine mammal vocalization patterns in vicinity of drilling activities. One new recorder will be placed 20 mi (32 km) northwest of the drillship to monitor for drilling sound propagation toward the south side of Hanna Shoal, which acoustic and satellite tag monitoring has identified as frequented by walrus in August.

Additional details on data analysis for the types of monitoring described here (*i.e.,* vessel-based, aerial, and acoustic) can be found in the April 2012 4MP (see **ADDRESSES**).

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, comprised of experts in the fields of marine mammal ecology and underwater acoustics, to review Shell's 4MP for Exploration Drilling of Selected Lease Areas in the Alaskan Chukchi Sea in 2012. The panel met on January 5–6, 2012, and provided their final report to NMFS on January 27, 2012. The full panel report can be viewed on the Internet at: *http://www.nmfs.noaa.gov/pr/pdfs/permits/openwater/peer_review_report_shell_chukchi.pdf*.

NMFS provided the panel with Shell's 4MP and asked the panel to answer the following questions regarding the plan:

(1) 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?

(2) Can the applicant achieve the stated objectives based on the methods described in the plan?

(3) 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?

(4) 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?

(5) 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)?

Prior to meeting with the panel, Shell reviewed the final reports of the 2010 and 2011 peer review panels, as Shell's 2010 proposed drilling activities were reviewed by the 2010 panel before the program was ultimately cancelled, and both reports contained general recommendations. In its presentation to the 2012 panel, Shell discussed suggested modifications and revisions to the 4MP submitted to NMFS in September 2011 and provided to the panel for review. The panel's final report includes recommendations both on the contents of the September 2011 4MP and the modifications presented at the meeting in January 2012.

NMFS has reviewed the report and evaluated all recommendations made by the panel and has determined there are several measures that Shell can incorporate into its 2012 Chukchi Sea exploratory drilling program 4MP to improve it. The panel recommendations determined by NMFS that are appropriate for inclusion in the 2012 program have been discussed with Shell and are included in the IHA, as appropriate. A summary of the recommendations that have been incorporated into Shell's revised Chukchi Sea 4MP is provided next.

(1) Vessel-Based Monitoring Measures

- Within safe limits, the PSOs should be stationed where they have the best possible viewing. Viewing may not always be best from the ship bridge, and in some cases may be best from higher positions with less visual obstructions (*e.g.,* flying bridge).
- The PSOs should be instructed to identify animals as unknown where appropriate rather than strive to identify a species if there is significant uncertainty.
- Sampling of the relative near-field around operations must be corrected for effort to provide the best possible estimates of marine mammals in safety and exposure zones.
- The PSOs should maximize their time with eyes on the water. This may require new means of recording data (*e.g.,* audio recorder) or the presence of a data recorder so that the observers can simply relay information to them.
- It would be useful if the PSOs or recorders have GIS software available to plot marine mammals sighted and vessel position on a real-time basis.
- Shell should develop a plan for real-time, inter-vessel communication of animal positions when multiple vessels are operating in an area.
- Continued testing and development to improve marine mammal detection capabilities when sighting conditions are poor is needed (*e.g.,* nighttime, high sea states, inclement weather).
- Apply appropriate statistical procedures for probability estimation of marine mammals missed based on observational data acquired during some period of time before and after night and fog events.
- Panel members made a recommendation regarding independence in the hiring, training, and debriefing of PSOs. In support of that recommendation, NMFS recommends that Shell provide its daily

PSO logs to NMFS throughout the operating season.

(2) Acoustic Monitoring

• If a mitigation gun is used during the stationary zero-offset vertical seismic surveys around the drilling sites, a reduced duty cycle (*e.g.,* 1 shot/min) would be appropriate.

• Once source characterization and verification measurements are obtained (including better resolution on directionality, as discussed below), propagation models should be rerun to provide better spatial footprints on which to base mitigation zones.

• Shell should consider the potential integration of visual and acoustic data from the Beaufort and Chukchi Seas monitoring programs and the Joint Science Program to produce estimates of bowhead, beluga, and walrus density using methods developed in the DECAF project by the Center for Research into Ecological and Environmental Modeling (CREEM) at the University of St. Andrews in Scotland.

(3) Presentation of Data in Reports

• It is important that the required reports are useful summaries and interpretations of the results of the various elements of the monitoring plans as opposed to merely regurgitations of all of the raw results. They should thus represent a first derivative level of summary/interpretation of the efficacy, measurements, and observations rather than raw data or fully processed analysis. A clear summary timeline and spatial (map) representation/summary of operations and important observations should be given. Any and all mitigation measures (*e.g.,* vessel course deviations for animal avoidance, operational shutdown) should be summarized. Additionally, an assessment of the efficacy of monitoring methods should be provided.

(4) Additional Monitoring Techniques or Methodologies

• The panel noted the concern over discharges and the impacts that discharges may have on marine mammals and their habitats. While NMFS acknowledges that there may be some challenges in designing techniques and methodologies to study the potential impacts from discharges on marine mammals for the 2012 season, because Shell's Chukchi Sea exploratory drilling program is proposed to be a multi-year operation, NMFS recommends that Shell investigate ways to conduct such studies during the proposed operations. Perhaps there are ways to work with other efforts such as the Joint Industry Monitoring Program funded by several of the oil and gas operators in the Beaufort and Chukchi Seas to collect the information and data.

Reporting Measures

The Notice of Proposed IHA (76 FR 69958, November 9, 2011) described the reporting requirements that would be required of Shell, including an SSV report, technical reports, a comprehensive report, and reports of sightings of injured or dead marine mammals. Please refer to that notice for the full description. Slight changes have been made to the submission of the SSV report, as described in the response to *Comment 75* earlier in this document. Because of the nature of the sounds that will be produced during Shell's operations, it is more appropriate to have a ''rolling'' schedule of submission of sound signatures. Additionally, in response to a recommendation from the peer review panel, NMFS will receive the daily PSO sighting logs.

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 drilling program. Noise propagation from the drillship, associated support vessels (including during ice management/icebreaking if needed), and the airgun array are expected to harass, through behavioral disturbance, affected marine mammal species or stocks. Additional disturbance to marine mammals may result from aircraft overflights and visual disturbance of the drillship or support vessels. However, based on the flight paths and altitude, impacts from aircraft operations are anticipated to be localized and minimal in nature.

The full suite of potential impacts to marine mammals from various industrial activities was described in detail in the ''Potential Effects of the Specified Activity on Marine Mammals'' section in the proposed IHA. The potential effects of sound from the exploratory drilling program might include one or more of the following: Tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.,* 1995a). NMFS estimates that Shell's activities will most likely result in behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of one or more marine mammals. For reasons discussed in the proposed IHA, hearing impairment (TTS and PTS) is highly unlikely to occur based on the fact that most of the equipment to be used during Shell's drilling program does not have source levels high enough to elicit even mild TTS and/or the fact that certain species are expected to avoid the ensonified areas close to the operations. Additionally, non-auditory physiological effects are anticipated to be minor, if any would occur at all. Finally, based on the required mitigation and monitoring measures described earlier in this document and the fact that the back-propagated source level for the drillship is estimated to be between 177 and 185 dB re 1 μPa (rms), no injury or mortality of marine mammals is anticipated as a result of Shell's exploratory drilling program.

For continuous sounds, such as those produced by drilling operations and during icebreaking activities, NMFS uses a received level of 120=dB (rms) to indicate the onset of Level B harassment. For impulsive sounds, such as those produced by the airgun array during the ZVSP surveys, NMFS uses a received level of 160=dB (rms) to indicate the onset of Level B harassment. Shell provided calculations for the 120=dB isopleths produced by the *Discoverer* and by the icebreaker during icebreaking activities and then used those isopleths to estimate takes by harassment. Additionally, Shell provided calculations for the 160=dB isopleth produced by the airgun array and then used that isopleth to estimate takes by harassment. Shell provides a full description of the methodology used to estimate takes by harassment in its IHA application (see **ADDRESSES**), which is also provided in the Notice of Proposed IHA (76 FR 69958, November 9, 2011). Please refer to those documents for the full explanation, as only a short summary is provided here.

Shell requested authorization to take bowhead, gray, fin, humpback, minke, killer, and beluga whales, harbor porpoise, and ringed, spotted, bearded, and ribbon seals incidental to exploration drilling, ice management/icebreaking, and ZVSP activities. Additionally, Shell provided exposure estimates and requested takes of

narwhal. However, as stated previously in this document, sightings of this species are rare, and the likelihood of occurrence of narwhals in the drilling area is minimal. Therefore, NMFS has not authorized take for narwhals.

Basis for Estimating ''Take by Harassment''

''Take by Harassment'' is described in this section and was calculated in Shell's application by multiplying the expected densities of marine mammals that may occur near the exploratory drilling operations by the area of water likely to be exposed to continuous, non-pulse sounds ≥120 dB re 1 μPa (rms) during drillship operations or icebreaking activities and impulse sounds ≥160 dB re 1 μPa (rms) created by seismic airguns during ZVSP activities. NMFS evaluated and critiqued the methods provided in Shell's application and determined that they were appropriate to conduct the requisite MMPA analyses.

Marine mammal densities near the operation are likely to vary by season and habitat, mostly related to the presence or absence of sea ice. Marine mammal density estimates in the Chukchi Sea have been derived for two time periods, the summer period covering July and August, and the fall period including September and October. Animal densities encountered in the Chukchi Sea during both of these time periods will further depend on the habitat zone within which the operations are occurring: open water or ice margin. More ice is likely to be present in the area of operations during the summer period, so summer ice-margin densities have been applied to 50 percent of the area that may be exposed to sounds from exploration drilling and ZVSP activities in those months. Open water densities in the summer were applied to the remaining 50 percent of the area. Less ice is likely to be present during the fall season, so fall ice-margin densities have been applied to only 20 percent of the area that may be exposed to sounds from exploration drilling and ZVSP activities in those months. Fall open-water densities were applied to the remaining 80 percent of the area. Since ice management/icebreaking activities would only occur within ice-margin habitat, the entire area potentially ensonified by ice management/icebreaking activities has been multiplied by the ice-margin densities in both seasons.

Shell notes that there is some uncertainty about the representativeness of the data and assumptions used in the calculations. To provide some allowance for the uncertainties, ''maximum estimates'' as well as ''average estimates'' of the numbers of marine mammals potentially affected have been derived. For a few marine mammal species, several density estimates were available, and in those cases the mean and maximum estimates were determined from the survey data. In other cases, no applicable estimate (or perhaps a single estimate) was available, so correction factors were used to arrive at ''average'' and ''maximum'' estimates. These are described in detail in Shell's application and the proposed IHA. Table 6–7 in Shell's application indicates that the ''average estimate'' for killer, fin, humpback, and minke whales, harbor porpoise, and ribbon seal is either zero or one. Therefore, to account for the fact that these species listed as being potentially taken by harassment in this document may occur in Shell's drilling sites during active operations, NMFS either used the ''maximum estimates'' or made an estimate based on typical group size for a particular species.

Detectability bias, quantified in part by $f(0)$, is associated with diminishing sightability with increasing lateral distance from the trackline. Availability bias [$g(0)$] refers to the fact that there is <100 percent probability of sighting an animal that is present along the survey trackline. Some sources of densities used below included these correction factors in their reported densities (*e.g.,* ringed seals in Bengtson *et al.,* 2005). In other cases the best available correction factors were applied to reported results when they had not been included in the reported data (*e.g.,* Moore *et al.,* 2000).

Estimated Area Exposed to Sounds >120 dB or >160 dB re 1 μPa rms

(1) Estimated Area Exposed to Continuous Sounds >120 dB rms From the Drillship

Sounds from the *Discoverer* have not previously been measured in the Arctic. However, measurements of sounds produced by the *Discoverer* were made in the South China Sea in 2009 (Austin and Warner, 2010). The results of those measurements were used to model the sound propagation from the *Discoverer* (including a nearby support vessel) at planned exploration drilling locations in the Chukchi and Beaufort seas (Warner and Hannay, 2011). Broadband source levels of sounds produced by the *Discoverer* varied by activity and direction from the ship but were generally between 177 and 185 dB re 1 μPa · m rms (Austin and Warner, 2010). Propagation modeling at the Burger Prospect resulted in an estimated distance of 0.81 mi (1.31 km) to the point at which exploration drilling sounds would likely fall below 120 dB. The estimated 0.81 mi (1.31 km) distance was multiplied by 1.5 (= 1.22 mi [1.97 km]) as a further precautionary measure before calculating the total area that may be exposed to continuous sounds ≥120 dB re 1 μPa rms by the *Discoverer* at each drill site on the Burger Prospect (Table 6–3 in Shell's application and Table 1 here). Given this distance or radius, the total area of water ensonified to ≥120 dB rms during exploration drilling at each drill site was estimated to be 4.6 mi^2 (12 km^2). The 160-dB radius for the *Discoverer* was estimated to be approximately 33 ft (10 m). Again, because the source level for the drillship was measured to be between 177 and 185 dB, the 180 and 190-dB radii were not needed.

The acoustic propagation model used to estimate the sound propagation from the *Discoverer* in the Chukchi Sea is JASCO Research's Marine Operations Noise Model (MONM). MONM computes received sound levels in rms units when source levels are specified also in those units. MONM treats sound propagation in range-varying acoustic environments through a wide-angled parabolic equation solution to the acoustic wave equation. The specific parabolic equation code in MONM is based on the Naval Research Laboratory's Range-dependent Acoustic Model. This code has been extensively benchmarked for accuracy and is widely employed in the underwater acoustics community (Collins, 1993).

Changes in the water column of the Chukchi Sea through the course of the exploration drilling season will likely affect the propagation of sounds produced by exploration drilling activities, so the modeling of exploration drilling sounds was run using expected oceanographic conditions in October which are expected to support greater sound propagation (Warner and Hannay, 2011). Results of sound propagation modeling that were used in the calculations of areas exposed to various levels of received sounds are summarized in Table 6–3 in Shell's application and Table 1 here.

Distances shown in Table 6–3 in Shell's application and Table 1 here were used to estimate the area ensonified to ≥120 dB rms around the drillship. All exploration drilling activities will occur at the Burger Prospect. The exploration drill sites assumed for summer 2012 at the Burger Prospect (Burger A, F, J, and V) are 3.4 to 13 mi (5.5 km to 21 km) from each other, and wells will not be drilled

simultaneously. Therefore, the area exposed to continuous sounds ≥120 dB at each drill site is not expected to overlap with any other drill site. The total area of water potentially exposed to received sound levels ≥120 dB rms by exploration drilling operations during July–August at two locations is therefore estimated to be 9.42 mi² (24.4 km²). Activities at two additional locations in September–October may expose an additional 9.42 mi² (24.4 km²) to continuous sounds ≥120 dB rms.

Table 1. Sound Propagation Modeling Results of Exploration Drilling, Icebreaking, and ZVSP Activities at the Burger Prospect in the Alaskan Chukchi Sea.

Source	Received Level (dB re 1 μPa)	Modeling Results (km)	Used in Calculations (km)
Discoverer	120	1.31	1.97
Icebreaking	120	7.63	9.50
ZVSP	160	3.67	5.51

(2) Estimated Area Exposed to Continuous Sounds >120 dB rms From Ice Management/Icebreaking Activities

Measurements of the icebreaking supply ship *Robert Lemeur* pushing and breaking ice during exploration drilling operations in the Beaufort Sea in 1986 resulted in an estimated broadband source level of 193 dB re 1 μPa · m (Greene, 1987a; Richardson *et al.,* 1995a). Measurements of the icebreaking sounds were made at five different distances and those were used to generate a propagation loss equation [RL=141.4–1.65R–10Log(R) where R is range in kilometers (Greene, 1987a); converting R to meters results in the following equation: R=171.4–10log(R)–0.00165R]. Using that equation, the estimated distance to the 120 dB threshold for continuous sounds from icebreaking is 4.74 mi (7.63 km). Since the measurements of the *Robert Lemeur* were taken in the Beaufort Sea under presumably similar conditions as would be encountered in the Chukchi Sea in 2012, an inflation factor of 1.25 was selected to arrive at a precautionary 120 dB distance of 5.9 mi (9.5 km) for icebreaking sounds (see Table 6–3 in Shell's application and Table 1 here). Additionally, measurements of identical sound sources at the Burger and Camden Bay prospects in 2008 yielded similar results, suggesting that sound propagation at the two locations is likely to be similar (Hannay and Warner, 2009).

If ice is present, ice management/icebreaking activities may be necessary in early July and towards the end of operations in late October, but it is not expected to be needed throughout the proposed exploration drilling season. Icebreaking activities would likely occur in a 40° arc up to 3.1 mi (5 km) upwind of the *Discoverer* (see Figure 1–3 and Attachment B in Shell's application for additional details). This activity area plus a 5.9 mi (9.5 km) buffer around it results in an estimated total area of 162 mi² (420 km2) that may be exposed to sounds ≥120 dB from ice management/icebreaking activities in each season.

(3) Estimated Area Exposed to Impulsive Sounds >160 dB rms From Airguns

Shell proposes to use the ITAGA eight-airgun array for the ZVSP surveys in 2012, which consists of four 150-in³ airguns and four 40-in³ airguns for a total discharge volume of 760 in³. The ≥160 dB re 1 μPa rms radius for this source was estimated from measurements of a similar seismic source used during the 2008 BP Liberty seismic survey (Aerts *et al.,* 2008). The BP liberty source was also an eight-airgun array but had a slightly larger total volume of 880 in³. Because the number of airguns is the same, and the difference in total volume only results in an estimated 0.4 dB decrease in the source level of the ZVSP source, the 100th percentile propagation model from the measurements of the BP Liberty source is almost directly applicable. However, the BP Liberty source was towed at a depth of 5.9 ft (1.8 m), while Shell's ZVSP source would be lowered to a target depth of 13 ft (4 m) (from 10–23 ft [3–7 m]). The deeper depth of the ZVSP source has the potential to increase the source strength by as much as 6 dB. Thus, the constant term in the propagation equation from the BP Liberty source was increased from 235.4 to 241.4 while the remainder of the equation (–18*LogR—0.0047*R) was left unchanged. NMFS reviewed the use of this equation and the similarities between the 2008 BP Liberty project and Shell's proposed drilling sites and determined that it is appropriate to base the sound isopleths on those results. This equation results in the following estimated distances to maximum received levels: 190 dB = 0.33 mi (524 m); 180 dB = 0.77 mi (1,240 m); 160 dB = 2.28 mi (3,670 m); 120 dB = 6.52 mi (10,500 m). The ≥160 dB distance was multiplied by 1.5 (see Table 6–3 in Shell's application and Table 4 here) for use in estimating the area ensonified to ≥160 dB rms around the drilling vessel during ZVSP activities. Therefore, the total area of water potentially exposed to received sound levels ≥160 dB rms by ZVSP operations at two exploration well sites during each season (*i.e.,* summer and fall) is estimated to be 73.7 mi² (190.8 km²).

Shell intends to conduct sound propagation measurements on the *Discoverer* and the airgun source in 2012 once they are on location in the Chukchi Sea. The results of those measurements would then be used during the season to implement mitigation measures.

Potential Number of Takes by Harassment

Although a marine mammal may be exposed to drilling or icebreaking sounds ≥120 dB (rms) or airgun sounds ≥160 dB (rms), not all animals react to sounds at this low level, and many will not show strong reactions (and in some cases any reaction) until sounds are much stronger. There are several variables that determine whether or not an individual animal will exhibit a response to the sound, such as the age of the animal, previous exposure to this type of anthropogenic sound, habituation, etc.

Numbers of marine mammals that might be present and potentially disturbed (*i.e.,* Level B harassment) are estimated below based on available data about mammal distribution and densities at different locations and times

of the year as described previously. Exposure estimates are based on a single drillship (*Discoverer*) drilling up to four wells in the Chukchi Sea from July 1–October 31, 2012. Shell assumes an average of 32 days at each drill site (including the partial well drill site, including 7.5 days of MLC excavation at all four drill sites). Shell also assumes that ZVSP activities may occur at each well drilled. Additionally, Shell assumed that more ice is likely to be present in the area of operations during the July-August period, so summer ice-margin densities have been applied to 50 percent of the area that may be exposed to sounds from exploration drilling and ZVSP activities in those months. Open-water densities in the summer were applied to the remaining 50 percent of the area. Less ice is likely to be present during the September-October period, so fall ice-margin densities have been applied to only 20 percent of the area that may be exposed to sounds from exploration drilling and ZVSP activities in those months. Fall open-water densities were applied to the remaining 80 percent of the area. Since ice management/icebreaking activities would only occur within ice-margin habitat, the entire area potentially ensonified by ice management/icebreaking activities has been multiplied by the ice-margin densities in both seasons.

The number of different individuals of each species potentially exposed to received levels of continuous drilling-related sounds ≥120 dB re 1 μPa or to pulsed airgun sounds ≥120 dB re 1 μPa within each season and habitat zone was estimated by multiplying:

- The anticipated area to be ensonified to the specified level in the time period and habitat zone to which a density applies, by
- The expected species density.

The numbers of exposures were then summed for each species across the seasons and habitat zones.

Estimated Take Conclusions

As stated previously, NMFS' practice has been to apply the 120 dB re 1 μPa (rms) received level threshold for underwater continuous sound levels and the 160 dB re 1 μPa (rms) received level threshold for underwater impulsive sound levels to determine whether take by Level B harassment occurs. However, not all animals react to sounds at these low levels, and many will not show strong reactions (and in some cases any reaction) until sounds are much stronger.

Although the 120-dB isopleth for the drillship may seem slightly expansive (*i.e.,* 1.22 mi [1.97 km], which includes the 50% inflation factor), the zone of ensonification begins to shrink dramatically with each 10-dB increase in received sound level to where the 160-dB isopleth is only about 33 ft (10 m) from the drillship. As stated previously, source levels are expected to be between 177 and 185 dB (rms). For an animal to be exposed to received levels between 177 and 185 dB, it would have to be within several meters of the vessel, which is unlikely, especially given the fact that certain species are likely to avoid the area.

For impulsive sounds, such as those produced by the airguns, studies reveal that baleen whales show avoidance responses, which would reduce the likelihood of them being exposed to higher received sound levels. The 180-dB zone (0.77 mi [1.24 km]) is one-third the size of the 160-dB zone (2.28 mi [3.67 km], which is the modeled distance before the 1.5 inflation factor is included). In the limited studies that have been conducted on pinniped responses to pulsed sound sources, they seem to be more tolerant and do not exhibit strong behavioral reactions (see Southall *et al.,* 2007).

NMFS has authorized the maximum take estimates provided in Table 6–7 of Shell's application and Table 2 here. With the exception of killer and minke whales (which are still less than 2.5%), less than 1% of each species or stock would potentially be exposed to sounds above the Level B harassment thresholds. The take estimates presented here do not take any of the mitigation measures presented earlier in this document into consideration. These take numbers also do not consider how many of the exposed animals may *actually* respond or react to the exploration drilling program. Instead, the take estimates are based on the presence of animals, regardless of whether or not they react or respond to the activities.

TABLE 2—POPULATION ABUNDANCE ESTIMATES, TOTAL AUTHORIZED LEVEL B TAKE (WHEN COMBINING TAKES FROM DRILLSHIP OPERATIONS, ICE MANAGEMENT/ICEBREAKING, AND ZVSP SURVEYS), AND PERCENTAGE OF STOCK OR POPULATION THAT MAY BE TAKEN FOR THE POTENTIALLY AFFECTED SPECIES THAT MAY OCCUR IN SHELL'S CHUKCHI SEA DRILLING AREA

Species	Abundance [1]	Total authorized take	Percentage of stock or population
Beluga Whale	[2] 3,710 [3] 39,258	15	0.04–0.4
Killer Whale	656	15	2.3
Harbor Porpoise	48,215	15	0.03
Bowhead Whale	[4] 15,232	53	0.35
Fin Whale	5,700	15	0.26
Gray Whale	18,017	46	0.26
Humpback Whale	2,845	15	0.53
Minke Whale	810–1,233	15	1.22–1.85
Bearded Seal	[5] 155,000	36	0.02
Ribbon Seal	49,000	15	0.03
Ringed Seal	208,000–252,000	814	0.32–0.39
Spotted Seal	59,214	21	0.04

[1] Unless stated otherwise, abundance estimates are taken from Allen and Angliss (2011).
[2] Eastern Chukchi Sea stock population estimate.
[3] Beaufort Sea stock population estimate.
[4] Estimate from George *et al.* (2004) with an annual growth rate of 3.4%.
[5] Beringia Distinct Population Segment (NMFS, 2010).

Negligible Impact and Small Numbers Analysis and 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 Shell's Chukchi Sea exploratory drilling program, and none are authorized. Injury, serious injury, or mortality could occur if there were a large or very large oil spill. However, as discussed previously in this document, the likelihood of a spill is extremely remote. Shell has implemented many design and operational standards to minimize the potential for an oil spill of any size. NMFS has not authorized take from an oil spill, as it is not part of the specified activity. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. Instead, any impact that could result from Shell's activities is most likely to be behavioral harassment and is expected to be of limited duration. Although it is possible that some individuals may be exposed to sounds from drilling operations more than once, during the migratory periods it is less likely that this will occur since animals will continue to move across the Chukchi Sea towards their wintering grounds.

Bowhead and beluga whales are less likely to occur in the project area in July and August, as they are found mostly in the Canadian Beaufort Sea at this time. The animals are more likely to occur later in the season (mid-September through October), as they head west towards Russia or south towards the Bering Sea. Additionally, while bowhead whale tagging studies revealed that animals occurred in the LS 193 area, a higher percentage of animals were found outside of the LS 193 area in the fall (Quakenbush *et al.,* 2010). Bowhead whales are not known to feed in areas near Shell's leases in the Chukchi Sea. The closest primary feeding ground is near Point Barrow, which is more than 150 mi (241 km) east of Shell's Burger prospect, with additional evidence of feeding in recent years off Point Franklin close to shore (Clarke *et al.,* 2011), which is more than 65 mi (105 km) from Shell's Burger prospect. There were no observations of feeding in the areas near Shell's proposed Burger prospect drill sites. Therefore, if bowhead whales stop to feed near Point Barrow on their fall westward migration (or off Point Franklin during the summer and fall months) during Shell's operations, the animals would not be exposed to continuous sounds from the drillship or icebreaker above 120 dB or to impulsive sounds from the airguns above 160 dB, as those sound levels only propagate 1.22 mi (1.97 km), 5.9 mi (9.5 km), and 3.42 mi (5.51 km), respectively, which includes the inflation factor. Additionally, the 120-dB radius for the airgun array has been modeled to propagate 6.5 mi (10.5 km) from the source (and would still be less than 10 mi [16.1 km] if an inflation factor of 1.5 were applied). Therefore, sounds from the operations would not reach the feeding grounds near Point Barrow or Point Franklin.

Gray whales occur in the northeastern Chukchi Sea during the summer and early fall to feed. The COMIDA 2008–2010 Final Report (Clarke *et al.,* 2011) notes 504 sightings of 835 gray whales during that time period, which were seen in every month of surveys each of the 3 years (*i.e.,* June to November) between Wainwright and Barrow within 31 mi (50 km) of shore. Clarke *et al.* (2011) note that sightings were also scattered throughout the study area more than 31 mi (50 km) offshore. The relative lack of gray whale sightings (and mud plumes, which are indicative of the presence of feeding gray whales) offshore was markedly different from that documented during surveys conducted from 1982–1991, when gray whales were frequently seen on Hanna Shoal (Moore and Clarke, 1992 cited in Clarke *et al.,* 2011). Gray whale sightings were most common in the survey blocks closer to shore in all months (Clarke *et al.,* 2011). Based on this information, it appears that currently nearshore locations are being used more frequently than Hanna Shoal for feeding by gray whales. Both Hanna Shoals and the nearshore feeding grounds lie outside of the 120-dB and 160-dB ensonified areas from Shell's activities. While some individuals may swim through the area of active drilling, it is not anticipated to interfere with their feeding at Hanna Shoals or other Chukchi Sea feeding grounds. Other cetacean species (such as humpback and fin whales) are much rarer in the project area. The exposure of cetaceans to sounds produced by exploratory drilling operations (*i.e.,* drillship, ice management/icebreaking, and airgun operations) is not expected to result in more than Level B harassment.

Few seals are expected to occur in the project area, as several of the species prefer more nearshore waters. Additionally, as stated previously in this document, pinnipeds appear to be more tolerant of anthropogenic sound, especially at lower received levels, than other marine mammals, such as mysticetes. Shell's activities would occur at a time of year when the ice seal species found in the region are not molting, breeding, or pupping. Therefore, these important life functions would not be impacted by Shell's activities.

NMFS began receiving reports of an outbreak of skin lesions and sores for certain ice seal species in summer 2011 and declared an unusual mortality event in December 2011. An investigative team was established, and testing has been underway. As noted in the response to *Comment 34* earlier in this document, testing has ruled out numerous bacteria and viruses known to affect marine mammals. Reports from the NSB indicate that hunters during early winter observed many healthy bearded and ringed seals. The seals behaved normally: they were playful, curious but cautious, and maintained distance from boats. No lesions were observed on any seals. Chukotka hunters did not report any sightings or harvest of sick and/or hairless seals in December 2011 and January 2012. The data available to date do not indicate that this outbreak has weakened the population. Moreover, Shell's activities are anticipated to take less than 1% of the population of all of the stocks of all three species observed to have the sores and lesions (*i.e.,* ringed, bearded, and spotted seals). The sound that will be produced by Shell's activities is of a low level. Therefore, even if the population were weakened from this outbreak it would not change our evaluation of the impacts of this activity at the population level. The exposure of pinnipeds to sounds produced by Shell's exploratory drilling operations in the Chukchi Sea is not expected to result in more than Level B harassment of the affected species or stock.

Of the 12 marine mammal species likely to occur in the drilling area, three are listed as endangered under the ESA: The bowhead, humpback, and fin whales. All three 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% annually for nearly a decade (Allen and Angliss, 2011), even in the face of ongoing industrial activity. 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, 2011). An annual increase of 4.8% was estimated for the period 1987–2003 for North Pacific fin whales. While this estimate is consistent with growth estimates for other large whale populations, it should be used with caution due to uncertainties in the initial population estimate and about population stock structure in the area (Allen and Angliss, 2011). Zeribini *et al.* (2006, cited in Allen and Angliss, 2011) noted an increase of 6.6% for the Central North Pacific stock of humpback whales in Alaska waters. Certain stocks or populations of gray and beluga whales and spotted seals are listed as endangered or are proposed for listing under the ESA; however, none of those stocks or populations occur in the activity area. On December 10, 2010, NMFS published a notice of proposed threatened status for subspecies of the ringed seal (75 FR 77476) and a notice of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register.** Neither of these two ice seal species is currently considered depleted under the MMPA. The ribbon seal is a ''species of concern.'' 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. There is currently no established critical habitat in the project area for any of these 12 species.

Potential impacts to marine mammal habitat were discussed in detail in the Notice of Proposed IHA (76 FR 69958, November 9, 2011; see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, any impacts to affected marine mammal stocks or species are anticipated to be minor. Based on the vast size of the Arctic Ocean where feeding by marine mammals occurs versus the localized area of the drilling program, any missed feeding opportunities in the direct project area would be of little consequence, as marine mammals would have access to other feeding grounds.

The estimated takes authorized represent less than 1% of the affected population or stock for 10 of the species and less than 2.5% for two of the species. 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.

The estimated take numbers are likely an overestimate for several reasons. First, these take numbers were calculated using a 50% inflation factor of the 120-dB radius from the drillship and of the 160-dB radius for the airguns and using a 25% inflation factor of the 120-dB radius from the icebreaker during active ice management/icebreaking activities, which is a precautionary approach recommended by some acousticians when modeling a new sound source in a new location and because the radii were based on results from measurements of the *Discoverer* in another location and of the icebreaker and airguns in the Arctic Ocean. SSV tests may reveal that the Level B harassment zone is either smaller or larger than that used to estimate take. If the SSV tests reveal that the Level B harassment zone is slightly larger than those modeled or measured elsewhere, the inflation factors should cover the discrepancy, however, based on recent SSV tests of seismic airguns (which showed that the measured 160-dB isopleth was in the area of the modeled value), the 50% correction factor likely results in an overestimate of takes. Moreover, the mitigation and monitoring measures (described previously in this document) included in the IHA are expected to reduce even further any potential disturbance to marine mammals. Last, some marine mammal individuals, including mysticetes, have been shown to avoid the ensonified area around airguns at certain distances (Richardson *et al.,* 1999), and, therefore, some individuals would not likely enter into the Level B harassment zones for the various types of activities. Based on the best available information, the mitigation and monitoring protocols that will be implemented by Shell, and the extremely low likelihood of a major oil spill occurring, NMFS has determined that the take, by Level B harassment, from Shell's activities would have no more than a negligible impact on the affected marine mammal species and stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Relevant Subsistence Uses

The disturbance and potential displacement of marine mammals by sounds from drilling activities are the principal concerns related to subsistence use of the area. Subsistence remains the basis for Alaska Native culture and community. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities. Additionally, the animals taken for subsistence provide a significant portion of the food that will last the community throughout the year. The main species that are hunted include bowhead and beluga whales, ringed, spotted, and bearded seals, walruses, and polar bears. (As mentioned previously in this document, both the walrus and the polar bear are under the USFWS' jurisdiction.) The importance of each of these species varies among the communities and is largely based on availability.

The subsistence communities in the Chukchi Sea that have the potential to be impacted by Shell's offshore drilling program include Point Hope, Point Lay, Wainwright, Barrow, and possibly Kotzebue and Kivalina (however, these two communities are much farther to the south of the proposed project area). Wainwright is the coastal village closest to the proposed drill site and is located approximately 78 mi (125.5 km) from Shell's Burger prospect. Point Lay, Barrow, and Point Hope are all approximately 92, 140, and 206 mi (148, 225.3, and 332 km), respectively, from Shell's Burger prospect.

(1) Bowhead Whales

Bowhead whale hunting is a key activity in the subsistence economies of northwest Arctic communities. The whale harvests have a great influence on social relations by strengthening the sense of Inupiat culture and heritage in addition to reinforcing family and community ties.

An overall quota system for the hunting of bowhead whales was established by the International Whaling Commission (IWC) in 1977. The quota is now regulated through an agreement between NMFS and the AEWC. The AEWC allots the number of bowhead whales that each whaling community may harvest annually (USDOI/BLM, 2005). The annual take of bowhead whales has varied due to (a) changes in the allowable quota level and (b) year-to-year variability in ice and weather conditions, which strongly influence the success of the hunt.

Bowhead whales migrate around northern Alaska twice each year, during the spring and autumn, and are hunted in both seasons. Bowhead whales are hunted from Barrow during the spring

and the fall migration. The spring hunt along Chukchi villages and at Barrow occurs after leads open due to the deterioration of pack ice; the spring hunt typically occurs from early April until the first week of June. From 1984–2009, bowhead harvests by the villages of Wainwright, Point Hope, and Point Lay occurred only between April 14 and June 24 and only between April 23 and June 15 in Barrow (George and Tarpley, 1986; George *et al.,* 1987, 1988, 1990, 1992, 1995, 1998, 1999, 2000; Philo *et al.,* 1994; Suydam *et al.,* 1995b, 1996, 1997, 2001b, 2002, 2003, 2004, 2005b, 2006, 2007, 2008, 2009, 2010). Shell will not mobilize and move into the Chukchi Sea prior to July 1.

The fall migration of bowhead whales that summer in the eastern Beaufort Sea typically begins in late August or September. Fall migration into Alaskan waters is primarily during September and October. In the fall, subsistence hunters use aluminum or fiberglass boats with outboards. Hunters prefer to take bowheads close to shore to avoid a long tow during which the meat can spoil, but Braund and Moorehead (1995) report that crews may (rarely) pursue whales as far as 50 mi (80 km). The autumn bowhead hunt usually begins in Barrow in mid-September and mainly occurs in the waters east and northeast of Point Barrow. Fall bowhead whaling has not typically occurred in the villages of Wainwright, Point Hope, and Point Lay. However, Wainwright whaling crews harvested one bowhead whale on October 7, 2010, and one bowhead whale on October 28, 2011. Because of changing ice conditions, there is the potential for these villages to resume a fall bowhead harvest. Additionally, residents of Point Lay have not hunted bowhead whales in the recent past but were selected by the IWC to receive a bowhead whale quota in 2009, and began bowhead hunting again in 2009 and harvested a bowhead on May 5, 2009, during the spring hunt. In the more distant past, Point Lay hunters traveled to Barrow, Wainwright, or Point Hope to participate in the bowhead whale harvest activities.

Barrow participates in a fall hunt each year. From 1984–2009, Barrow whalers harvested bowhead whales between August 31 and October 29. While this time period overlaps with that of Shell's proposed operations, the drill sites are located more than 140 mi (225 km) west of Barrow, so the whales would reach the Barrow hunting grounds before entering the sound field of Shell's operations. Shell will be flying helicopters out to the drillship for resupply missions. However, Shell will communicate with the communities about helicopter routes and has agreed to conditions in the signed 2012 CAA to avoid conflicts with helicopter flights. In the past 35 years, however, Barrow whaling crews have harvested almost all whales in the Beaufort Sea to the east of Point Barrow (Suydam *et al.,* 2008), indicating that relatively little fall hunting occurs to the west where the flight corridor is located.

(2) Beluga Whales

Beluga whales are available to subsistence hunters along the coast of Alaska in the spring when pack-ice conditions deteriorate and leads open up. Belugas may remain in coastal areas or lagoons through June and sometimes into July and August. The community of Point Lay is heavily dependent on the hunting of belugas in Kasegaluk Lagoon for subsistence meat. From 1983–1992 the average annual harvest was approximately 40 whales (Fuller and George, 1997). Point Hope residents hunt beluga primarily in the lead system during the spring (late March to early June) bowhead hunt but also in open-water along the coastline in July and August. Belugas are harvested in coastal waters near these villages, generally within a few miles from shore.

In Wainwright and Barrow, hunters usually wait until after the spring bowhead whale hunt is finished before turning their attention to hunting belugas. The average annual harvest of beluga whales taken by Barrow for 1962–1982 was five (MMS, 1996). The Alaska Beluga Whale Committee (ABWC) recorded that 23 beluga whales had been harvested by Barrow hunters from 1987 to 2002, ranging from 0 in 1987, 1988 and 1995 to the high of 8 in 1997 (Fuller and George, 1997; ABWC, 2002 cited in USDOI/BLM, 2005). Barrow residents typically hunt for belugas between Point Barrow and Skull Cliffs in the Chukchi Sea (primarily April-June) and later in the summer (July-August) on both sides of the barrier island in Elson Lagoon/Beaufort Sea (MMS, 2008). Harvest rates indicate that the hunts are not frequent. Wainwright residents hunt beluga in April-June in the spring lead system, but this hunt typically occurs only if there are no bowheads in the area. Communal hunts for beluga are conducted along the coastal lagoon system later in July-August. Shell's exploration drilling activities take place well offshore, far away from areas that are used for beluga hunting by the Chukchi Sea communities.

(3) Ringed Seals

Ringed seals are hunted mainly from October through June. Hunting for these smaller mammals is concentrated during winter (November through March) because bowhead whales, bearded seals, and caribou are available through other seasons. In winter, leads and cracks in the ice off points of land and along the barrier islands are used for hunting ringed seals. The average annual ringed seal harvest was 49 seals in Point Lay, 86 in Wainwright, and 394 in Barrow (Braund *et al.,* 1993; USDOI/BLM, 2003, 2005). Although ringed seals are available year-round, the planned activities will not occur during the primary period when these seals are typically harvested (November-March). Also, the activities will be largely in offshore waters where they will not influence ringed seals in the nearshore areas where they are hunted.

(4) Spotted Seals

The spotted seal subsistence hunt peaks in July and August along the shore where the seals haul out, but usually involves relatively few animals. Available maps of recent and past subsistence use areas for spotted seals indicate harvest of this species within 30–40 mi (48–64 km) of the coastline. Spotted seals typically migrate south by October to overwinter in the Bering Sea. During the fall migration, spotted seals are hunted by the Wainwright and Point Lay communities as the seals move south along the coast (USDOI/BLM, 2003). Spotted seals are also occasionally hunted in the area off Point Barrow and along the barrier islands of Elson Lagoon to the east (USDOI/BLM, 2005). The planned activities will remain offshore of the coastal harvest area of these seals and should not conflict with harvest activities.

(5) Bearded Seals

Bearded seals, although generally not favored for their meat, are important to subsistence activities in Barrow and Wainwright because of their skins. Six to nine bearded seal hides are used by whalers to cover each of the skin-covered boats traditionally used for spring whaling. Because of their valuable hides and large size, bearded seals are specifically sought. Bearded seals are harvested during the spring and summer months in the Chukchi Sea (USDOI/BLM, 2003, 2005). The animals inhabit the environment around the ice floes in the drifting nearshore ice pack, so hunting usually occurs from boats in the drift ice. Most bearded seals are harvested in coastal areas inshore of the proposed exploration drilling area, so no conflicts with the harvest of bearded seals are expected.

Potential Impacts to Subsistence Uses

NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by causing the marine mammals to abandon or avoid hunting areas; directly displacing subsistence users; or placing physical barriers between the marine mammals and the subsistence hunters; and that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Noise and general activity during Shell's drilling program 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) is avoidance of the ensonified area. In the case of bowhead whales, this often means that the animals divert from their normal migratory path by several kilometers. Helicopter activity also has the potential to disturb cetaceans and pinnipeds by causing them to vacate the area. Additionally, general vessel presence in the vicinity of traditional hunting areas could negatively impact a hunt. Native knowledge indicates that bowhead whales become increasingly ''skittish'' in the presence of seismic noise. Whales are more wary around the hunters and tend to expose a much smaller portion of their back when surfacing (which makes harvesting more difficult). Additionally, natives report that bowheads exhibit angry behaviors in the presence of seismic activity, such as tail-slapping, which translate to danger for nearby subsistence harvesters.

In the unlikely event of an oil spill, marine mammals could become contaminated and therefore unavailable to subsistence users. Additionally, perception could also affect availability of marine mammals for subsistence uses. Even if whales or seals are not oiled or contaminated by an oil spill, the mere perception that they could be contaminated could reduce the availability of marine mammals for subsistence uses.

Plan of Cooperation (POC)

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. Shell developed a POC for its 2012 Chukchi Sea, Alaska, exploration drilling program to minimize any adverse impacts on the availability of marine mammals for subsistence uses. A copy of the Draft POC was provided to NMFS with the IHA Application as Attachment D (see **ADDRESSES** for availability). Meetings with potentially affected subsistence users began in 2009 and continued into 2010 and 2011 (see Table 4.2–1 in Shell's POC for a list of all meetings conducted through April 2011). During these meetings, Shell focused on lessons learned from prior years' activities and presented mitigation measures for avoiding potential conflicts, which are outlined in the 2012 POC and this document. Shell's POC addresses vessel transit, drilling, and associated activities. Communities that were consulted regarding Shell's 2012 Arctic Ocean operations include: Barrow, Kaktovik, Wainwright, Kotzebue, Kivalina, Point Lay, Point Hope, Kiana, Gambell, Savoonga, and Shishmaref.

Beginning in early January 2009 and continuing into 2011, Shell held one-on-one meetings with representatives from the NSB and Northwest Arctic Borough (NWAB), subsistence-user group leadership, and Village Whaling Captain Association representatives. Shell's primary purpose in holding individual meetings was to inform and prepare key leaders, prior to the public meetings, so that they would be prepared to give appropriate feedback on planned activities.

Shell presented the proposed project to the NWAB Assembly on January 27, 2009, to the NSB Assembly on February 2, 2009, and to the NSB and NWAB Planning Commissions in a joint meeting on March 25, 2009. Meetings were also scheduled with representatives from the AEWC, and presentations on proposed activities were given to the Inupiat Community of the Arctic Slope, and the Native Village of Barrow. On December 8, 2009, Shell held consultation meetings with representatives from the various marine mammal commissions. Prior to drilling in 2012, Shell will also hold additional consultation meetings with the affected communities and subsistence user groups, NSB, and NWAB to discuss the mitigation measures included in the POC. Shell presented information regarding the proposed operations and marine mammal monitoring plans at the 2012 Arctic Open Water Meeting in Anchorage, Alaska, which was held March 6–8, 2012. Shell also attended the 2011 CAA negotiation meetings in support of a limited program of marine environmental baseline activities in 2011 taking place in the Beaufort and Chukchi seas. Shell has stated that it is committed to a CAA process and will demonstrate this by making a good-faith effort to negotiate a CAA every year it has planned activities. To that end, Shell attended the 2012 CAA negotiation meetings and signed the 2012 CAA on March 26, 2012.

The following mitigation measures, plans and programs, are integral to the POC and were developed during consultation with potentially affected subsistence groups and communities. These measures, plans, and programs will be implemented by Shell during its 2012 exploration drilling operations in both the Beaufort and Chukchi Seas to monitor and mitigate potential impacts to subsistence users and resources. The mitigation measures Shell has adopted and will implement during its 2012 Chukchi Sea offshore exploration drilling operations are listed and discussed below. This most recent version of Shell's planned mitigation measures was presented to community leaders and subsistence user groups starting in January of 2009 and has evolved since in response to information learned during the consultation process.

To minimize any cultural or resource impacts to subsistence activities from its exploration operations, Shell will implement the following additional measures to ensure coordination of its activities with local subsistence users to minimize further the risk of impacting marine mammals and interfering with the subsistence hunts for marine mammals:

(1) The drillship and support vessels will not enter the Chukchi Sea before July 1;

(2) To minimize impacts on marine mammals and subsistence hunting activities, vessels that can safely travel outside of the polynya zone will do so. In the event the transit outside of the polynya zone results in Shell having to break ice (as opposed to managing ice by pushing it out of the way), the drillship and support vessels will enter into the polynya zone far enough so that ice breaking is not necessary. If it is necessary to move into the polynya zone, Shell will notify the local communities of the change in the transit route through the Communication Centers (Com Centers);

(3) Shell has developed a Communication Plan and will implement the plan before initiating exploration drilling operations to coordinate activities with local subsistence users as well as Village Whaling Associations in order to minimize the risk of interfering with subsistence hunting activities and keep

current as to the timing and status of the bowhead whale migration, as well as the timing and status of other subsistence hunts. The Communication Plan includes procedures for coordination with Com and Call Centers to be located in coastal villages along the Chukchi and Beaufort Seas during Shell's proposed activities in 2012;

(4) Shell will employ local Subsistence Advisors from the Beaufort and Chukchi Sea villages to provide consultation and guidance regarding the whale migration and subsistence hunt. There will be a total of nine subsistence advisor-liaison positions (one per village), to work approximately 8 hours per day and 40-hour weeks through Shell's 2012 exploration project. The subsistence advisor will use local knowledge (Traditional Knowledge) to gather data on subsistence lifestyle within the community and advise on ways to minimize and mitigate potential impacts to subsistence resources during the drilling season. Responsibilities include reporting any subsistence concerns or conflicts; coordinating with subsistence users; reporting subsistence-related comments, concerns, and information; and advising how to avoid subsistence conflicts. A subsistence advisor handbook will be developed prior to the operational season to specify position work tasks in more detail;

(5) Shell will recycle drilling muds (*e.g.,* use those muds on multiple wells), to the extent practicable based on operational considerations (*e.g.,* whether mud properties have deteriorated to the point where they cannot be used further), to reduce discharges from its operations. At the end of the season excess water base fluid will be pre-diluted to a 30:1 ratio with seawater and then discharged;

(6) Shell will implement flight restrictions prohibiting aircraft from flying within 1,000 ft (305 m) of marine mammals or below 1,500 ft (457 m) altitude (except during marine mammal monitoring, takeoffs and landings, or in emergency situations) while over land or sea;

(7) Vessels within 900 ft (274 m) of marine mammals will reduce speed, avoid separating members from a group, and avoid multiple changes in direction;

(8) Vessels underway will alter course to avoid impacts to marine mammals, including collisions;

(9) The drilling support fleet will avoid known fragile ecosystems, including the Ledyard Bay Critical Habitat Unit and will include coordination through the Com Centers; and

(10) Vessel speeds will be reduced during inclement weather conditions in order to reduce the potential for collisions with marine mammals.

Aircraft and vessel traffic between the drill sites and support facilities in Wainwright, and aircraft traffic between the drill sites and air support facilities in Barrow would traverse areas that are sometimes used for subsistence hunting of belugas. Disturbance associated with vessel and aircraft traffic could therefore potentially affect beluga hunts. Vessel and aircraft traffic associated with Shell's proposed drilling program will be restricted under normal conditions to designated corridors that remain onshore or proceed directly offshore thereby minimizing the amount of traffic in coastal waters where beluga hunts take place. The designated traffic corridors do not traverse areas indicated in recent mapping as utilized by Barrow, Point Lay, or Point Hope for beluga hunts. The corridor avoids important beluga hunting areas in Kasegaluk Lagoon.

The POC also contains measures regarding ice management procedures, critical operations procedures, the blowout prevention program, and oil spill response. Some of the oil spill response measures to reduce impacts to subsistence hunts include: having the primary OSRV on standby at all times so that it is available within 1 hour if needed; the remainder of the OSR fleet will be available within 72 hours if needed and will be capable of collecting oil on the water up to the calculated Worst Case Discharge; oil spill containment equipment will be available in the unlikely event of a blowout; capping stack equipment will be stored aboard one of the ice management vessels and will be available for immediate deployment in the unlikely event of a blowout; and pre-booming will be required for all fuel transfers between vessels.

Unmitigable Adverse Impact Analysis and Determination

Shell has adopted a spatial and temporal strategy for its Chukchi Sea operations that should minimize impacts to subsistence hunters. Shell will enter the Chukchi Sea far offshore, so as to not interfere with July hunts in the Chukchi Sea villages and will communicate with the Com Centers to notify local communities of any changes in the transit route. After the close of the July beluga whale hunts in the Chukchi Sea villages, very little whaling occurs in Wainwright, Point Hope, and Point Lay. Although the fall bowhead whale hunt in Barrow will occur while Shell is still operating (mid- to late September to October), Barrow is located 140 mi (225 km) east of the proposed drill sites. Based on these factors, Shell's Chukchi Sea operations are not expected to interfere with the fall bowhead harvest in Barrow. In recent years, bowhead whales have occasionally been taken in the fall by coastal villages along the Chukchi coast, but the total number of these animals has been small. Wainwright landed its first fall whale in more than 90 years in October 2010 and landed a second whale in October 2011. Hunters from the northwest Arctic villages prefer to harvest whales within 50 mi (80 km) so as to avoid long tows back to shore.

Adverse impacts are not anticipated on sealing activities since the majority of hunts for seals occur in the winter and spring, when Shell will not be operating. Additionally, most sealing activities occur much closer to shore than Shell's proposed drill sites.

Shell will also support the village Com Centers in the Arctic communities and employ local Subsistence Advisors from the Beaufort and Chukchi Sea villages to provide consultation and guidance regarding the whale migration and subsistence hunt. The Subsistence Advisors will provide advice to Shell on ways to minimize and mitigate potential impacts to subsistence resources during the drilling season. Support activities, such as helicopter flights, could impact nearshore subsistence hunts. However, Shell will use flight paths and agreed upon flight altitudes to avoid adverse impacts to hunts and will communicate regularly with the Com Centers.

In the unlikely event of a major oil spill in the Chukchi Sea, there could be major impacts on the availability of marine mammals for subsistence uses (such as displacement from traditional hunting grounds and contaminated animals taken for harvests). As discussed earlier in this document, the probability of a major oil spill occurring over the life of the project is low (Bercha, 2008). As a condition of the 2012 CAA that Shell signed on March 26, 2012, any company engaged in drilling operations agrees to enter into a binding oil spill mitigation agreement with the AEWC, NSB, and ICAS to provide for hunter transport to alternate hunting locations in the unlikely event of an oil spill. Additionally, Shell developed an OSRP, which was recently approved by BSEE after review and comment by DOI and several Federal agencies and the public. Shell has also incorporated several mitigation measures into its operational design to reduce further the risk of an oil spill. Based on the information available, the mitigation measures that Shell will

implement, and the extremely low likelihood of a major oil spill occurring, NMFS has determined that Shell's activities will not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses.

Endangered Species Act (ESA)

There are three marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the proposed project area: the bowhead, humpback, and fin whales. There are two marine mammal species proposed for listing as threatened with confirmed or possible occurrence in the project area: ringed and bearded seals. NMFS' Permits and Conservation Division conducted consultation with NMFS' Endangered Species Division under section 7 of the ESA on the issuance of an IHA to Shell under section 101(a)(5)(D) of the MMPA for this activity. In April, 2012, NMFS finished conducting its section 7 consultation and issued a Biological Opinion, and concluded that the issuance of the IHA associated with Shell's 2012 Chukchi Sea drilling program is not likely to jeopardize the continued existence of the endangered bowhead, humpback, and fin whale, the Arctic sub-species of ringed seal, or the Beringia distinct population segment of bearded seal. No critical habitat has been designated for these species, therefore none will be affected.

National Environmental Policy Act (NEPA)

NMFS prepared an EA that includes an analysis of potential environmental effects associated with NMFS' issuance of an IHA to Shell to take marine mammals incidental to conducting an exploratory drilling program in the Chukchi Sea, Alaska. NMFS has finalized the EA and prepared a FONSI for this action. Therefore, preparation of an Environmental Impact Statement is not necessary. NMFS' EA was available to the public for a 30-day comment period before it was finalized.

Authorization

As a result of these determinations, NMFS has issued an IHA to Shell for the take of marine mammals, by Level B harassment, incidental to conducting an offshore exploratory drilling program in the Chukchi Sea during the 2012 open-water season, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 2, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–11094 Filed 5–8–12; 8:45 am]

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