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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, February 22, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Rules and Regulations

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

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

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Parts 9, 11, and 12

[AG Order No. 3252–2011]

Regulations Affecting Publication of the United States Government Manual

AGENCY: Administrative Committee of the Federal Register.

ACTION: Final rule.

SUMMARY: The Administrative Committee of the Federal Register, with the approval of the Attorney General, is updating its regulations for the **Federal Register** system to clarify that there is no requirement that the *United States Government Manual* (*Manual*) be published and distributed in a print edition. This document also eliminates the requirement to make print copies available to officials of the United States government without charge. The general public and United States government officials will continue to have free access to a redesigned online version of the *Manual.* Printed copies of the *Manual* may still be issued and would be available from the U.S. Government Bookstore. This action does not represent an increase in the burdens on agencies or the public.

DATES: This rule is effective March 7, 2011.

ADDRESSES: Docket materials are available at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20001, 202–741–6030. Please contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection of docket materials. The Office of the Federal Register's official hours of business are Monday through Friday, 8:45 a.m. to 5:15 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Amy P. Bunk, Director of Legal Affairs and Policy, Office of the Federal Register, at *Fedreg.legal@nara.gov,* or 202–741–6030.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On June 15th, 2010, the Secretary to the Administrative Committee of the Federal Register (Administrative Committee) published a notice of proposed rulemaking (NPRM) to update the Administrative Committee's regulations to clarify that there is no requirement that *United States Government Manual* (*Manual*) be published and distributed to the general public and to officials of the Federal government in a print edition. 75 FR 33734. The NPRM also announced the development of a redesigned and more up to date *Manual* that will be available on the Internet through the Government Printing Office (GPO). Finally, it stated that printed copies of the *Manual* may still be issued and would be available from the U.S. Government Bookstore.

The *Manual* has been issued as a special edition of the **Federal Register** since the publication was transferred to the Office of the Federal Register from the Office of Government Reports within the Bureau of Budget when that Office was abolished on June 30, 1948. The first manual, the *United States Government Organization Manual,* produced under the authority of regulations of the Administrative Committee, was issued on August 4, 1949, and sold for $1.00 per copy. Then, as now, this publication provides agencies the mechanism for meeting the requirement of the Administrative Procedure Act to separately state and publish in the **Federal Register** descriptions of agency organization. 5 U.S.C. 552(a)(1)(A). Now known as the *United States Government Manual* (*Manual*), it continued to be one of the Government Printing Office's (GPO) "best sellers" until public demand for print editions began to decline in favor of more current information found on the Internet.

Discussion of Comments

We received two comments to the NPRM, the first from a law librarian asking if Federal depository libraries would still have the option of obtaining print copies of the *Manual.* While this rule makes it clear that there is no requirement to print copies of the *Manual,* the Office of the Federal Register (OFR) and the Government Printing Office (GPO) still have the flexibility to produce a printed product based on the strength of customer demand. In the near term, OFR/GPO expect that there will be sufficient demand from individuals and organizations to produce a print edition of the *Manual* that will continue to be available to individual patrons and institutions, through the U.S. Government Bookstore, and to libraries through the Federal Depository Library Program. In the long term, the annual print edition of the *Manual* may be discontinued entirely if customer demand significantly decreases. If that happens, GPO will notify the Federal depository libraries.

The second comment was submitted by a Congressional staffer who stated that he liked the soft bound edition of the *Manual* because it was useful as a quick reference. He also indicated that the current online version of the *Manual* could not be downloaded as a single PDF file that includes bookmarks. Finally, he asked if any smart phone applications related to the *Manual* were under development and suggested that might be a means for GPO to generate revenue.

In its present form, as an annual-only publication, some agency information published in the *Manual* is out of date as soon as purchasers or federal officials receive their copy. Under the new design, the *Manual* will be published and officially distributed as a currently updated online database. The new online version of the *Manual* will contain the same information as has appeared in the print edition. OFR editors will continue to review all material submitted for publication in the *Manual* to ensure the accuracy and integrity of the *Manual.* The database structure of the new electronic version of the *Manual* enables Federal agencies to submit updated information on an ongoing basis, as new officials take office and agency programs undergo changes. It will also enable the public and federal government officials to easily download the *Manual* for storage on their computers in an easy-to-use format. We believe that providing a currently updated online version will be more useful and a better quick reference than the annually updated print edition of the *Manual.*

As we stated in the NPRM, as long as the GPO continues to print bound editions of the *Manual,* it will provide Federal agencies an opportunity to order copies before printing at the rider rate. A rider rate is available before the start of printing production and represents the minimal cost of producing additional copies as a continuation of the initial printing run. After production is complete, Federal agencies and the public will be able to obtain copies from the U.S. Government Bookstore.

The Administrative Committee is not aware of any applications for smart phones currently under development. We hope that the new online version of the *Manual* encourages both the public and private sectors to develop applications using the information from the *Manual.* We believe that providing this information in an updated online version meets the administration's open government and transparency goals.

Changes to the Regulations

Under the Federal Register Act (44 U.S.C. Chapter 15), the Administrative Committee of the Federal Register (Administrative Committee), with the approval of the Attorney General, is responsible for issuing regulations governing **Federal Register** publications. The Administrative Committee has general authority under 44 U.S.C. 1506 to determine the manner and form for publishing the Federal Register and its special editions, including the *Manual.* This publication has been issued as a special edition of the **Federal Register** since August 4, 1949 and continued to be one of the GPO's "best sellers" until public demand for printed editions began to decline in favor of more current information found on the Internet. The Government Printing Office Electronic Information Access Enhancement Act of 1993 (44 U.S.C. chapter 41) enabled the OFR/GPO partnership to develop an annual online edition of the *Manual* in both text-only files and PDF files. It is now possible to publish and officially distribute the *Manual* as an updated online database, which represents a significant improvement over the current online edition of the *Manual,* which is not regularly updated or easy to navigate. In light of this improved technology and ease of online access to an updated version of the *Manual,* and given the decline in demand for the printed edition, the Administrative Committee, with the approval of the Attorney General, is amending its regulations to remove the requirement to publish an annual edition of the *Manual.* A currently updated online database that can be viewed, printed, or copied and stored on a user's computer will replace the soft bound print edition of the *Manual.*

Title 1 part 9 of the Code of Federal Regulations regulates the publication of the *Manual.* This rule revises part 9 by removing the requirement to publish an annual edition of the *Manual* (which is currently issued as a soft bound copy) and making other non-substantive changes to the formatting of the sections. It also makes non-substantive formatting changes to § 11.4 and substantive changes to part 12 to remove § 12.3. Under the FRA, the Administrative Committee is responsible for setting the number of official use copies of Federal Register publications that are distributed free of charge to various offices within the Federal Government. See, 44 U.S.C. 1506(4). To fulfill the requirements of the FRA, 1 CFR part 12, entitled "Official Distribution within Federal Government," sets out the number of official copies of **Federal Register** publications that various Federal government entities are entitled to receive. Specifically, § 12.3 addresses the number of printed copies of the *Manual* available to Federal entities without charge. Because the *Manual* has been published in a print edition that may not adequately serve the needs of Federal officials, the OFR is publishing an online version that is continually updated throughout the year, available free of charge. The Administrative Committee believes that publishing the *Manual* in a free, electronic-only format to Federal officials for their official use constitutes the distribution of a **Federal Register** publication for official use without charge, as referred to in the FRA. Thus, the final rule removes § 12.3. These changes to parts 9, 11 and 12 will not expand any regulated community or impose any additional regulatory burden on the public.

Regulatory Analysis

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

Executive Order 12866

This rule has been drafted in accordance with Executive Order 12866, section 1(b), "Principles of Regulation." The Administrative Committee has determined that this rule is not a significant regulatory action as defined under section 3(f) of Executive Order 12866. The rule has not been submitted to the Office of Management and Budget under section 6(a)(3)(E) of Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant impact on small entities since it imposes no requirements. Members of the public can access **Federal Register** publications free through GPO's Web site.

Federalism

This rule has no federalism implications under Executive Order 13132. It does not impose compliance costs on state or local governments or preempt state law.

Congressional Review

This rule is not a major rule as defined by 5 U.S.C. 804(2). The Administrative Committee will submit a rule report, including a copy of this rule, to each House of the Congress and to the Comptroller General of the United States as required under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1986.

List of Subjects

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Government publications, United States Government Manual.

1 CFR Part 11

Code of Federal Regulations, **Federal Register**, Government publications, Public Papers of Presidents of United States, United States Government Manual, Daily Compilation of.

1 CFR Part 12

Code of Federal Regulations, **Federal Register**, Government publications, Public Papers of Presidents of United States, United States Government Manual, Daily Compilation of.

For the reasons discussed in the preamble, under the authority at 44 U.S.C. 1506 and 1510, the Administrative Committee of the Federal Register, amends parts 9, 11, and 12 of chapter I of title 1 of the Code of Federal Regulations as set forth below:

■ 1. Revise part 9 to read as follows:

PART 9—THE UNITED STATES GOVERNMENT MANUAL

Sec.
9.1 Publication required.
9.2 Scope.

Authority: 5 U.S.C. 552; 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

§ 9.1 Publication required.

(a) The Director publishes a special edition of the **Federal Register** called "The United States Government Manual" as authorized by the Administrative Committee.

(b) The Director may update the *Manual* when such supplementation is considered to be in the public interest.

§ 9.2 Scope.

(a) The *Manual* will contain appropriate information about the Executive, Legislative, and Judicial branches of the Federal Government, which for the major Executive agencies will include—

(1) Descriptions of the agency's legal authorities, public purposes, programs, and functions;

(2) Established places and methods whereby the public may obtain information and make submittals or requests; and

(3) Lists of officials heading major operating units.

(b) The *Manual* will also contain brief information about quasi-official agencies and supplemental information that, in the opinion of the Director, is of enough public interest to warrant.

PART 11—[AMENDED]

■ 2. The authority citation for part 11 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

■ 3. Revise § 11.4 as follows:

§ 11.4 The United States Government Manual.

(a) The online edition of the *Manual,* issued under the authority of the Administrative Committee, is available through the Government Printing Office's Web site.

(b) Copies of a bound, paper edition of the *Manual* may be sold at a price determined by the Superintendent of Documents under the general direction of the Administrative Committee.

PART 12—[AMENDED]

■ 4. The authority citation for part 12 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

§ 12.3 [Removed]

■ 5. Remove § 12.3.

David S. Ferriero,

Chairman, Administrative Committee of the Federal Register.

William J. Boarman,

Member, Administrative Committee of the Federal Register.

Rosemary Hart,

Member, Administrative Committee of the Federal Register.

Eric H. Holder, Jr.,

Attorney General.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2011–2463 Filed 2–3–11; 8:45 am]

BILLING CODE 1505–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1429

RIN 0560–AI02

Asparagus Revenue Market Loss Assistance Payment Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the Asparagus Revenue Market Loss Assistance Payment (ALAP) Program authorized by the Food, Conservation and Energy Act of 2008 (the 2008 Farm Bill). The ALAP Program will compensate domestic asparagus producers for marketing losses resulting from imports during the 2004 through 2007 crop years. Payments will be calculated based on 2003 crop production. Through the ALAP Program, CCC is authorized to provide up to $15 million in direct payments to asparagus producers. This rule specifies eligibility requirements, payment application procedures, and the method for calculating individual payments.

DATES: *Effective date:* February 4, 2011.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, Program Manager, Farm Service Agency (FSA), USDA; telephone (202) 720–1919. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

During the 2004 through 2007 crop years, a substantial increase in asparagus imports to the United States resulted in reduced domestic production, reduced U.S. market share for domestic producers, and reduced market prices for both fresh and processed asparagus in the United States. Section 10404 of the 2008 Farm Bill (Pub. L. 110–246) directs the Secretary of Agriculture to "make payments to producers of the 2007 crop of asparagus for market loss resulting from imports during the 2004 through 2007 crop years." A total of $15 million of Commodity Credit Corporation (CCC) funds are authorized for payments, with an allocation of $7.5 million of those funds for payments for asparagus marketed as fresh, and $7.5 million for payments for processed asparagus.

The ALAP Program payment rates are based on CCC's estimate of the reduction in asparagus farm revenue per pound for the 2004 through 2007 crop years in the two marketing categories, fresh and processed. The payment quantity for a producer will be the quantity of the 2003 crop of asparagus produced on a farm, which is used as the "baseline" production amount before the losses in 2004 through 2007 occurred. Producers must have produced asparagus in both 2003 and 2007 to be eligible for this program. If applications exceed the available funding, the payment rates will be adjusted downward to remain within the available funding for each marketing category.

CCC published a proposed rule on July 16, 2010 (75 FR 41397–41404), with a 60-day comment period which ended on September 14, 2010. The proposed rule proposed eligibility requirements, payment application procedures, and the method for calculating ALAP Program payments. This final rule addresses the comments received on the proposed rule; minor revisions were made to address the comments.

The ALAP Program is a CCC program that will be administered by FSA. The ALAP Program provides a one-time payment to asparagus producers. The ALAP Program regulations are specified in 7 CFR part 1429, which is a new part.

Discussion of Comments

FSA received six comments on the proposed rule. The comments were from individual producers, a State advisory board, and a State asparagus commission. The comments generally supported the goals of the ALAP Program. Some comments suggested changes to the eligibility provisions. The following provides a summary of the comments that suggested specific changes to the regulations in the proposed rule, and FSA's response,

including changes we are making in the final rule in response to the comments.

Comment: The proposed eligibility provision that would have required producers to have produced asparagus in the United States during both crop years 2003 and 2007 should be changed. The import competition that depressed the U.S. market during the 2003 and 2004 crop years forced some growers out of business. Therefore, the proposed eligibility provision should be changed to allow asparagus producers that stopped growing asparagus after the 2003 and 2004 crop years to be allowed benefits under the ALAP Program, regardless of whether they were still producing asparagus during the 2007 crop year.

Response: The 2008 Farm Bill specifies that ALAP payments are to be made to producers of the 2007 crop of asparagus for market loss resulting from imports during the 2004 through 2007 crop years. We do not have the authority under this program to pay producers who did not produce asparagus in 2007. Therefore, no change has been made regarding this eligibility requirement.

Comment: Why is funding being allocated to domestic asparagus producers to make up for revenue losses rather than placing a limit on the amount of asparagus imports? Funds should be used to support the local farmer by expanding domestic asparagus farms and structures to improve farmer sustainability and reduce dependence on foreign imports.

Response: The 2008 Farm Bill does not give us authority to use the funds authorized for the ALAP Program to limit imports or for any other purpose not specified in Section 10404. Asparagus farmers may use their ALAP Program payments to expand domestic production, but are not required to do so. No change was made to the final rule as a result of this comment.

Comment: Small asparagus producers with less than 2 acres or annual sales of less than 3,000 pounds should be excluded from ALAP program eligibility, because small producers that sell to local markets are insulated from imports and world supply levels that affect commercial producers.

Response: The 2008 Farm Bill does not distinguish between the different sizes of producers who may be impacted by imports. Adopting this comment would penalize small producers, contrary to the general goals of FSA farm programs. Presumably both small and large producers are impacted in some way by imports and while a large producer may suffer larger impacts, those larger impacts will qualify the larger producer for a higher payment, up to the amount of the payment limit. ALAP only covers commercial producers, so very small producers that do not sell in commercial markets would be ineligible. To exclude small producers would have been directly contrary to the adoption of the payment limit for ALAP. The payment limit provision allows small producers to receive an equitable share of the funding. Accordingly, no change was made to the final rule in response to this comment.

Comment: Clarify how entities that have reorganized since 2003 under a different entity name or structure should apply for the ALAP Program.

Response: The application form for program benefits allows for the entry of the name and address of the asparagus farm operation where the 2003 crop was produced and the name and address of the asparagus farm operation where the 2007 crop was produced, if it is different from that in 2003. FSA believes that this addresses entity changes during the period of 2003 and 2007. Therefore, no change has been made to the final rule regarding this eligibility requirement. The local FSA county office can provide guidance in filling out the application.

Comment: Clarify the terms "production" and "engaged" for the purposes of determining grower eligibility. If a producer harvested an asparagus crop in 2003, and then replanted, but did not harvest the replanted crop in 2007 because the crowns were not mature enough to produce a marketable crop, would they be eligible?

Response: As specified in § 1429.105, to be eligible for ALAP payments, producers must "have produced and marketed asparagus in commercial quantities in commercial markets in the United States during both of the 2003 and 2007 crop years * * *" A producer that did not harvest asparagus in 2007 would not meet that eligibility requirement. The term "engaged" does not appear in the rule in the context of production; it appears only in reference to engaging in misrepresentation or fraud. No change has been made to the final rule in response to this comment.

Comment: Clarify how the applicable year average Adjusted Gross Income (AGI) provisions apply.

Response: Under the provisions of this final rule, if the total value of payments claimed exceeds the available funding, then any producer who has average AGI in excess of $2,500,000 for calendar years 2003 through 2005 is not eligible for program benefits. The base years used for the determination have been adjusted from the proposed rule, where the relevant AGI years were proposed to be the calendar years 2004 through 2006. This final rule amends § 1429.105(a)(4) accordingly and the amendment reflects an intent to be consistent with the application of the AGI test in other FSA commodity programs, such as the Direct and Counter-cyclical Program (DCP), where the application of the AGI test, unlike here, is required by the 2008 Farm Bill. Under the AGI test specified for other FSA programs by the 2008 Farm Bill, for practical reasons presumably (involving the availability of completed tax calculations), the relevant AGI years are those 3 tax years that precede the most immediate complete tax year preceding the program year. For example, for 2010 DCP payments, the 3 years preceding that most recent complete tax year (2009) which preceded the program year (2010) are the years 2006 through 2008. The asparagus program makes payments to 2007 crop year producers and for this purpose FSA has used 2007 as the program year, and the complete tax year preceding the program year would be 2006. Therefore, following the formula used under the AGI test, the 3 years preceding 2006 are the relevant base years, those being the years 2003 through 2005.

Comment: If a producer's share of production in 2003 for each marketing category of fresh and processed changed for the 2007 crop, will payment be calculated on the share percentages of the 2003 crop or the 2007 crop? For example, what if a producer marketed their 2003 crop for processing but switched entirely to fresh production in 2007? Would they be paid at the processed asparagus rate or the fresh asparagus rate?

Response: Payment will be calculated based on the marketing category share of the 2003 crop since that year is specified in the 2008 Farm Bill as the base year for the program. CCC will determine each applicant's payment quantity based on their share of their 2003 production quantity for each marketing category of fresh and processed as certified on the application. No change to the final rule was made as a result of this comment.

Miscellaneous Changes

FSA made two additional changes that were not in response to comments. The $100,000 payment cap has been clarified to specify that a separate $100,000 payment cap per producer applies to each of the two marketing categories: fresh and processed asparagus. In the event that the authorized funding for a marketing category, fresh or processed, is not

sufficient to pay all claims at maximum payment rates, a payment cap of $100,000 per producer for each marketing category will apply. Likewise, if one marketing category is oversubscribed and not the other, the maximum payment limit will only apply to the oversubscribed marketing category. A producer that markets both fresh and processed asparagus may, accordingly, receive up to $200,000 per farm operation if both maximum payment caps are applied. The use of these subcaps, rather than an overall cap of $100,000, was intended to ease program administration and to some degree represents an understanding that Congress effectively created separate programs for the fresh and processed asparagus markets. The use of subcaps could, however, reduce the payments to small producers by providing larger payments to the largest producers than would a $100,000 overall cap. However, for the reasons given, we think that the rule strikes a proper balance and the facilitation of the administration of the payment limits will aid in advancing the interests of all producers by making quicker payments possible.

An additional change was made to extend the application period from 30 days to 60 days to allow more time for producers to apply for program benefits.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule allows FSA to provide benefits to asparagus producers who suffered economic losses. Therefore, to begin providing benefits to producers as soon as possible, this final rule is effective when published in the **Federal Register**.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, "Regulatory Planning and Review," and therefore has not reviewed this rule. Even though this rule has been designated as not significant, a summary of cost benefit analysis is provided below, and the cost-benefit analysis is available through *http://www.regulations.gov.*

Summary of Economic Impacts

The 2008 Farm Bill authorizes $15 million in payments to asparagus producers for losses that asparagus producers sustained due to imports. The estimated U.S. asparagus revenue losses due to crop year 2004 through 2007 imports in the fresh market totaled $141.6 million, and in the processed market, $73.3 million, for a total of $214.9 million in losses. Therefore, we expect to receive applications that exceed the available funding. The payment rates will be calculated so as not to exceed the available funding. The expected benefit to producers is $15 million, which is all of the available funding. Since producers are being paid for past losses on past production, this program is not expected to increase production of asparagus or to change the price that consumers pay for asparagus.

Alternative methods for calculating payment quantities and rates would result in a different distribution of payment amounts among producers, but would not reduce the costs or benefits of this program to below $15 million.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) 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. FSA has determined that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, FSA has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, a small business, as described in the Small Business Administration's Table of Small Business Size Standards by North American Industry Classification System Category (13 CFR 121.201) includes the following categories and the relative size standard: NAICS 111219, Other Vegetable (except Potato) and Melon Farming with maximum annual receipts of $750,000; NAICS 311411, Frozen Fruit, Juice, and Vegetable Manufacturing, with up to 500 employees; and NAICS 311421, Fruit and Vegetable Canning, with up to 500 employees. It is difficult to estimate the number of small entities for asparagus producers because the data for annual receipts and number of employees are not readily available. Therefore, FSA used Census of Agriculture data to estimate the number and size of asparagus farms.

According to the 2007 Census of Agriculture, there are 2,605 asparagus farms, with 1,408 of those farms harvesting 1 acre or less. Those farms harvesting 100 acres or more account for 5 percent of farms harvesting asparagus and 74 percent of all asparagus production. Most of the payments as specified in this rule will likely go to the producers on larger farms that accounted for most of the production, rather than the smaller farms. CCC will calculate and disburse payments based on the actual 2003 crop production quantities for fresh and processed marketing. Producers on both small and large farms will receive payment in proportion to their production, subject to the $100,000 cap for each marketing category that will impact only producers on the largest farms. Direct and indirect costs of applying for these one-time payments will likely be very small as a percentage of the resulting payment. The minimal regulatory requirements will impact large and small businesses equally, and the ALAP program's benefits should slightly improve cash flow and liquidity for farmers participating in the ALAP program. Therefore, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), CCC is certifying that there would not be a significant economic impact on a substantial number of small entities. Due to the limited amount of funding available, payments are unlikely to have a substantial economic impact on entities of any size.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The implementation and administration of the ALAP Program required by the 2008 Farm Bill that is identified in this rule is non-discretionary in nature, solely providing financial assistance. Therefore, FSA has determined that NEPA does not require that an environmental assessment or environmental impact statement be prepared and neither will be prepared.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, "Civil Justice Reform." The provisions of this rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, "Federalism." The policies contained in this rule would not have any substantial direct effect on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The policies contained in this rule do not preempt Tribal law. This rule was included in the October through December, 2010, Joint Regional Consultation Strategy facilitated by USDA that consolidated consultation efforts of 70 rules from the 2008 Farm Bill. USDA sent senior level agency staff to seven regional locations and consulted with Tribal leadership in each region on the rules. When the consultation process is complete, USDA will analyze the feedback and then incorporate any required changes into the regulations.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. 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 of $100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Domestic Federal Assistance to which this rule will apply is 10.098—Asparagus Revenue Market Loss Assistance Payment Program.

Small Business Regulatory Enforcement Fairness Act

In general, any rule designated by OMB under Executive Order 12866 as economically significant is also a major rule. As noted above, OMB designated this rule as not significant. As a result, this rule is not considered a major rule under SBREFA. Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review and this rule is effective on the date of publication in the **Federal Register**. Further, if this rule had been designated as significant, FSA would have found that there is good cause for making this rule effective less than 60 days after publication in the **Federal Register**. The good cause exemption would have applied as it would be contrary to the public interest to delay this rule given that it allows FSA to provide benefits to asparagus producers who suffered economic losses and that any delay in the effective date would further delay the provision of benefits clearly intended and provided for by Congress.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), in the proposed rule CCC described the new information collection activities associated with the ALAP Program. CCC requires producers to submit an application on a form specified by CCC to the FSA County Office for the farms where they produced 2003 and 2007 crop asparagus. Comments on the information collection were requested in the proposed rule. No comments about the information collection were received from the public during the 60-day comment period. The information collection reporting and recordkeeping requirements associated with this rulemaking have been approved by OMB and assigned control number 0560–0273.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government Information and services, and for other purposes.

List of Subjects in 7 CFR Part 1429

Asparagus, Reporting and record keeping requirements.

For the reasons discussed in the preamble, the Commodity Credit Corporation (USDA) adds 7 CFR part 1429 to read as follows:

PART 1429—ASPARAGUS REVENUE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

Sec.

1429.101 Applicability.
1429.102 Administration.
1429.103 Definitions.
1429.104 Application requirements.
1429.105 Producer eligibility requirements.
1429.106 Proof of production.
1429.107 Maximum and final payment rates.
1429.108 Calculation of individual payments.
1429.109 Availability of funds.
1429.111 Misrepresentation and scheme or device.
1429.112 Death, incompetence, or disappearance.
1429.113 Maintaining records.
1429.114 Refunds; joint and several liability.
1429.115 Miscellaneous provisions and appeals.

Authority: 15 U.S.C. 714b and 714c, and Sec. 10404, Pub. L. 110–246, 122 Stat. 2111.

§ 1429.101 Applicability.

(a) The regulations in this part are applicable to program applicants who

produced both 2003- and 2007-crop asparagus. Asparagus producers may apply to the Commodity Credit Corporation (CCC) for a payment based on the actual quantity of their 2003 asparagus production and their share of that production.

(b) Total payments made through the Asparagus Revenue Marketing Loss Assistance Payment Program will not exceed $15 million, allocated as $7.5 million for fresh asparagus and $7.5 million for processed asparagus, less any reserve allocated for disputed claims.

§ 1429.102 Administration.

(a) The Asparagus Revenue Market Loss Assistance Payment Program will be administered under the general supervision of the Executive Vice President, CCC (Administrator, Farm Service Administration (FSA)), or a designee, and will be carried out in the field by FSA State and county committees and FSA employees.

(b) FSA State and county committees, and representatives and employees of those committees, do not have the authority to modify or waive any of the provisions of this part, except as provided in paragraph (e) of this section.

(c) The FSA State committee will take any action required by this part that has not been taken by the FSA county committee. The FSA State committee will also:

(1) Correct or require correction of an action taken by an FSA county committee that is not in compliance with this part; and

(2) Require an FSA county committee to not take an action or implement a decision that is not in compliance with the regulations of this part.

(d) No delegation in this part to an FSA State or county committee will preclude the Executive Vice President, CCC, or a designee, from determining any question for the Asparagus Revenue Marketing Loss Assistance Payment Program, or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize FSA State and county committees to waive or modify program requirements that are not statutory in cases where failure to meet such requirements does not adversely affect the operation of the Asparagus Revenue Market Loss Assistance Payment Program.

§ 1429.103 Definitions.

The following definitions apply to this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Application means the Asparagus Revenue Market Loss Assistance Payment Program application form approved for use in this program by CCC and any required accompanying information or documentation.

Application period means the 60-day period established by the Deputy Administrator for producers to apply for the Asparagus Revenue Marketing Loss Assistance Payment Program.

Asparagus producer means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity, as defined in § 1400.3 of this chapter, who is an owner, operator, landlord, tenant, or sharecropper, who directly or indirectly, as determined by the Secretary, shares in the risk of producing asparagus and who is entitled to ownership share in the asparagus crop available for marketing from the farm operation. Growers producing asparagus under contract for crop owners are not considered asparagus producers unless the grower can be determined to have an ownership share of the crop.

Base period means the 2003 crop year of asparagus.

County office means the FSA office responsible for administering CCC programs located in a specific area in a State.

Crop year means the marketing season or year as defined by the National Agricultural Statistics Service (NASS).

Department or USDA means the U.S. Department of Agriculture.

Determined production means, with respect to the base period, the total amount of fresh and processed asparagus specified on the application for payment verified by CCC as having been produced and marketed by the producer in the base period.

Farm Service Agency or FSA means the Farm Service Agency of the U.S. Department of Agriculture.

Fresh asparagus means domestically-produced asparagus that, regardless of intended use, was marketed as a fresh product without any processing other than cleaning, grading, sorting, trimming, drying, cooling, and packing.

Hundredweight or cwt. means 100 pounds.

Processed asparagus means domestically-produced asparagus that, regardless of intended use, was marketed as frozen, canned, pickled, or otherwise treated or handled in such fashion that the buyer would not consider the asparagus to be consumed as fresh, as determined by CCC.

Reliable production records means evidence provided by the producer to the FSA county office that FSA determines is adequate to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries. When the term "acceptable production records" is used in this rule, it may be either reliable or verifiable production records, as defined in this section.

Reported production means the total amount of fresh and processed asparagus produced and marketed by a producer, as specified by a producer on the application for payment.

United States means the 50 States of the United States, the District of Columbia, and Puerto Rico.

Verifiable production records means evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source.

§ 1429.104 Application requirements.

(a) To be eligible for payment, asparagus producers must submit a completed application for payment and meet other eligibility requirements as specified in this part. Asparagus producers may obtain an application in person, by mail, by telephone, or by facsimile from any FSA county office. In addition, applicants may download a copy of the application from *http://www.sc.egov.usda.gov.*

(b) An application for payment must be submitted on a completed application form. Applications and any other supporting documentation must be submitted to the FSA county office serving the county in which the producer produced asparagus in 2003 unless the producer now resides in a different county than the county in which asparagus was produced in the base period.

(c) Asparagus producers who apply for payment must certify the information on the application before the application will be considered complete. Applications may be accompanied by acceptable production records for all fresh and processed asparagus produced and marketed from the farm in the 2003 crop year. Producers must certify they had a share interest in both 2003 and 2007 crop asparagus. To be eligible for payment on asparagus produced in the base period, the producer must have produced asparagus in 2007 for the commercial

market in commercial quantities as determined for this purpose by the Deputy Administrator. At any time CCC deems appropriate, either before or after payment issuance, CCC may, at its discretion, require a producer to provide documentation to support:

(1) Reported production of 2003 crop fresh or processed asparagus production or both entered on the application accompanied by acceptable production record,

(2) Share percentage of 2003 crop production by marketing category for each producer in the asparagus farm operation, or

(3) Any other eligibility requirement specified in this part including commercial quantities of 2007 production to meet the 2007 production requirement.

(d) Each asparagus producer who signs the application must certify the accuracy and truthfulness of the information in the application and any supporting documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program payments will not be approved. Providing a false certification may be punishable by imprisonment, fines, and other penalties or sanctions.

(e) Data furnished by the applicants will be used to determine eligibility for program payments. Although participation in the Asparagus Revenue Market Loss Assistance Payment Program is voluntary, program payments will not be provided unless the participant furnishes a complete application by the end of the application period with all requested data.

(f) Individuals or entities who submit applications after the application period are not entitled to any payment consideration or determination of eligibility. Regardless of the reason why an application is not submitted to or received by the FSA county office, any late application will be considered as not having been timely filed and the applicants on that application will not be eligible for the Asparagus Revenue Marketing Loss Assistance Payment Program.

§ 1429.105 Producer eligibility requirements.

(a) To be eligible to receive the Asparagus Revenue Marketing Loss Assistance Payment Program payments, asparagus producers must submit an application during the application period and must:

(1) Have produced and marketed asparagus in commercial quantities in commercial markets in the United States during both of the 2003 and 2007 crop years;

(2) Be an asparagus producer, as defined in § 1429.103, for the 2003 and 2007 crop years;

(3) Certify their shares and the pounds of fresh and processed asparagus produced and marketed from the farm operation during the 2003 crop year as reflected on the application;

(4) If the total value of payments claimed exceeds the available funding, have an average adjusted gross income (AGI) of less than $2.5 million for the 3 tax years of 2003 through 2005; and

(5) Be in compliance with the requirements in 7 CFR part 12 regarding highly erodible cropland and wetlands and meet any general farm program eligibility requirements that apply under 7 CFR part 1400 or other regulations as applicable.

(b) Asparagus producers must sign an application to be considered for payment eligibility. Asparagus producers who do not sign an application will not receive payment or a determination of eligibility, even if other producers in the asparagus farm operation sign an application and receive payment.

(c) Each applicant determined by spot check or other information to not have an interest as an asparagus producer in 2003 and 2007 who meets the other qualifications of this part will be ineligible for payment and such applicant's claimed share shown on the application will not be paid.

§ 1429.106 Proof of production.

(a) Producers selected for spot check by CCC must, in accordance with instructions issued by the Deputy Administrator or a designee, provide adequate proof of the fresh and processed asparagus produced and marketed during the 2003 and 2007 crop years.

(b) If adequate proof of marketed production and supporting documentation in support of any application for payment is not presented to the satisfaction of CCC or the FSA county office requesting information, the application and the producers on that application will be determined ineligible for payment.

§ 1429.107 Maximum and final payment rates.

(a) Subject to the funding limits that may apply to the program, the estimated maximum per pound payment rates for fresh market asparagus and for processed market asparagus are:

(1) $1.06 per pound ($106.00 per hundredweight) for 2003 crop quantities of asparagus marketed to fresh markets; and

(2) $1.08 per pound ($108.00 per hundredweight) for 2003 crop quantities of asparagus marketed for processing.

(b) This program will be administered to assure that total payments do not exceed the available funding. If the total value of payments claimed calculated using the maximum payment rates specified in paragraph (a) of this section exceeds the funding available for each marketing category, less any reserve that may be created as specified in § 1429.109, the payment quantities will be paid at a lower rate determined by dividing the funds available in each marketing category of asparagus, by the payment quantity from applications received by the end of the application period in each marketing category.

(c) In no event will the payment rate exceed the maximum payment rate for each marketing category of asparagus determined in paragraph (a) of this section.

§ 1429.108 Calculation of individual payments.

(a) Producers will be eligible for payment for both fresh and processed asparagus. CCC will calculate the payment quantity of 2003 fresh and processed asparagus for an asparagus farm operation based on the lower of:

(1) Reported production reflected on the application, or

(2) If applicable, determined production.

(b) The payment quantity will be multiplied by the following:

(1) Each asparagus producer's share, and

(2) The payment rate for the fresh or processed asparagus determined as specified in § 1429.107.

(c) If the total value of payments claimed exceeds the available funding, payments to producers are subject to a $100,000 cap per each of the two program marketing categories (fresh and processed) per asparagus producer as defined in this part, not per "person" or "legal entity" as those terms might be defined in part 1400 of this title.

§ 1429.109 Availability of funds.

(a) Payments specified in this part are subject to the availability of funds. The total available program funds will be $15,000,000 as provided by section 10404 of Public Law 110–246.

(b) Of the available funds, $7,500,000 are allocated for fresh market asparagus production and $7,500,000 are allocated to processed market asparagus.

(c) CCC will prorate the available funds by a national factor to ensure that payments do not exceed $15,000,000. CCC will prorate the payments in such manner as it, in its sole discretion, finds fair and reasonable.

(d) A reserve will be created to handle appeals and errors. Claims will not be payable once the available funding is expended. Any amount of funds reserved for such purposes that are not disbursed for the purpose of correcting errors or omissions, or for the payment of appeals, will not otherwise be distributed to any payment applicants and will be refunded to the U.S. Department of Treasury.

§ 1429.111 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions, or remedies as may apply, an asparagus producer will be ineligible to receive assistance through the Asparagus Revenue Market Loss Assistance Payment Program if the asparagus producer is determined by CCC to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due and all charges including interest will run from the date of the disbursement of the CCC funds. Any asparagus farm operation, asparagus producer, or person engaged in acts prohibited by this section and any asparagus farm operation, asparagus producer, or person receiving payment as specified in this part will be jointly and severally liable with other persons or operations involved in such claim for payment for any refund due as specified in this section and for related charges. The remedies provided in this part will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1429.112 Death, incompetence, or disappearance.

(a) In the case of death, incompetency, disappearance, or dissolution of a person or an entity that is eligible to receive payment as specified in this part, an alternate person or persons as specified in part 707 of this title may receive such payment, as determined appropriate by CCC.

(b) Payment may be made for asparagus market losses suffered by an otherwise eligible asparagus producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into an application for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If an asparagus producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

§ 1429.113 Maintaining records.

Producers applying for payment through the Asparagus Revenue Market Loss Assistance Payment Program must maintain records and accounts to document all eligibility requirements specified in this part. Such records and accounts must be retained for 3 years after the date of payment.

§ 1429.114 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment in the application or this part, must be refunded to CCC.

(b) A refund required as specified in this section will be due with interest from the date of CCC disbursement and determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this chapter.

(c) Persons signing an ALAP Program application as having an interest in the asparagus farm operation will be jointly and severally liable for any refund and related charges found to be due as specified in this section.

(d) Interest will be applicable to any refunds required as specified in parts 792 and 1403 of this title. Such interest will be charged at the rate that the U.S. Department of the Treasury charges CCC for funds, and will accrue from the date CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

§ 1429.115 Miscellaneous provisions and appeals.

(a) *Offset.* CCC may offset or withhold any amount due CCC as specified in this part in accordance with the provisions of part 1403 of this chapter.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of part 1403 of this chapter.

(c) *Other interests.* Payments or any portion thereof due under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the asparagus crop, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any asparagus producer entitled to any payment as specified in this part may assign any payment in accordance with the provisions of part 1404 of this chapter.

(e) *Appeals.* Appeals will be handled as specified in parts 11 and 780 of this title.

Signed in Washington, DC, on January 30, 2011.

Jonathan W. Coppess,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2011–2506 Filed 2–3–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

7 CFR Part 2902

RIN 0503–AA39

Designation of Biobased Items for Federal Procurement

AGENCY: Departmental Management, USDA.

ACTION: Direct final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending its Guidelines for Designating Biobased Products for Federal Procurement, to be consistent with certain statutory changes to section 9002 of the Farm Security and Rural Investment Act (FSRIA) that were effected when the Food, Conservation, and Energy Act (FCEA) of 2008 was signed into law on June 18, 2008. The amendment is issued as an immediately effective final rule. Elsewhere in this issue of the **Federal Register**, we are publishing a companion proposed rule under USDA's usual procedure for notice and comment to provide a procedural framework to finalize the rule in the event we receive significant adverse comment and withdraw this direct final rule.

DATES: This rule is effective June 6, 2011. Submit comments on the direct final rule by April 5, 2011. If we receive any timely significant adverse comment,

we will withdraw this final rule in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends.

ADDRESSES: Please submit any comments, or a notice of intent to submit comments, identified by "Technical Amendments to BioPreferred Program Guidelines" or Regulatory Information Number (RIN) 0503–AA39, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: biopreferred@usda.gov.* Include RIN number 0503–AA39 and "Proposed Technical Amendments to BioPreferred Program Guidelines" on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024.

Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024; e-mail: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION:

The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Changes
IV. Regulatory Information
A. Executive Order 12866: Regulatory Planning and Review
B. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
C. Executive Order 12988: Civil Justice Reform
D. Executive Order 13132: Federalism
E. Unfunded Mandates Reform Act of 1995
F. Executive Order 12372: Intergovernmental Review of Federal Programs
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Paperwork Reduction Act

I. Authority

The Guidelines for Designating Biobased Products for Federal Procurement (the Guidelines) are established under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102, as amended by the Food, Conservation, and Energy Act of 2008 (FCEA). (Section 9002 of FSRIA, as amended by the FCEA, is referred to in this document as "section 9002".)

II. Background

As originally enacted, section 9002 provides for the preferred procurement of biobased products by Federal agencies. USDA proposed guidelines for implementing this preferred procurement program on December 19, 2003 (68 FR 70730–70746). The Guidelines were promulgated on January 11, 2005 (70 FR 1792), and are contained in 7 CFR part 2902, "Guidelines for Designating Biobased Products for Federal Procurement."

The Guidelines identify various procedures Federal agencies are required to follow in implementing the requirements of section 9002. They were modeled in part on the "Comprehensive Procurement Guidelines for Products Containing Recovered Materials" (40 CFR part 247), which the Environmental Protection Agency (EPA) issued pursuant to the Resource Conservation Recovery Act ("RCRA"), 40 U.S.C. 6962.

On June 18, 2008, the FCEA was signed into law. Section 9001 of the FCEA includes several provisions that amend section 9002 of FSRIA. Some of these provisions require programmatic changes to the preferred procurement program. Other provisions of the FCEA simply clarify terminology and requirements for the preferred procurement program. USDA is continuing to resolve issues related to implementing the programmatic changes and will propose additional amendments to the Guidelines at a later date. For example, the Guidelines' definition of "biobased product" will be later revised to include intermediate ingredients and feedstocks, pending such programmatic changes. The purpose of this rule is to revise the Guidelines (*i.e.,* 7 CFR part 2902) to make them consistent with certain technical changes to section 9002 of FSRIA as required by the FCEA.

USDA believes that this rule is appropriate for direct final rulemaking because it responds to a statutory amendment that became effective June 18, 2008, and because it codifies USDA policy as already stated in the first final rule designating biobased products. Elsewhere in this issue of the **Federal Register**, however, USDA is publishing a companion proposed rule that is identical in substance to this direct final rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received in response to the companion proposed rule will also be considered as comments regarding this direct final rule.

If we receive any significant adverse comment, we intend to withdraw this final rule before its effective date by publishing a notice in the **Federal Register** within 30 days after the comment period ends. If we withdraw the direct final rule, all comments received will be considered under the companion proposed rule in developing a final rule under the usual notice-and-comment procedures.

III. Summary of Changes

USDA is amending eight sections of 7 CFR part 2902, as described below.

A. 7 CFR 2902.1—Purpose and Scope

In response to the promulgation of the FCEA, USDA is amending 7 CFR 2902.1(a) to refer to compliance with that law's requirements.

B. 7 CFR 2902.2—Definitions

In response to section 9001 of the FCEA, USDA is amending 7 CFR 2902.2 by revising the definition of "biobased product" to add the word "including." This is to ensure that the Guidelines do not violate U.S. trade agreements by applying exclusively to domestic agricultural materials. Additionally, a definition for "FCEA" has been added.

C. 7 CFR 2902.3—Applicability to Federal Procurements

USDA is amending 7 CFR 2902.3(c) to state that procuring agencies must comply with section 9002(a)(2) regarding the procuring of products composed of the highest percentage of biobased content practicable. Section 2902.3(c) now incorrectly includes the phrase "highest percentage of biobased products."

D. 7 CFR 2902.4—Procurement Programs

USDA has revised paragraph (b)(2)(ii) to read "section 9002" as it refers to both FSRIA and the FCEA.

E. 7 CFR 2902.5—Item Designation

USDA is amending 7 CFR 2905.5(c) by adding heating oil to the list of exclusions to this program, because it was added to the list pursuant to section 9001 of the FCEA.

F. 7 CFR 2902.6—Providing Product Information to Federal Agencies

In response to a name change, USDA is amending 7 CFR 2902.6(a) to refer to the USDA information Web site at *http://www.biopreferred.gov* rather than to "*http://www.biobased.oce.usda.gov*."

Additionally, USDA is amending 7 CFR 2902.6(b) to include a reference to the BioPreferred "Guidelines for Marketing the BioPreferred Program," and a link to the Federal Trade Commission "Guides for the Use of Environmental Marketing Claims."

G. 7 CFR 2902.8—Determining Life Cycle Costs, Environmental and Health Benefits, and Performance

USDA is revising 7 CFR 2902.8 to comply with section 9002(a)(3)(D), which states that guidelines issued under this paragraph may not require a manufacturer or vendor of biobased products, as a condition of the purchase of biobased products from the manufacturer or vendor, to provide to procuring agencies more data than would be required to be provided by manufacturers or vendors offering products for sale to a procuring agency, other than data confirming the biobased content of a product.

H. 7 CFR 2902.9—Funding for Testing

In response to a name change, USDA is amending 7 CFR 2902.9(b) to refer to the USDA information Web site at *http://www.biopreferred.gov* rather than to *http://www.biobased.oce.usda.gov.*

IV. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

This rule has been reviewed under Executive Order 12866. It has been determined that this rule, which amends the Guidelines, is not a "significant regulatory action" under the terms of Executive Order 12866, because its purpose is only to implement statutory amendments to section 9002. Therefore, this rule has not been reviewed by the Office of Management and Budget (OMB).

B. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

C. Executive Order 12988: Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

D. Executive Order 13132: Federalism

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

E. Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

F. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Today's rule does not significantly or uniquely affect "one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes." Thus, no further action is required under Executive Order 13175.

H. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under the Guidelines is currently approved under OMB control number 0503–0011.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Section 2902.1 is revised to read as follows:

§ 2902.1 Purpose and scope.

(a) *Purpose.* The purpose of the guidelines in this part is to assist procuring agencies in complying with the requirements of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171, 116 Stat. 476 (7 U.S.C. 8102), as amended by the Food, Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, as they apply to the procurement of the products designated in subpart B of this part.

(b) *Scope.* The guidelines in this part designate items that are or can be produced with biobased products and whose procurement by procuring agencies will carry out the objectives of section 9002.

■ 3. Section 2902.2 is amended by revising the definition of "biobased product" and adding a definition for "FCEA" to read as follows:

§ 2902.2 Definitions.

* * * * *

Biobased product. A product determined by USDA to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials.

* * * * *

FCEA. The Food, Conservation and Energy Act of 2008, Pub. L. 110–246.

* * * * *

■ 4. Section 2902.3 is amended by revising paragraph (c) to read as follows:

§ 2902.3 Applicability to Federal procurements.

* * * * *

(c) *Procuring products composed of the highest percentage of biobased content.* Section 9002(a)(2) requires

procuring agencies to procure designated items composed of the highest percentage of biobased content practicable or such products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1), consistent with maintaining a satisfactory level of competition, considering these guidelines. Procuring agencies may decide not to procure such products if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

* * * * *

■ 5. Section 2902.4 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 2902.4 Procurement programs.

* * * * *

(b) * * *

(2) * * *

(ii) A policy of setting minimum biobased products content specifications in such a way as to assure that the biobased products content required is consistent with section 9002 and the requirements of the guidelines in this part except when such items:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

* * * * *

■ 6. Section 2902.5 is amended by revising paragraph (c)(1) to read as follows:

§ 2902.5 Item designation.

* * * * *

(c) *Exclusions.* (1) Motor vehicle fuels, heating oil, and electricity are excluded by statute from this program.

* * * * *

■ 7. Section 2902.6 is amended by revising the first sentence of paragraph (a) and by revising paragraph (b) to read as follows:

§ 2902.6 Providing product information to Federal agencies.

(a) *Informational Web site.* An informational USDA Web site implementing section 9002 can be found at: *http://www.biopreferred.gov.*

* * *

(b) *Advertising, labeling and marketing claims.* Manufacturers and vendors are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to the Federal Trade Commission "Guides for the Use of Environmental Marketing Claims," 16 CFR part 260 (*see: http://www.access.gpo.gov/nara/cfr/waisidx_08/16cfr260_08.html*). For further requirements, click on the link to the "Guidelines for Marketing the BioPreferred Program."

■ 8. Section 2902.8 is amended by revising paragraph (a) to read as follows:

§ 2902.8 Determining life cycle costs, environmental and health benefits, and performance.

(a) *Providing information on life cycle costs and environmental and health benefits.* Federal agencies may not require manufacturers or vendors of biobased products to provide to procuring agencies more data than would be required to be provided by other manufacturers or vendors offering products for sale to a procuring agency, other than data confirming the biobased contents of the products, as a condition of the purchase of biobased products from the manufacturer or vendor.

* * * * *

■ 9. Section 2902.9 is amended by revising paragraph (b)(1) to read as follows:

§ 2902.9 Funding for testing.

* * * * *

(b) * * *

(1) Subject to the availability of funds and paragraph (a) of this section, USDA will announce annually the solicitation of proposals for cost sharing for life cycle costs, environmental and health benefits, and performance testing of biobased products in accordance with the standards set forth in § 2902.8 to carry out this program. Information regarding the submission of proposals for cost sharing also will be posted on the USDA informational Web site, *http://www.biopreferred.gov.*

* * * * *

Dated: January 25, 2011.

Pearlie S. Reed,

Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2011–2017 Filed 2–3–11; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS–2009–0083]

RIN 0579–AD22

Brucellosis Class Free States and Certified Brucellosis-Free Herds; Revisions to Testing and Certification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; extension of comment period.

SUMMARY: We are extending the comment period for an interim rule modifying brucellosis testing, classification, and certification requirements for certain Class Free States. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before March 11, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0083* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2009–0083, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0083.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Debbi Donch, National Brucellosis Program Staff, National Center for Animal Health Programs, VS, APHIS,

4700 River Road, Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION: On December 27, 2010, we published in the **Federal Register** (75 FR 81090–81096, Docket No. APHIS–2009–0083) an interim rule that amended the brucellosis regulations to reduce the amount of testing required to maintain Class Free status for States that have been Class Free for 5 or more years and that also have no *Brucella abortus* in wildlife. The interim rule also removed the provision for automatic reclassification of any Class Free State or area to a lower status if two or more herds are found to have brucellosis within a 2-year period or if a single brucellosis-affected herd is not depopulated within 60 days. Further, the interim rule reduced the age at which cattle are included in herd blood tests. The interim rule also added a requirement that any Class Free State or area with *Brucella abortus* in wildlife must develop and implement a brucellosis management plan approved by the Administrator in order to maintain Class Free status. Finally, the interim rule provided an alternative testing protocol for maintaining the certified brucellosis-free status of dairy herds, which will give producers more flexibility for the herd certification process.

Comments on the interim rule were currently required to be received on or before February 25, 2011. We are extending the comment period on Docket No. APHIS–2009–0083 for an additional 14 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 31st day of January 2011.

Gregory L. Parham,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–2507 Filed 2–3–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0068; Directorate Identifier 2010–NE–05–AD; Amendment 39–16580; AD 2011–02–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45 and CF6–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for General Electric Company (GE) CF6–45 and CF6–50 series turbofan engines with certain low-pressure turbine (LPT) rotor stage 3 disks installed. That AD currently requires initial and repetitive borescope inspections of the high-pressure turbine (HPT) rotor stage 1 and stage 2 blades for wear and damage, including excessive airfoil material loss. That AD also requires fluorescent-penetrant inspection (FPI) of the LPT rotor stage 3 disk under certain conditions and removal of the disk from service before further flight if found cracked. That AD also requires repetitive exhaust gas temperature (EGT) system checks (inspections). This AD requires HPT rotor stage 1 and stage 2 blade inspections and EGT system inspections. This AD also requires FPI of the LPT rotor stage 3 disk under certain conditions, removal of the disk from service before further flight if found cracked, and an ultrasonic inspection (UI) of the LPT rotor stage 3 disk forward spacer arm. This AD also requires initial and repetitive engine core vibration surveys and reporting to the FAA any crack findings, disks that fail the UI, and engines that fail the engine core vibration survey.

This AD was prompted by reports received of additional causes of HPT rotor imbalance not addressed in AD 2010–12–10, and two additional LPT rotor stage 3 disk events. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD is effective February 22, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 22, 2011.

We must receive any comments on this AD by March 21, 2011.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; e-mail: *tomasz.rakowski@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On June 4, 2010, we issued AD 2010–12–10, Amendment 39–16331 (75 FR 32649, June 9, 2010), for CF6–45 and CF6–50 series turbofan engines with certain LPT rotor stage 3 disks installed. That AD requires initial and repetitive borescope inspections of the HPT rotor stage 1 and stage 2 blades for wear and damage, including excessive airfoil material loss. That AD also requires FPI of the LPT rotor stage 3 disk under certain conditions, removal of the disk from service before further flight if found cracked, and repetitive EGT system checks (inspections). That AD resulted from reports received of two additional LPT rotor stage 3 disk events since the original AD 2010–06–15, Amendment 39–16240 (75 FR 12661, March 17, 2010) was issued. We issued those ADs to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Actions Since AD was Issued

Since we issued AD 2010–12–10, investigations have revealed additional causes for HPT rotor imbalance not addressed in that AD, and two additional LPT rotor stage 3 disk events have occurred.

FAA's Determination

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

AD Requirements

This AD requires:

- HPT rotor stage 1 and stage 2 blade inspections and EGT system inspections; and
- FPI of the LPT rotor stage 3 disk under certain conditions and removal of the disk from service before further flight if found cracked; and
- A UI of the LPT rotor stage 3 disk forward spacer arm; and
- Initial and repetitive engine core vibration surveys; and
- Reporting to the FAA any crack findings, disks that fail the UI, and engines that fail the engine core vibration survey.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because we require near immediate corrective action to address the unsafe condition. Therefore, we find that notice and opportunity for prior public comment are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2010–0068 and directorate identifier 2010–NE–05–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Costs of Compliance

We estimate that this AD will affect 387 CF6–45 and CF6–50 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take, about 8 hours to perform the HPT blade inspection, 6 hours to perform a vibration survey, 4 hours to perform an ultrasonic inspection, 2 hours to perform an EGT resistance check, and 1 hour to perform an EGT thermocouple inspection for each engine. The average labor rate is $85 per work-hour. We anticipate no required parts cost. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $690,795.

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

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

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, 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.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–12–10, Amendment 39–16331 (75 FR 32649, June 9, 2010) and adding the following new AD:

2011–02–07 General Electric Company: Amendment 39–16580; Docket No. FAA–2010–0068; Directorate Identifier 2010–NE–05–AD.

Effective Date

(a) This AD is effective February 22, 2011.

Affected ADs

(b) This AD supersedes AD 2010–12–10, Amendment 39–16331.

Applicability

(c) This AD applies to the following engines with any of the low-pressure turbine (LPT) rotor stage 3 disk part numbers listed in Table 1 of this AD installed in:

(1) General Electric Company (GE) CF6–45A, CF6–45A2, CF6–50A, CF6–50C, CF6–50CA, CF6–50C1, CF6–50C2, CF6–50C2B, CF6–50C2D, CF6–50E, CF6–50E1, and CF6–50E2 turbofan engines, including engines marked on the engine data plate as CF6–50C2–F and CF6–50C2–R.

(2) These engines are installed on, but not limited to, Airbus A300 series, Boeing 747 series, McDonnell Douglas DC–10 series, and DC–10–30F (KDC–10) airplanes.

TABLE 1—APPLICABLE LPT ROTOR STAGE 3 DISK PART NUMBERS

9061M23P06	9061M23P07	9061M23P08	9061M23P09	9224M75P01
9061M23P10	1473M90P01	1473M90P02	1473M90P03	1473M90P04
9061M23P12	9061M23P14	9061M23P15	9061M23P16	1479M75P01
1479M75P02	1479M75P03	1479M75P04	1479M75P05	1479M75P06
1479M75P07	1479M75P08	1479M75P09	1479M75P11	1479M75P13
1479M75P14	N/A	N/A	N/A	N/A

Unsafe Condition

(d) This AD results from reports received of additional causes of high-pressure turbine (HPT) rotor imbalance not addressed in AD 2010–12–10, and two additional LPT rotor stage 3 disk events. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Compliance

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

Borescope Inspections of HPT Rotor Stage 1 and Stage 2 Blades

(f) For the borescope inspections required by paragraphs (f)(1), (f)(2), and (f)(3) of this AD, inspect the blades from the forward and aft directions. Inspect all areas of the blade airfoil: Your inspection must include blade leading and trailing edges, and their convex and concave airfoil surfaces. Inspect for signs of impact, cracking, burning, damage, or distress.

(1) Perform an initial borescope inspection of the HPT rotor stage 1 and stage 2 blades, within 10 cycles after the effective date of this AD.

(2) Thereafter, repeat the borescope inspection of the HPT rotor stage 1 and stage 2 blades within every 75 cycles-since-last-inspection (CSLI).

(3) Borescope-inspect the HPT rotor stage 1 and stage 2 blades within the cycle limits after the engine has experienced any of the events specified in Table 2 of this AD.

(4) Remove any engine from service before further flight if the engine fails any of the borescope inspections required by this AD.

TABLE 2—CONDITIONAL BORESCOPE INSPECTION CRITERIA

If the engine has experienced:	Then Borescope-Inspect:
(i) An exhaust gas temperature (EGT) above redline	Within 10 cycles.
(ii) A shift in the smoothed EGT trending data that exceeds 18 °F (10 °C), but is less than or equal to 36 °F (20 °C).	Within 10 cycles.
(iii) A shift in the smoothed EGT trending data that exceeds 36 °F (20 °C)	Before further flight.
(iv) Two consecutive raw EGT trend data points that exceed 18 °F (10 °C) above the smoothed average, but is less than or equal to 36 °F (20 °C).	Within 10 cycles.
(v) Two consecutive raw EGT trend data points that exceed 36 °F (20 °C) above the smoothed average	Before further flight.

Actions Required for Engines With Damaged HPT Rotor Blades

(g) For those engines that fail any borescope inspection requirements of this AD, before returning the engine to service, fluorescent-penetrant inspect the inner diameter surface forward cone body (forward spacer arm) of the LPT rotor stage 3 disk. If a crack is found or if a circumferential band of fluorescence appears, remove the disk from service.

EGT Thermocouple Probe Inspections

(h) Inspect the EGT thermocouple probe for damage within 50 cycles after the effective date of this AD or before accumulating 750 CSLI, whichever occurs later.

(i) Thereafter, re-inspect the EGT thermocouple probe for damage within every 750 CSLI.

(j) If any EGT thermocouple probe shows wear through the thermocouple guide sleeve, remove and replace the EGT thermocouple probe before further flight, and ensure the turbine mid-frame liner does not contact the EGT thermocouple probe.

EGT System Resistance Check Inspections

(k) Perform an EGT system resistance check within 50 cycles from the effective date of this AD or before accumulating 750 cycles-since-the-last-resistance check on the EGT system, whichever occurs later.

(l) Thereafter, repeat the EGT system resistance check within every 750 cycles-since-the-last-resistance check.

(m) Remove and replace, or repair any EGT system component that fails the resistance system check before further flight.

Ultrasonic Inspection (UI) of the LPT Rotor Stage 3 Disk Forward Spacer Arm

(n) Within 75 cycles after the effective date of this AD, perform a UI of the forward cone body (forward spacer arm) of the LPT rotor stage 3 disk. Use paragraphs E. through K. of Appendix A of GE Service Bulletin (SB) No. CF6–50–SB 72–1312, Revision 1, dated October 18, 2010, to do the UI.

Engine Core Vibration Survey

(o) Within 75 cycles after the effective date of this AD, perform an initial engine core vibration survey.

(1) Use approximately a one-minute acceleration and a one-minute deceleration of the engine between ground idle and 84% N2 (about 8,250 rpm) to perform the engine core vibration survey.

(2) Use a spectral/trim balance analyzer or equivalent, to determine the N2 rotor vibration.

(p) Thereafter, within every 350 cycles-since-the-last-engine core vibration survey, perform the engine core vibration survey as required in paragraphs (o)(1) through (o)(2) of this AD.

(q) If the vibration level is above 5 mils Double Amplitude then before further flight, remove the engine from service.

(r) For those engines that fail any engine core vibration survey requirements of this AD, before returning the engine to service, fluorescent-penetrant inspect the inner diameter surface forward cone body (forward spacer arm) of the LPT rotor stage 3 disk. If a crack is found or if a circumferential band of fluorescence appears, remove the disk from service.

(s) If the engine has experienced any vibration reported by maintenance or flight crew that is suspected to be caused by the HPT rotor (N2), perform the engine core vibration survey as required in paragraphs (o)(1) through (o)(2) of this AD within 10 cycles after the report.

(t) You can find further guidance about performing the engine core vibration survey in GE SB No. CF6–50–SB 72–1313, Revision 1, dated October 18, 2010.

Reporting Requirements

(u) Report to the FAA within 10 days after any of the following:

(1) Any crack findings; and

(2) Any disks that failed a UI performed as specified in paragraph (n) of this AD; and

(3) Any engines that failed an engine core vibration survey as specified in paragraphs (o) and (p) of this AD.

(4) Submit these findings to FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-

mail: *tomasz.rakowski@faa.gov;* phone: 781–238–7735; fax: 781–238–7199.

Paperwork Reduction Act Burden Statement

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

Definitions

(v) For the purposes of this AD, an EGT above redline is a confirmed over-temperature indication that is not a result of EGT system error.

(w) For the purposes of this AD, a shift in the smoothed EGT trending data is a shift in a rolling average of EGT that can be confirmed by a corresponding shift in the trending of fuel flow or fan speed/core speed (N1/N2) relationship. You can find further guidance about evaluating EGT trend data in GE Company Service Rep Tip 373 "Guidelines For Parameter Trend Monitoring."

Previous Credit

(x) A borescope inspection performed before the effective date of this AD using AD 2010–06–15, Amendment 39–16240 (75 FR 12661, March 17, 2010) or AD 2010–12–10, Amendment 39–16331 (75 FR 32649, June 9, 2010) within the last 75 cycles, satisfies the initial borescope inspection requirement in paragraph (f)(1) of this AD.

(y) A UI performed before the effective date of this AD using GE SB No. CF6–50–SB 72–1312, dated August 9, 2010 or GE SB No. CF6–50–SB 72–1312 Revision 1, dated October 18, 2010, satisfies the inspection requirement in paragraph (n) of this AD.

(z) An engine core vibration survey performed before the effective date of this AD using GE SB No. CF6–50–SB 72–1313, dated August 9, 2010 or GE SB No. CF6–50–SB 72–1313 Revision 1, dated October 18, 2010, within the last 350 cycles, satisfies the initial survey requirement in paragraph (o) of this AD.

Alternative Methods of Compliance (AMOCs)

(aa) AMOCs previously approved for AD 2010–06–15, Amendment 39–16240 (75 FR 12661, March 17, 2010) are not approved for this AD. However, AMOCs previously approved for AD 2010–12–10, Amendment 39–16331 (75 FR 32649, June 9, 2010) are approved for this AD.

(bb) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(cc) Contact Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; e-mail: *tomasz.rakowski@faa.gov,* for more information about this AD.

Material Incorporated by Reference

(dd) You must use GE Service Bulletin No. CF6–50–SB 72–1312, Revision 1, dated October 18, 2010, to do the ultrasonic inspections required by this AD.

(1) The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) Contact General Electric Company, GE–Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, telephone (513) 552–3272; fax (513) 552–3329; e-mail: *geae.aoc@ge.com* for a copy of this service information.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on January 14, 2011.

Peter A. White,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–2387 Filed 2–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 516

[Docket No. FDA–2011–N–0003]

New Animal Drugs; Masitinib

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect conditional approval of an application for a new animal drug intended for a minor use filed by AB Science. The application for conditional approval provides for the veterinary prescription use of masitinib mesylate tablets in dogs.

DATES: This rule is effective February 4, 2011.

FOR FURTHER INFORMATION CONTACT: Lisa M. Troutman, Center for Veterinary Medicine (HFV–116), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8322, e-mail: *lisa.troutman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: AB Science, 3 Avenue George V, 75008 Paris, France, filed an application for conditional approval (141–308) that provides for veterinary prescription use of KINAVET–CA1 (masitinib mesylate) Tablets for the treatment of recurrent (post-surgery) or nonresectable Grade II or III cutaneous mast cell tumors in dogs that have not previously received radiotherapy and/or chemotherapy except corticosteroids. In accordance with the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Minor Use and Minor Species Animal Health Act of 2004 (MUMS Act), this drug is conditionally approved as of December 15, 2010, and the regulations in part 516 (21 CFR part 516) are amended by adding new § 516.1318.

In addition, AB Science has not been previously listed in the animal drug regulations as a sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to add entries for this firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support conditional approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

KINAVET–CA1 (masitinib mesylate) Tablets for the intended uses conditionally approved by FDA under application number 141–308 qualifies for 7 years of exclusive marketing rights beginning on the date of conditional approval. This new animal drug qualifies for exclusive marketing rights under section 573(c) of the FD&C Act (21 U.S.C. 360ccc–2(c)) because it has

been declared a designated new animal drug by FDA under section 573(a) of the FD&C Act.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 516 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), alphabetically add an entry for "AB Science"; and in the table in paragraph (c)(2), numerically add an entry for "052913" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
AB Science, 3 Avenue George V, 75008 Paris, France	052913
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
052913	AB Science, 3 Avenue George V, 75008 Paris, France.
* * * * *	

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 3. The authority citation for 21 CFR part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

■ 4. Add § 516.1318 to subpart E to read as follows:

§ 516.1318 Masitinib.

(a) *Specifications.* Each tablet contains 50 or 150 milligrams (mg) masitinib mesylate.

(b) *Sponsor.* See No. 052913 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* 12.5 mg/kilograms (5.7 mg/lb) of body weight daily.

(2) *Indications for use.* For the treatment of recurrent (post-surgery) or nonresectable Grade II or III cutaneous mast cell tumors in dogs that have not previously received radiotherapy and/or chemotherapy except corticosteroids.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. It is a violation of Federal law to use this product other than as directed in the labeling.

Dated: January 28, 2011.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2011–2519 Filed 2–3–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Restricted Area, Potomac River, Marine Corps Base Quantico, Quantico, VA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending its regulations to establish a restricted area in the waters of the Potomac River extending offshore from the Marine Corps Air Facility (MCAF) at Marine Corps Base Quantico (MCB Quantico), located in Quantico, Virginia. The restricted area will address current security needs at MCB Quantico, including the protection of military assets at MCAF which includes the Presidential Helicopter Squadron (HMX–1). The restricted area will also protect public health by preventing vessels from disturbing a planned environmental remediation area that is located to the northeast of MCAF.

DATES: *Effective date:* March 7, 2011.

ADDRESSES: Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or by e-mail at *david.b.olson@usace.army.mil* or Mr. Steve Elinsky, U.S. Army Corps of Engineers, Baltimore District, Regulatory Branch, at 410–962–4503 or by e-mail at *steve.elinsky@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending its regulations to establish a restricted area in the waters of the Potomac River extending offshore from the MCAF at MCB Quantico, located in Quantico, Virginia. The restricted area will address current security needs at MCB Quantico, including the protection of military assets at MCAF which includes the Presidential Helicopter Squadron (HMX–1). The restricted area will also protect public health by preventing vessels from disturbing a planned environmental remediation area that is located to the northeast of MCAF.

The proposed rule was published in the August 31, 2010, edition of the **Federal Register** (75 FR 53264) and the docket number was COE–2010–0032. In September 2010, the Corps Baltimore and Norfolk districts issued public notices soliciting comments on the proposal from all known interested parties. The districts received three comments.

One commenter indicated that this action does not require essential fish habitat (EFH) conservation measures to protect EFH. Another commenter said that the proposed undertaking would have no effect on historic resources in Maryland. One commenter stated that the establishment of the restricted area would not impact recreation nor would it adversely affect any documented state-listed plant or animal species in Virginia.

None of these comments warrant changes to the rule text. However, to provide clarity in the final rule, the following changes were made to the rule text:

1. The provisions concerning the timing of the restrictions stated in

paragraph (b)(2) of the proposed rule were moved to paragraph (b)(1).

2. The last two sentences of paragraph (a) of the proposed rule were moved to paragraph (b)(2).

3. To clearly indicate that limited access to the restricted area by commercial fishermen may be granted by the Marine Corps, the first sentence of paragraph (b)(3) of the proposed rule was moved to create a new paragraph (d).

4. The following sentence from paragraph (c) of the proposed rule was not included in the final rule to simplify the enforcement provision of this section: "USMC boats with law enforcement personnel will randomly patrol the restricted area and provide a response capability. All persons, vessels, or other craft are prohibited from entering, transiting, drifting, dredging, or anchoring within the restricted area without the permission of the Commander, MCB Quantico or his/her designated representative."

Administrative Requirements

a. *Review Under Executive Order 12866.* This rule is issued with respect to a military function of the Department of Defense, and the provisions of Executive Order 12866 do not apply.

b. *Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The Corps determined that the establishment of the new restricted area zone would not have a significant economic impact on a substantial number of small entities. For more detailed analysis of potential economic impacts of this rule, please see the regulatory analysis in the environmental assessment.

c. *Review Under the National Environmental Policy Act.* An environmental assessment (EA) has been prepared. After considering the comments received in response to the proposed rule, we have concluded that the establishment of a restricted area at MCB Quantico will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. The final EA and Finding of No Significant Impact may be reviewed at the Baltimore District Office. Please contact Mr. Steve Elinsky at the phone number specified above for further information.

d. *Unfunded Mandates Reform Act.* This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found, under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Transportation, Waterways.

For the reasons stated in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.235 to read as follows:

§ 334.235 Potomac River, Marine Corps Base Quantico (MCB Quantico) in vicinity of Marine Corps Air Facility (MCAF), restricted area.

(a) *The area.* All of the navigable waters of the Potomac River extending approximately 500 meters from the high-water mark on the Eastern shoreline of the MCAF, bounded by these coordinates (including the Chopawamsic Creek channel, but excluding Chopawamsic Island): Beginning at latitude 38°29′34.04″ N, longitude 077°18′22.4″ W (Point A); thence to latitude 38°29′43.01″ N, longitude 077°18′4.1″ (Point B); thence to latitude 38°29′55.1″ N, longitude 077°17′51.3″ W (Point C); thence to latitude 38°30′10.1″ N, longitude 077°17′40.3″ W (Point D); thence to latitude 38°30′23.43″ N, longitude 077°17′50.30″ W (Point E); then along the western shoreline of Chopawamsic Island to latitude 38°30′35.13″ N, longitude 077°17′47.45″ W (Point F); thence to latitude 38°30′42.1″ N, longitude 077°17′37.1″ W (Point G); thence to latitude 38°30′50.71″ N, longitude 077°17′54.12″ W (Point H); then along the shoreline to latitude 38°30′0.058″ N, longitude 077°18′39.26″ W (Point I); then across the Chopawamsic Channel to latitude 38°29′58.45″ N, longitude 077°18′39.97″ W (Point J); thence to latitude 38°29′38.2″ N, longitude 077°18′38.14″ W (Point K); and thence to the beginning point of origin.

(b) *The regulations.* (1) All persons, vessels, or other craft are prohibited from entering, transiting, drifting, dredging, or anchoring within the restricted area without the permission of the Commander, MCB Quantico or his/her designated representatives. The restriction will be in place 24 hours a day, seven days a week.

(2) The boundary of the restricted area will be demarcated with marker buoys and warning signs set at 500 foot intervals. In addition, lighted, floating, small craft intrusion barriers will be placed across the Chopawamsic Creek channel at the entrance to the channel from the Potomac River and immediately west of the CSX railroad bridge.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, MCB Quantico or any such agencies he/she designates. The areas identified in paragraph (a) of this section will be monitored 24 hours a day, 7 days a week. Any person or vessel encroaching within the areas identified in paragraph (a) of this section will be directed to immediately leave the restricted area. Failure to do so could result in forceful removal and/or criminal charges.

(d) *Exceptions.* Commercial fisherman will be authorized controlled access to the restricted area (with the exception of Chopawamisc Creek channel) after registering with MCB Quantico officials and following specific access notification procedures.

Dated: January 31, 2011.

Michael G. Ensch,

Chief, Operations and Regulatory, Directorate of Civil Works.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL–9261–6]

Official Release of the January 2011 AP–42 Method for Estimating Re-Entrained Road Dust From Paved Roads

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of Availability.

SUMMARY: On January 13, 2011, EPA posted the latest version of the method for estimating re-entrained road dust emissions from cars, trucks, buses, and

motorcycles on paved roads. This document approves this method for use in PM_{10} and $PM_{2.5}$ state air quality implementation plans (SIPs) and regional emissions analyses for transportation conformity determinations ("regional conformity analyses"). This new method is incorporated in Chapter 13 of Compilation of Air Pollutant Emission Factors, AP–42, Fifth Edition, Volume I, that was published in January 2011.

Today's action also starts a two-year grace period after which the January 2011 AP–42 method is required to be used in regional conformity analyses in PM_{10} nonattainment and maintenance areas and any $PM_{2.5}$ nonattainment and maintenance areas where the EPA regional administrator or the state air quality agency determined that re-entrained road dust is a significant contributor to the area's $PM_{2.5}$ problem, or if the area has a $PM_{2.5}$ motor vehicle emissions budget that includes re-entrained road dust. This document is not relevant to SIP development or regional conformity analyses for ozone, carbon monoxide, and nitrogen dioxide nonattainment and maintenance areas, or for areas that use EPA-approved locally developed road dust methods.

DATES: EPA's approval of the January 2011 AP–42 method for estimating re-entrained road dust from paved roads for SIPs and regional conformity analyses is effective February 4, 2011. As discussed further below, today's approval also starts a two-year conformity grace period which ends on February 4, 2013, after which the January 2011 AP–42 method is required to be used for SIPs and regional conformity analyses.

FOR FURTHER INFORMATION CONTACT: For questions about using AP–42 in SIPs and transportation conformity, contact David Bizot at *Bizot.David@epa.gov* or (734) 214–4432, or Laura Berry at *Berry.Laura@epa.gov* or (734) 214–4858. For technical questions regarding the use of AP–42, contact Ron Myers at *Myers.Ron@epa.gov* or (919) 541–5407.

SUPPLEMENTARY INFORMATION: The official version of the January 2011 edition of Section 13.2.1 of AP–42, Paved Roads, and supporting documentation can be found at: *http://www.epa.gov/ttn/chief/ap42/ch13/index.html.*

The contents of this document are as follows:

I. Background on AP–42 and the January 2011 AP–42 Method
II. SIP Policy for Using AP–42
III. Transportation Conformity Policy for Using AP–42

I. Background on AP–42 and the January 2011 AP–42 Method

Motor vehicle emissions inventories for PM_{10} and $PM_{2.5}$ are comprised of four components: Exhaust emissions, emissions from brake wear, emissions from tire wear, and re-entrained road dust. EPA's methodologies for estimating PM emissions from re-entrained road dust are found in AP–42, the Agency's compilation of data and methods for estimating average emission rates from a variety of activities and sources from various sectors. The sections of AP–42 that address re-entrained road dust emissions are: Section 13.2.1 (Paved Roads) and Section 13.2.2 (Unpaved Roads). State and local agencies currently use the latest versions of these sections of AP–42 for calculating re-entrained road dust in PM SIP development and regional conformity analyses, as applicable, unless EPA has approved an alternate method.

In today's document, EPA is approving, for SIPs and regional emissions analyses, the January 2011 edition of Section 13.2.1 of AP–42 that reflects a new methodology for calculating re-entrained road dust from paved roads.[1] The January 2011 AP–42 method did not change the methods for calculating road dust from unpaved roads (Section 13.2.2), last updated in November 2006,[2] nor affect EPA's previous approvals of other emissions models.[3]

The January 2011 AP–42 method includes revisions of the equation used to predict PM emissions, an extension of the applicable range of speeds down to 1 mph from the previous 10 mph, and the incorporation of an improved methodology for characterizing silt loading. These revisions were based on additional data from tests that were conducted on roads with slow moving and stop-and-go traffic, as well as public comments received on the draft revision. Please see EPA's AP–42 Web site for technical supporting documentation that provides additional detail regarding the revisions and the revision process.[4]

It is estimated that PM_{10} emissions predicted by the January 2011 AP–42 method will be, on average, 40% less than the emissions for paved roads predicted by the November 2006 update. However, some silt loading and average vehicle weight conditions could result in different reduction levels and in some cases greater estimated emissions. $PM_{2.5}$ emissions from paved roads predicted by the January 2011 AP–42 method will be generally greater than the emissions predicted by the November 2006 update. However, some silt loading and average vehicle weight conditions could result in lower estimated emissions.

EPA notes that the January 2011 AP–42 method is approved only for situations for which silt loading, mean vehicle weight, and mean vehicle speed fall within ranges given in AP–42 section 13.2.1.3 and with reasonably free-flowing traffic. For other conditions, areas should use, or continue to use, an alternate method approved by EPA on a case-by-case basis for use in SIPs or regional conformity analyses. In some areas, alternate methods may be more appropriate than AP–42 given specific local conditions even within the parameters given in AP–42 Section 13.2.1.3. State and local agencies should consult with EPA for approval of alternate road dust methods.

II. SIP Policy for Using AP–42

In general, states should use the January 2011 AP–42 method for PM_{10} and $PM_{2.5}$ SIPs that are currently under development and future PM SIP revisions, unless EPA has approved an alternate method. The Clean Air Act (CAA) requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP is developed.[5] States should use the January 2011 AP–42 method where PM SIP development is in its initial stages or hasn't progressed far enough along that switching to this method would create a significant adverse impact on state and local resources.

Although the January 2011 AP–42 method should be used in PM_{10} and $PM_{2.5}$ SIP development as expeditiously

[1] When completing project-level PM hot-spot analyses for transportation conformity purposes, either AP–42 or alternative local methods can be used. For more details, see EPA's "Transportation Conformity Guidance for Quantitative Hot-spot Analyses in $PM_{2.5}$ and PM_{10} Nonattainment and Maintenance Areas" (EPA–420–B–10–040, December 2010).

[2] For estimating road dust from unpaved roads, the November 2006 update to Section 13.2.2 of AP–42 remains in effect. See "Policy Guidance on the Use of the November 1, 2006, Update to AP–42 for Re-entrained Road Dust for SIP Development and Transportation Conformity" at: *http://www.epa.gov/otaq/stateresources/transconf/policy/420b07055.pdf.* This document supersedes the portions of this guidance that cover estimating dust from paved roads.

[3] Such as EPA's approvals of the MOVES2010 emissions model for SIPs and regional conformity purposes (75 FR 9411) and of the MOVES2010a and EMFAC models for transportation conformity hot-spot analyses (75 FR 79370).

[4] *See http://www.epa.gov/ttn/chief/ap42/ch13/index.html.*

[5] *See* CAA section 172(c)(3) and 40 CFR 51.112(a)(1).

as possible, EPA also recognizes the time and effort that states have already undertaken in SIP development using previous AP–42 methods. PM SIPs that EPA has already approved are not required to be revised solely based on the existence of the January 2011 AP–42 method. States that have already submitted PM SIPs or will submit PM SIPs shortly after today's approval are not required to revise these SIPs based on the recent availability of the January 2011 AP–42 method. States can choose to use the January 2011 AP–42 method in these PM SIPs, for example, if it is determined that it is appropriate to update motor vehicle emissions budgets ("budgets") with the new method for future transportation conformity determinations. However, EPA does not believe that a state's use of a previous AP–42 method should be an obstacle to EPA approval for PM SIPs that have been or will soon be submitted, assuming that such SIPs are otherwise approvable and significant SIP work has already occurred (*e.g.,* attainment modeling for an attainment SIP has already been completed with a previous method). It would be unreasonable in such cases to require states to revise these PM SIPs with the January 2011 AP–42 method since significant work has already occurred and EPA intends to act on these SIPs in a timely manner.

If you have questions about which road dust method should be used in your SIP, please consult with your EPA Regional Office.

III. Transportation Conformity Policy for Using AP–42

Transportation conformity is a CAA requirement to ensure that federally supported highway and transit activities are consistent with the SIP. Conformity to a SIP means that a transportation activity will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards (NAAQS) or any interim milestone. EPA's transportation conformity regulations (40 CFR 51.390 and 40 CFR part 93, subpart A) describe how federally funded and approved highway and transit projects meet these statutory requirements.

CAA section 176(c)(1) states that "* * * [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates * * *." The transportation conformity rule (40 CFR 93.111) requires that conformity analyses be based on the latest motor vehicle emissions model approved by EPA. The conformity rule states that EPA will consult with the DOT to establish a grace period following specification of any new emissions model. The conformity rule further provides for a grace period for new emissions models of between 3–24 months, to be established by notification in the **Federal Register** (40 CFR 93.111(b)(1)).

In consultation with DOT, EPA must consider various factors when establishing a grace period for conformity determinations, including the degree of change in emissions models and the effects of the new model on the transportation planning process (40 CFR 93.111(b)(2)).

EPA articulated its intentions for establishing the length of a conformity grace period in the preamble to the 1993 transportation conformity rule (58 FR 62211):

> EPA and DOT will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an opportunity to revise their SIPs before MPOs (metropolitan planning organizations) must use the model's new emissions factors.

As stated in Section I of today's document, the January 2011 AP–42 method may result in PM_{10} emissions from paved roads being reduced as compared to the previous method, but results can vary from area to area. In general, $PM_{2.5}$ emissions from paved roads could increase as compared to the previous method, which could affect those $PM_{2.5}$ areas where road dust emissions are included in the $PM_{2.5}$ SIP budget and are based on a previous AP–42 method. In these limited number of $PM_{2.5}$ areas and possibly some PM_{10} areas, state and local agencies may need additional time to consider whether additional revisions during the grace period are necessary to ensure future conformity determinations.

Upon consideration of all of these factors, EPA is establishing a two-year conformity grace period that begins today and ends on February 4, 2013. At the end of the grace period, the January 2011 AP–42 method will be required for regional conformity analyses in PM_{10} nonattainment and maintenance areas and any $PM_{2.5}$ nonattainment and maintenance areas where re-entrained road dust is a significant contributor to the area's $PM_{2.5}$ problem, or if the area has a $PM_{2.5}$ motor vehicle emissions budget that includes re-entrained road dust.[6] The following discussion about the conformity grace period is not relevant for those PM_{10} and $PM_{2.5}$ areas that are completing conformity determinations based on approved alternate road dust methods.

During the conformity grace period, affected areas should use the interagency consultation process to examine how the January 2011 AP–42 method will impact their future transportation plan and TIP conformity determinations and any regional emissions analyses. Areas should consider whether their PM_{10} and/or $PM_{2.5}$ SIP(s) and budget(s) should be revised with the January 2011 AP–42 method, or if transportation plans and TIPs should be revised before the end of the conformity grace period in order to assist areas in continuing to meet transportation conformity requirements after the grace period ends.

Regional conformity analyses that are started during the grace period can use either the January 2011 AP–42 method or the previous method. When the grace period ends on February 4, 2013, the January 2011 AP–42 method will become the only approved method for estimating re-entrained road dust. The grace period for new regional emissions analyses would be shorter if a PM area revised its SIP and budgets with the January 2011 AP–42 method and such budgets became applicable prior to the end of the two-year conformity grace period.

The conformity rule provides some flexibility for regional emissions analyses that are started before the end of the grace period. Analyses that begin before or during the grace period may continue to rely on the previous AP–42 method. 40 CFR 93.111(c). The interagency consultation process should be used if it is unclear if an analysis based on a previous method was begun before the end of the grace period. If you have questions about which AP–42 method should be used in your conformity determination, consult with your EPA Regional Office.

Dated: January 28, 2011.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

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[6] *See* 40 CFR 93.102(b)(3) for when re-entrained road dust is included in regional emissions analyses.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–1027; FRL–9251–1]

Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revision to Definitions; Construction Permit Program; Regulation 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the State of Colorado on June 20, 2003 and April 12, 2004. This final rule will approve those portions of the revisions to Colorado's Regulation 3 that place restrictions on increment consumption, add innovative control technology as an alternative to BACT requirements and make other changes as described in more detail below. EPA will act separately on the portions of the June 20, 2003 and April 12, 2004 submittals that revise Regulation 3, Part A, Section II, Air Pollutant Emission Notice (APEN) Requirements. Today's action on the Colorado Regulation 3 revisions will make federally enforceable the revised portions of Colorado's Regulation 3 that EPA is approving. This action is being taken under section 110 of the Clean Air Act.

DATES: *Effective Date:* This final rule is effective March 7, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2007–1027. 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 Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, 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: Mark Komp, Air Program, U.S. Environmental Protection Agency, Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number (303) 312–6022, fax number (303) 312–6064, *komp.mark@epa.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Colorado* mean the State of Colorado, unless the context indicates otherwise.

(v) The initials *APEN* mean or refer to Air Pollutant Emission Notice.

(vi) The initials *NSR* mean or refer to New Source Review, the initials *RACT* mean or refer to Reasonably Available Control Technology, the initials *BACT* mean or refer to Best Available Control Technology and the initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

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I. Background Information

On June 20, 2003 and on April 12, 2004, the State of Colorado submitted formal revisions to its SIP that changed or deleted numerous definitions in Part A of the State's Regulation Number 3. Primarily, these were minor changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete or duplicative definitions. In addition to the clarifications, formatting and readability changes were made to the definition section and a number of definitions were added or modified to reflect developments in federal law. In the April 12, 2004 submittal, the only revision to Parts A and B of Regulation 3 was a minor change to Part A, Section I.A [1] regarding the availability of material incorporated by reference.

One modified definition was for non-road engines. In response to the 1990 CAA Amendments, federal case law, and EPA's interpretation of the term, Colorado modified the definition of a non-road engine. The definition was also moved from the APEN section of Regulation 3 (Part A, Section II) to the definition section (Part A, Section I). In addition, Colorado took steps to keep track of these sources by requiring a non-road engine rated at 1,200 horsepower or greater to file a Colorado APEN. The filing of an APEN for non-road engines is stipulated by Colorado's SIP revisions to be a State-only requirement.

New definitions also included the definition of Pollution Control Projects at existing electric utility steam generating units and the use of Clean Coal Technology at these units. Colorado also revised its definitions of actual emissions and major modification to include special provisions governing physical or operational changes at electric utility steam generating units. These new definitions and revisions responded to changes in the federal regulations arising out of the decision in the Wisconsin Electric Power Company ("WEPCO") case (*Wisconsin Electric Power Co.* v. *Reilly,* 893 F.2d 901 (7th Cir. 1990)). As a result of the WEPCO decision, EPA's NSR regulations were changed in 1992 and Colorado responded to the changes by adding these definitions to its Regulation 3.

Revisions were also submitted involving Part B of Colorado's Regulation 3. Part B describes the process air emission sources must go through to obtain a required construction permit prior to commencing operation. The State's submittals modified the exemptions from construction permitting, modified requirements for permit applicants, added restrictions on increment consumption, and added provisions regarding innovative control technology.

Colorado added language to its area classification section of Part B, Section V stating that within certain Class II areas in the State (for example, certain National Monuments that are not Class I areas), sulfur dioxide concentration increases over baseline concentrations are limited to the amount permitted in Class I areas as established under Section 163(b) of the federal CAA. Such increases are not allowed if the Federal Land Manager determines and the State concurs that there would be an adverse impact on air quality from the sulfur dioxide concentration increase.

In Section III.D.1.c(iii), Colorado modified the exemption from construction permitting for stationary internal combustion engines. The State also limited to 75 percent the amount that a new major stationary source or major modification may consume of an

[1] All references in this notice to particular section numbers are to the designated sections within Regulation 3.

applicable pollutant increment (Part B, Section VII.A.5). Sources may ask for a waiver from the limit.

II. Response to Comments

EPA received one letter from the State of Colorado dated December 8, 2010 that provided one comment on our November 8, 2010 **Federal Register** proposed action regarding the partial approval and partial disapproval of Colorado's SIP revisions to their Regulation 3. The comment addresses our proposed disapproval of the portion of the revision regarding sections IV.B.2 and IV.H.8 in Part B of Regulation 3. The revision changed the existing requirement for construction permit applicants to submit in their application an operating and maintenance plan and recordkeeping format (collectively, "O&M plan"). In its place, the revision would require the owner or operator to submit the O&M plan before final permit approval. In this section EPA responds to the comment made by the State.

Comment—Colorado expressed its concern that the disapproval would delay permit issuance, create inefficiencies, and result in increased need for resources. Colorado stated that the final version of the O&M plan is dependent on conditions of the issued permit and on performance testing after the source has been authorized to construct. As a result of the disapproval of this portion of the revision, Colorado believes that there will be insufficient information to submit and review the initial submission of the O&M plan, and therefore there will be inefficient use of resources when the State reviews both the initial and final versions of it. Colorado also expressed concern that disapproval of the provision would result in modifications of O&M plans having to be submitted as SIP revisions, a process that Colorado believes would cause additional delays. As a result, the State asked EPA to delay action on the portion of the revision regarding sections IV.B.2.

EPA Response—EPA notes that the State did not take issue with the basis for our proposed disapproval. In our proposal, we stated that the operating and maintenance plan and recordkeeping format appeared to be information on the operation of the source that was necessary to determine whether construction or modification of the source would violate the applicable portions of the control strategy or interfere with attainment or maintenance of a national standard. *See* 40 CFR 51.160(a), (c). Therefore, we reasoned, such information must be submitted by the owner or operator of the source and as a result must be subject to public comment. *See* 40 CFR 51.161(a). As the State acknowledges, the proposed revision removes the existing requirement that the information be submitted in the application and only requires that it be submitted before final permit approval. As EPA noted in the proposal (and the State does not dispute), this change does not ensure that the public has 30 days to comment on both the information and the permitting agency's analysis of the effect on air quality, as required by 40 CFR 51.161. Furthermore, the State did not take issue with our determination that such information was necessary under 40 CFR 51.160; and therefore, must be subject to public comment under 40 CFR 51.161. Thus, the State comment described above does not provide a basis for EPA to change its proposed disapproval. In response to the State's request that EPA delay action on the proposed revision, EPA notes that under a consent decree entered in the U.S. District Court for the District of Colorado, EPA must take final action on the submitted provision by December 31, 2010. (*WildEarth Guardians* v. *Jackson,* Civ. No. 09–2148 (D. Colo. 2009)).

EPA appreciates the State's concern for efficient processing of construction permits. However, requiring owners and operators to submit the O&M plan and recordkeeping format in their application for a construction permit is not unduly burdensome. If the application contains sufficient other information (such as the nature of the facility, processes, and emissions units) to enable the State to determine whether construction or modification of the source meets the requirements of 40 CFR 51.160(a), then the applicant is also in a position to submit an O&M plan and recordkeeping format. Furthermore, the State is then in a position to determine from the information in the application the controls and other applicable requirements that must be reflected in the final permit, and as a result modify the O&M plan accordingly. To the extent that performance testing subsequently requires modification of the O&M plan, the State does not need to submit a SIP revision for such modification. O&M plan revisions would constitute a modification of the construction permit to which the requirements of section 110(i) of the Act would not apply.

III. Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. Those portions of the revision to Colorado's Regulation 3 that we are approving satisfy section 110(l), because those portions do not relax existing SIP requirements. Instead, the portions of the June 20, 2003 and April 12, 2004 submittals EPA is approving increase stringency of existing requirements, clarify existing requirements, or remove obsolete requirements. Therefore, section 110(l) is satisfied.

IV. Final Action

We have evaluated Colorado's June 20, 2003 and April 12, 2004 submittals regarding revisions to the State's Regulation 3, Parts A and B. We are approving most of the revisions from the two submittals but are disapproving certain revisions within the June 20, 2003 submittal. Also, we are taking no action on the State-only requirements in sections I.B.40.c. and d. for nonroad engines, as we regard these as submitted only for informational purposes. We will take separate action on the portion of the June 20, 2003 and April 12, 2004 submittals regarding Regulation 3, Part A, Section II, Air Pollutant Emission Notice (APEN) Requirements.

What EPA Is Disapproving

The State added terms and definitions (Section I.B.69) in response to EPA's 1992 WEPCO rule. Under the definition of "modification" (I.B.36), the State also added provisions related to these definitions, including for pollution control projects (I.B.36.b (iii)(G) and I.B.69.d). On June 24, 2005, the Court of Appeals for the DC Circuit vacated the Pollution Control Project portion of the WEPCO rule as well as the corresponding portion of EPA's 2002 NSR rule (*State of New York et al.* v. *EPA,* 413 F.3d 3 (DC Cir. 2005)). Therefore, EPA is disapproving Part A, Section I.B.36.b(iii)(G) and Section I.B.69.d in Regulation 3.

EPA is disapproving the new provisions in Part A, Section IV.C. regarding emissions trading under permit caps. These new provisions apply to both construction permits and to CAA Title V operating permits. For operating permits, the provisions should not be incorporated into the federally enforceable version of the Colorado SIP. Instead, they should be submitted separately under 40 CFR 70.4(i) as a revision of Colorado's approved operating permit program. To the extent that these new provisions apply to Prevention of Significant Deterioration (PSD) or nonattainment NSR for major

sources or major modifications, they are not allowed by the regulations in 40 CFR 51.166 or 51.165. EPA provides a mechanism for establishing permit caps through plant wide applicability limitations (PALs). The provisions in IV.C for emissions trading under permit caps do not meet the requirements for PALs in 40 CFR 51.165(f) and 40 CFR 51.166(w). Therefore, EPA is disapproving the provisions for emissions trading under permit caps set forth in Section IV.C.

In Part A, Section V.F.5, Colorado expanded the acronym Lowest Achievable Emission Rate (LAER) as one instance of a regulation-wide style change that expanded many acronyms. The revision apparently inadvertently deleted the requirement that trading transactions may not be used inconsistently with or to circumvent requirements of LAER. EPA is disapproving this change because emissions trading must be consistent with other requirements of the CAA, including LAER.

Turning to Part B of Regulation 3, in Section III.D.1.c(iii), the State modified the requirements for stationary internal combustion engines to be exempt from construction permitting. Previously, all such engines were exempt if they had actual emissions of less than five tons per year or were rated less than fifty horsepower. Under the revision, in attainment areas such engines are exempt if they have uncontrolled actual emissions of less than ten tons per year or are rated less than one hundred horsepower; thus, more engines may be exempt from construction permitting under the revision. Under section 110(l) of the CAA, EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or reasonable further progress, as defined in Section 171 of the CAA, or any other applicable requirement of the CAA. The State did not provide a demonstration or other analysis that the expansion of the exemption satisfies the requirements of section 110(l). Exempting a potentially greater number of stationary engines from construction permitting may result in increased emissions of criteria pollutants such as NOx. EPA therefore disapproves the revision to Section III.D.I.c(iii).

Finally, for the reasons discussed in the Response to Comments, EPA is disapproving the revision to Part B, Section IV.B.2 and Section IV.H.8 regarding operating and maintenance plans and recordkeeping formats.

What EPA Is Approving

The State added language to its definition of actual emissions (Section I.B.1.d) for electric utility steam generating units. The State defined actual emissions by allowing the actual emissions from the unit following a physical or operational change of the unit to equal the actual annual emissions of the unit provided the owner or operator can provide information from a five year period showing no emission increase resulting from the unit's physical or operational change. This revised definition is consistent with EPA's 1992 WEPCO rule discussed earlier in this proposed rule. Although a term used ("representative actual annual emissions") is that of the WEPCO rule, the substance of the revised definition is also consistent with current federal regulations in 40 CFR 51.165 and 51.166, and EPA, therefore, is approving the revised definition.

The State also modified its definition for commenced construction in Section I.B.13 by excluding certain construction activities from the requirement for a permit. Planning activities, site clearing and grading, ordering equipment and materials, storing of equipment, constructing personnel trailers, engineering and design changes, and geotechnical investigation do not require that a permit be issued prior to these activities. EPA is approving this change in the definition of commenced construction as it is consistent with EPA guidance interpreting the equivalent term, "begin actual construction." [2] As noted in that guidance, though, such activity, if undertaken prior to issuance of a permit, is at the risk of the owner or operator and would not guarantee that the permit would be forthcoming.

The revisions to Regulation 3 excluded the consideration of clean coal technology demonstration projects as a major modification when the projects do not result in an increase in the potential to emit of any regulated pollutant. EPA is approving this revision since the revision is consistent with the Federal NSR regulations described at 40 CFR 51.165 and 51.166.

Earlier in this final rule EPA stated that we were disapproving Pollution Control Projects as defined in Section I.B.36.b(iii)(G) and Section I.B.69.d of Colorado's Regulation 3. However, the remainder of the revised definitions within Part A, Section I.B.36 and Section I. B. 69 are consistent with EPA's 1992 WEPCO rule and with current federal NSR regulations. EPA is therefore approving the definitions for clean coal technology, electric utility steam generating unit, reactivation of very clean coal-fired electric utility steam generating unit, repowering, representative actual annual emissions, temporary clean coal technology demonstration project and wet screening operations.

Colorado revised its fee schedule in Part A, Section VI.D by eliminating the dollar amount of the annual fee and referring the fee applicant to provisions provided in Colorado's Revised Statutes Section 25–7–114.7. Colorado also revised the filing of claims regarding confidential information and how the State elevates such claims (Part A, Section VII.). EPA is approving these revisions.

Turning to Part B of Regulation 3, EPA is approving the construction permit review requirements regarding RACT for minor sources in attainment/maintenance areas that were added in Part B, Section IV.D.3.e. These requirements mirror the existing requirements in Section IV.D.2.d for minor sources in nonattainment areas.

As noted in Section II of this proposed rule, in Part B, Section V of Colorado's Regulation 3, the State made the restrictions on maximum allowable increases of sulfur dioxide concentrations over baseline concentrations in Class I areas also applicable to certain Class II areas, such as certain National Monuments that are not Class I areas. This change strengthens the SIP by making the more stringent Class I restrictions also applicable in the listed Class II areas; EPA is therefore approving the revision.

Increment consumption restrictions were added to Part B, Section VII.A.5 of Colorado's Regulation 3. EPA is approving this revision as the revision is more stringent than federal requirements regarding increment consumption.

Finally, the State added Part B, Section IX regarding the use of innovative control technology. EPA is approving this revision since the revision is consistent with the federal NSR regulations described at 40 CFR 51.166(b)(19).

Minor changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete or duplicative definitions were made throughout the entirety of Parts A and B. These changes are approved by EPA.

[2] Memorandum from Edward E. Reich entitled Construction Activities prior to Issuance of a PSD Permit with Respect to "Begin Actual Construction" (March 28, 1986).

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 29, 2010.

Carol Rushin,

Deputy Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(116) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(116) On June 20, 2003, the State of Colorado submitted revisions to Colorado's Regulation 3 Regulation, 5 CCR 1001–5, that place restrictions on increment consumption, add innovative control technology as an alternative to BACT requirements, and changed or deleted numerous definitions in Part A. The State in Part B revised construction permit review requirements regarding RACT for minor sources in attainment/maintenance areas. The State made the restrictions on maximum allowable increases of sulfur dioxide concentrations over baseline concentrations in Class I areas also applicable to certain Class II areas, such as certain National Monuments that are not Class I areas. Increment consumption restrictions were added to limit major stationary sources from consuming more than 75 percent of an applicable increment. The State added the use of innovative control technology by a source in lieu of BACT requirements in order to encourage the use of such technology. The revisions to both Parts and B also included minor changes designed to fix ambiguous language, to make the definitions more readable or to delete obsolete or duplicative definitions. On April 12, 2004, the State of Colorado submitted a minor revision to Part A, Section I.A regarding the availability of material incorporated by reference.

(i) Incorporation by reference.

(A) Regulation 3, 5 CCR 1001–5, AIR CONTAMINANT EMISSIONS NOTICES, Part A, Concerning General Provisions Applicable to Construction Permits and Operating Permits, effective December 2002 and April 2003 with the following exceptions:

(1) Section I.B.36.b.(iii)(G) provisions related to Pollution Control Projects

(2) Section I.B.40.c.(ii) Submittal of an application for a nonroad engine permit, State-only requirement

(3) Section IV. C., Emissions Trading under Permit Caps

(4) Section V.F.5, Criteria for Approval of all Transactions, deleting the requirement that trading transactions may not be used inconsistently with or to circumvent requirements of LAER

(B) Regulation 3, 5 CCR 1001–5, AIR CONTAMINANT EMISSIONS NOTICES, Part B, Concerning Construction Permits including Regulations for the Prevention of Significant Deterioration (PSD), Area Classifications, Part B, Section V.B., effective December 2002 with the following exceptions:

(*1*) Section III.D.1.c(iii), Exemption from Construction Permit Requirements, Uncontrolled Emissions

(*2*) Section IV.B.2, Application for a Construction Permit, and Section IV.H.8, Application for a Final Permit, regarding operating and maintenance plans and recordkeeping formats.

[FR Doc. 2011–2508 Filed 2–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0098; FRL–8861–9]

Sodium and Potassium Salts of N-alkyl (C_8–C_{18})-beta-iminodipropionic acid; 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 sodium and potassium salts of N-alkyl (C_8–C_{18})-beta-iminodipropionic acid where the C_8–C_{18} is linear and may be saturated and/or unsaturated, (CAS Reg. Nos. 110676–19–2, 3655–00–3, 61791–56–8, 14960–06–6, 26256–79–1, 90170–43–7, 91696–17–2, and 97862–48–1), herein referred to in this document as SSNAs, when used as inert ingredients for pre- and post-harvest uses and for application to animals at a maximum of 30% by weight in pesticide formulations. The Joint Inerts Task Force (JITF), Cluster Support Team Number 14, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of SSNAs.

DATES: This regulation is effective February 4, 2011. Objections and requests for hearings must be received on or before April 5, 2011, 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–2009–0098. 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: Karen Samek, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–8825; *e-mail address: samek.karen@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://www.gpoaccess.gov/ecfr.* To access the harmonized 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–2009–0098 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 April 5, 2011. 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–2009–0098, 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. Petition for Exemption

In the **Federal Register** of March 19, 2010 (75 FR 132771) (FRL–8813–2), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 9E7631) by The Joint Inerts Task Force, Cluster Support Team 14 (CST 14), c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910 and 40

CFR 180.930 be amended by establishing exemptions from the requirement of a tolerance for residues of the SSNAs (CAS Reg. Nos. 110676–19–2, 3655–00–3, 61791–56–8, 14960–06–6, 26256–79–1, 90170–43–7, 91696–17–2, and 97862–48–1) when used as inert ingredients as a surfactant in pesticide formulations applied to crops pre- and post-harvest, as well as to animals at a maximum of 30% by weight in pesticide formulations. That notice referenced a summary of the petition prepared by the Joint Inerts Task Force (JITF), Cluster Support Team Number 14 (CST 14), the petitioner, which is available in the docket, *http://www.regulations.gov.* Two comments were received in response to the Notice of Filing. One of the comments was received from a private citizen who opposed the authorization to sell any pesticide that leaves a residue on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. A second comment was received regarding endocrine effects from soybeans. Since the subject of this tolerance exemption request is not soybeans, this comment is not relevant to this action.

EPA previously published a final rule to establish a tolerance exemption for sodium salts of SSNA (CAS Reg. Nos. 3655–00–3, 61791–56–8, 14960–06–6, 26256–79–1, 90170–43–7, 91696–17–2, and 97862–48–1) under 40 CFR 180.920 in the **Federal Register** of July 29, 2009 (74 FR 37584) (FRL–8425–5). That final rule established a tolerance exemption for sodium salts of SSNA when used as inert ingredients in pesticide formulations applied to growing crops only.

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 section 408(c)(2)(A) of FFDCA, 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 the SSNAs including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with the SSNAs follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their 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.

Specific information on the studies received and the nature of the adverse effects caused by the SSNAs, 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 "Sodium Salts of N-Alkyl (C_8–C_{18})-β-iminodipropionic Acid (SSNAs—JITF CST 14 Inert Ingredients). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations," pages 8–13 and pages 46–49 in docket ID number EPA–HQ–OPP–2009–0098. In this human health risk assessment an exemption from the requirement of a tolerance was assessed for an exemption under 40 CFR 180.920 for pre-harvest use of sodium salts of SSNA where the C_8-C_{18} is linear and may be saturated and/or unsaturated provided that the concentration of the SSNA inert is limited to no more than 30% by weight in pesticide formulations. It was noted in the document that this risk assessment also supports the use of the SSNA inert ingredients in pesticide formulations intended for use post-harvest as well. Because it is likely that the sodium or potassium salts of SSNA readily disassociate in the body to the salt and the active moiety and that the toxicity of the chemical is associated with the active moiety, the Agency concludes that its risk assessment is sufficient to support both the sodium and potassium salts of SSNA. The Agency also concludes that the risk assessment supports the application of these chemicals to animals under 40 CFR 180.930 with the limitation of no more than 30% in pesticide formulations.

The available toxicity data indicate that the SSNAs have low acute oral and dermal toxicity, are potentially

corrosive to the skin, but are also mild to moderate eye irritants. In the OPPTS Harmonized Guideline 870.3650 study with sodium coco β-iminodipropionate in rats, decreased food consumption and body weight gain in males and females at 160 and 600 mg/kg bw/day were observed. Mean liver and kidney weights were increased at the high dose, while testis and epididymides were unaffected. Hypertrophy was found in the livers of males and/or females at the mid- and high-doses as well as renal histopathology in males, acanthosis of the non-glandular stomach in males and females, and inflammation of the glandular and non-glandular stomach in females. In the absence of any evidence of hepatic toxicity, liver hypertrophy was considered an adaptive effect and non-adverse.

No reproduction or developmental effects were noted in the database and there was no evidence of neurotoxicity.

In general, surfactants are surface-active materials that can damage the structural integrity of cellular membranes at high dose levels. Thus, surfactants are often corrosive and irritating in concentrated solutions. It is possible that some of the observed toxicity seen in the repeated studies, such as inflammation of the glandular stomach, can be attributed to the corrosive and irritating nature of these surfactants.

There are no published metabolism studies for this series of surfactants. The SSNA mammalian metabolism pathway is based on analogy to well-described pathways for tertiary amines and fatty acids. Overall it is anticipated that the various metabolites are not systemically toxic and would be rapidly conjugated and excreted.

The SSNA surfactants (mono and di-sodium propionates) may be conjugated and excreted directly. Alternatively, the tertiary amine dipropionate may be oxidized in the liver by monoamine oxidases to generate the intact tertiary amine dipropionate N-oxide which may either be conjugated and excreted or metabolically cleaved to a dipropionate oxime type metabolite that is conjugated and excreted. The linear fatty acid is metabolized via successive beta-oxidation cycles to release acetic acid and eventually carbon dioxide and water.

There are no chronic toxicity studies available for this series of nonionic surfactants. The Agency used a qualitative structure activity relationship (SAR) database, DEREK Version 11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts were identified.

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.*

A summary of the toxicological endpoints for the SSNAs used for human health risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR THE SSNAS FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/ scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary	An effect attributable to a single exposure was not identified.		
Chronic dietary (All populations)	NOAEL= 43 mg/kg/day UF_A = 10x. UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.43 mg/kg/day. cPAD = 0.43 mg/kg/day.	Combined Repeated Dose Toxicity Study with the Reproduction/ Developmental Toxicity Screening Test-Rat OPPTS Harmonized Guideline 870.3650 (CAS Reg. No. 3655–00–3). Parental LOAEL = 160 mg/kg/day based on decreased body weight gain in males and females during the pre-mating period, and an increased incidence of microscopic lesions in the kidneys of males and acanthosis of the glandular + non-glandular stomachs of females. Reporductive/Developmental LOAEL was not observed.
Incidental Oral, Dermal and Inhalation (Short-, and Intermediate-, and Long-Term).	NOAEL= 43 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x 5% dermal and 100% inhalation absorption assumed.	LOC for MOE = 100	Combined Repeated Dose Toxicity Study with the Reproduction/ Developmental Toxicity screening Test-Rat OPPTS Harmonized Guideline 870.3650 (Cas Reg. No. 3655–00–3). Parental LOAEL = 160 mg/kg/day based on decreased body weight gain in males and females during the pre-mating period and an increased incidence of microscopic lesions in the kidneys of males and acanthosis of the glandular + non-glandular stomachs of females. Reproductive/Developmental LOAEL was not observed.
Cancer (oral, dermal, inhalation).	Classification: No animal toxicity data available for an assessment. Based on SAR analysis, the SSNAs are not expected to be carcinogenic.		

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures.

NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies).

UF_H = potential variation in sensitivity among members of the human population (intraspecies). PAD = population adjusted dose (a = acute, c = chronic). FQPA SF = FQPA Safety Factor. RfD = reference dose. MOE = margin of exposure. LOC = level of concern. N/A = not applicable.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to the SSNAs, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from the SSNAs in food as follows:

i. *Acute exposure.* No adverse effects attributable to a single exposure of the SSNAs were seen in the toxicity databases; therefore, an acute exposure assessment for the SSNAs is not necessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for SSNAs. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled "Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts." (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738. In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural products are generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient. In the case of the SSNAs, EPA made a specific adjustment to this dietary exposure assessment to account for the use limitations of the amount of SSNAs that may be in formulations (no more than 30% by weight in pesticide formulations) and assumed that the SSNAs are present at the maximum limitation rather than at equal quantities with the active ingredient. This remains a very conservative assumption because surfactants are generally used at levels far below this percentage.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

iii. Cancer. The Agency used a qualitative structure activity relationship (SAR) database, DEREK11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts for carcinogenicity were identified. SSNAs are not expected to be carcinogenic. Therefore a cancer dietary exposure assessment is not necessary to assess cancer risk.

iv. Anticipated residue and percent crop treated (PCT) information.

EPA did not use anticipated residue and/or PCT information in the dietary assessment for SSNAs. Tolerance level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for SSNAs in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of SSNAs. Further information regarding EPA drinking water models used in the pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

A screening level drinking water analysis, based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) was performed to calculate the estimated drinking water concentrations (EDWCs) of SSNAs. Modeling runs on four surrogate inert ingredients using a range of physical chemical properties that would bracket those of the SSNAs were conducted. Modeled acute drinking water values ranged from 0.001 ppb to 41 ppb. Modeled chronic drinking water values ranged from 0.0002 ppb to 19 ppb. Further details of this drinking water analysis can be found at *http://www.regulations.gov* in the document "Sodium Salts of N-Alkyl (C_8–C_{18})-β-iminodipropionic Acid (SSNAs—JITF CST 14 Inert Ingredients). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations," pages 13–14 and pages 51–53 in docket ID number EPA–HQ–OPP–2009–0098.

For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for the SSNAs, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compounds and for the metabolites of concern. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). SSNAs may be used as inert ingredients in pesticide products that are registered for specific uses that may result in both indoor and outdoor residential exposures. A screening level residential exposure and risk assessment was completed for products containing the SSNAs as inert ingredients. In this assessment, representative scenarios, based on end-use product application methods and labeled application rates, were selected. For each of the use scenarios, the Agency assessed residential handler (applicator) inhalation and dermal exposure for indoor and outdoor scenarios with high exposure potential (*i.e.,* exposure scenarios with high end unit exposure values) to serve as a screening assessment for all potential residential pesticides containing SSNAs. Similarly, residential post application dermal and oral exposure assessments were also performed utilizing high end indoor and outdoor exposure scenarios. Further details of this residential exposure and risk analysis can be found at *http://www.regulations.gov* in the memorandum entitled "JITF Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations" (D364751, 5/7/09, Lloyd/LaMay) in docket ID number EPA–HQ–OPP–2008–0710.

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 the SSNAs to share a common mechanism of toxicity with any other substances, and the SSNAs do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that the SSNAs do 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.* The toxicology database is adequate to assess risk for the SSNAs when used as inert ingredients in pesticide formulations. The toxicity data available on the SSNAs consists of one OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/development toxicity screening test (rat) for the representative surfactant, sodium coco beta-iminodipropionate (CAS Reg. No. 3655–00–3). There was no evidence of increased sensitivity in young animals because no developmental or reproductive toxicity was observed in the OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity study. No treatment related effects were observed on litter sizes or on the early development of pups.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for SSNAs is considered adequate for assessing the risks to infants and children (the available studies are described in unit IV.D.2.). The Agency has determined that the OPPTS Harmonized Guideline 870.3650, Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test in rats is adequate to assess the toxicity of this chemical because the study provides information on systemic toxicity, neurotoxicity and immunotoxicity following repeated exposure, as well as assessing possible developmental and reproductive effects. The study measures various toxicological parameters such as hematology, clinical biochemistry, gross pathology and histopathology. In this study, no treatment related adverse effects were observed in any of the observed or measured parameters at dose levels below the high dose level of 600 mg/kg/day except for decreased body weight gain during the pre-mating period, and increased incidence of microscopic renal lesions in males and congestion and inflammation of the glandular and non-glandular stomachs of females at the mid level dose level of 160 mg/kg/day. Stomach epithelial cell congestion/inflammation is an effect attributable to local irritation rather than systemic activity. The Agency notes that surfactants are surface-active materials that can damage the structural integrity of cellular membranes at high dose levels. Thus, surfactants are often corrosive and irritating in concentrated solutions. The observed toxicity seen in the repeated dose studies are attributable to the corrosive and irritating nature of these surfactants. The Agency has considerable toxicity information on surfactants which indicates that their effects do not progressively increase in severity over time. In addition, use of the full 10X interspecies factor will actually provide an additional margin of safety because it is not expected that humans' response to local irritation/corrosiveness effects would be markedly different from animals. The database on the SSNAs indicates that the target organ toxicity is occurring at relatively high doses. Based on the above considerations, the Agency concluded that there is no need for additional data and an additional FQPA safety factor is not necessary.

ii. No quantitative or qualitative increased susceptibility was demonstrated in the offspring in the OPPTS Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats following *in utero* and post-natal exposure.

iii. There are no neurotoxicity studies available for this series of nonionic

surfactants. However a Functional Observation Battery (FOB) to evaluate neurotoxicity was performed in the Combined Repeated Dose/ Developmental Screening study and only a minor decrease in temperature was observed in males at the mid and high doses. The effect was likely due to normal biological variation and; therefore, was not considered treatment-related. Thus, there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iv. There are no residual uncertainties identified in the exposure databases. The food and drinking water assessment is not likely to underestimate exposure to any subpopulation, including those comprised of infants and children. The food exposure assessments are considered to be highly conservative, as they are based on the use of the highest tolerance level from the surrogate pesticides for every food and 100% crop treated is assumed for all crops. EPA also made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to SSNAs in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by the SSNAs.

E. Aggregate Risks and Determination of Safety

Determination of safety section. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (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, the SSNAs are not expected to pose an acute risk.

2. *Chronic risk.* A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for chronic exposure and the use limitations of not more than 30% by weight in pesticide formulations, the chronic dietary exposure from food and water to SSNAs is 27% of the cPAD for the U.S. population and 87% of the cPAD for children 1–2 yrs old, the most highly exposed population subgroup.

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). SSNAs are used as inert ingredients in pesticide products that are currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to SSNAs. Using the exposure assumptions described in this unit, EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in aggregate MOEs of 160 for both adult males and females respectively. EPA has concluded the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 100 for children. As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

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). SSNAs are currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to SSNAs. Using the exposure assumptions described in this unit, EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in aggregate MOEs of 430 and 450 for adult males and females, respectively. EPA has concluded the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 110 for children. As the level of concern is for MOEs that are lower than 100, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to SSNAs.

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 residues of SSNAs.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of the SSNAs in or on any food commodities. EPA is establishing a limitation on the amount of the SSNAs that may be used in pesticide formulations. That limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide for sale or distribution that contains greater than 30% of the SSNAs by weight in food use pesticide formulations.

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 the SSNAs.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180. 910 and 40 CFR 180.930 for sodium and potassium salts of N-alkyl (C_8–C_{18})-beta-iminodipropionic acid where the C_8–C_{18} is linear and may be saturated and/or unsaturated (CAS Reg. Nos. 110676–19–2, 3655–00–3, 61791–56–8, 14960–06–6, 26256–79–1, 90170–43–7, 91696–17–2, and 97862–48–1) when used as inert ingredients in pesticide formulations for pre-harvest and post-harvest uses, as well as, for application to animals at a maximum of 30% by weight in pesticide formulations.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance 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).

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: January 24, 2011.

Lois Rossi,

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. In § 180.910, the table is amended by adding alphabetically the following inert ingredient to read as follows:

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

* * * * *

Inert ingredients	Limits	Uses
Sodium and potassium salts of N-alkyl (C_8–C_{18})-beta-iminodipropionic acid where the C_8–C_{18} is linear and may be saturated and/or unsaturated (CAS Reg. Nos. 110676–19–2, 3655–00–3, 61791–56–8, 14960–06–6, 26256–79–1, 90170–43–7, 91696–17–2, 97862–48–1).	Concentration in formulated end-use products not to exceed 30% by weight in pesticide formulations.	Surfactants, related adjuvants of surfactants.

* * * * *

■ 3. In § 180.930, the table is amended by adding alphabetically the following inert ingredient to read as follows:

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

* * * * *

Inert ingredients	Limits	Uses
Sodium and potassium salts of N-alkyl (C_8–C_{18})-beta-iminodipropionic acid where the C_8–C_{18} is linear and may be saturated and/or unsaturated (CAS Reg. Nos. 110676–19–2, 3655–00–3, 61791–56–8, 14960–06–6, 26256–79–1, 90170–43–7, 91696–17–2, 97862–48–1).	Concentration in formulated end-use products not to exceed 30% by weight in pesticide formulations.	Surfactants, related adjuvants of surfactants.

* * * * *

[FR Doc. 2011–2408 Filed 2–3–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0181; FRL–8860–7]

n-Octyl Alcohol and n-Decyl Alcohol; 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 n-octyl alcohol (CAS Reg. No. 111–87–5); and n-decyl alcohol (CAS Reg. No. 112–30–1) when used as an inert ingredient (solvent or co-solvent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest under EPA regulations. Technology Sciences Group Inc., on behalf of AMVAC, Chemical Corporation, 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 n-octyl alcohol and n-decyl alcohol.

DATES: This regulation is effective February 4, 2011. Objections and requests for hearings must be received on or before April 5, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION** section).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0181. 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: Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8353; e-mail address: *debesai.alganesh@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://www.gpoaccess.gov/ecfr.*

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–2010–0181 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 April 5, 2011. 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–2010–0181, by one of the following methods:

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

II. Petition for Exemption

In the **Federal Register** of March 24, 2010 (75 FR 14154) (FRL–8815–6), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 9E7671) by AMVAC Chemical Corporation, 4695 MacArthur Court, Suit 1250, Newport Beach, CA 90660. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of n-octyl alcohol (CAS Reg. No. 111–87–5); and n-decyl alcohol (CAS Reg. No. 112–30–1) when used as inert ingredients (solvent or co-solvent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. That notice referenced a summary of the petition prepared by AMVAC Chemical Corporation, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

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 section 408(c)(2)(A) of FFDCA, 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 n-octyl alcohol and n-decyl alcohol including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with n-octyl alcohol and n-decyl alcohol follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their 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. Specific information on the studies received and the nature of the adverse effects caused by n-octyl alcohol and n-decyl alcohol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The following provides a brief summary for the risk assessment and conclusions for the Agency's review for the aliphatic alcohols, which include n-octyl alcohol and n-decyl alcohol. The Agency's full decision document for this action is available in the Agency's electronic docket (*regulations.gov*) under the docket number EPA–HQ–OPP–2010–0181. Details regarding the Agency's findings with regards to human health and environmental fate and effects, are found in: "Aliphatic Alcohols: Human Health Chapter of the Reregistration Eligibility Decision (RED) Document Reregistration Case Number 4004 (June 30, 2006). DP Barcode: 325712; PC Codes: 079029, 079038, 079059" (June 30, 2006), and "Ecological Risk Assessment Aliphatic Alcohols Considered in Registration Case 4004". These documents are available on the Agency's Web site in the EPA Docket at: *http://www.regulations.gov* (Docket ID EPA–HQ–2007–0134). Additional information on the use, physical/chemical properties, toxicological effects, and exposure profile of n-octyl and n-decyl alcohols can be found on the 2006 Agency's reassessment decision document for tolerance exemption at *http://www.epa.gov/opprd001/inerts/octyldecyl.pdf*.

Briefly, the available acute toxicity studies indicate the aliphatic alcohols are of low acute toxicity. Acute oral toxicity for n-octyl alcohol was 4,135 milligrams/kilogram (mg/kg) and for n-decyl alcohol was 9,800 mg/kg. Acute inhalation studies with the rat resulted in LC_{50} estimates above the limit concentration of 2 milligrams per Liter (mg/L). Eye irritation studies with undiluted test compound resulted in severe and sometimes non-reversible eye damage. Dermal irritation studies revealed slight to moderate irritation in rabbits. The aliphatic alcohols generally did not produce sensitization in guinea pigs.

A 90-day dermal toxicity study in rats with fatty alcohol blend (56.7% decanol, 42.7% octanol) at dose levels of 0, 100, 300, or 1,000 mg/kg resulted in severe irritation at the application site. Severe irritation including fissuring of the skin occurred in 40% of the animals at 100 mg/kg/day and 80% of the animals at the limit dose. Slight changes in hematology, clinical chemistry, and organ weights were noted at the limit dose of 1,000 mg/kg/day. The systemic toxicity NOAEL in the 90-day dermal study was 300 mg/kg/day based on changes in clinical chemistry and hematological parameters, and organ weight changes seen at the LOAEL of 1,000 mg/kg/day. No systemic or developmental toxicity was observed in the developmental toxicity studies in rats via the inhalation with n-decyl alcohol at the maximum attainable vapor concentration (100 mg/cubic meter (m^3)) approximately equivalent to 30 mg/kg/day. Similarly, no maternal or developmental toxicity was seen in an oral (gavage) developmental toxicity study in rats with fatty alcohol blend at doses up to 1,000 mg/kg/day. Aliphatic alcohols gave a negative response for mutagenicity in the available studies. No long term studies or carcinogenicity studies are available in the database via oral routes of exposure. However, as a class, the straight chain aliphatic alcohols are not considered carcinogenic. In addition, the Agency used a qualitative structure activity relationship (QSAR) database, DEREK11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts for carcinogenicity were identified.

No neurotoxicity studies are available in the database. The clinical signs suggestive of neurotoxicity were observed following a single high bolus dose and/or repeated high bolus doses. These signs were transient and considered due to bolus dosing.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to n-octyl and n-decyl alcohol, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from n-octy and n-decyl alcohol in food as follows:

i. *Acute exposure.* No adverse effects attributable to a single exposure of n-octyl alcohol and n-dectyl alcohol were seen in the available toxicity studies. Therefore, an acute dietary risk assessment for n-octyl and n-decyl alcohol was not conducted.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for n-octyl and n-decyl alcohol. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredients. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled "Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts." (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentration of active ingredient in agricultural products is generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather, there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, and then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically 1 to 2 orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

iii. *Cancer.* The Agency used a qualitative structure activity relationship (QSAR) database, DEREK11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts for carcinogenicity were identified. Therefore, a quantitative dietary exposure assessment was not conducted for the purpose of evaluating cancer risk.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and or PCT information in the dietary assessment for n-octyl and n-decyl alcohol. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for, a conservative drinking water concentration value of 100 parts per billion (ppb) based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). Due to the low hazard profile and lack of endpoint selection for the dermal route of exposure, no post application dermal risk was assessed.

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 n-octyl and n-decyl alcohols to share a common mechanism of toxicity with any other substances, and does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that n-octyl and n-decyl alcohol do 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*.

C. Safety Factor for Infants and Children

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 Food Quality Protection Act Safety Factor (FQPA 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. EPA has determind that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. The decision is based on the following findings:

1. The database on n-octyl alcohol and n-decyl alcohol is considered adequate for FQPA assessment. The database includes two developmental toxicity studies in rats via oral route of exposure, one developmental toxicity study in rats via inhalation routes and one Organization of Economic Development (OECD) 422 study (reproductive and developmental screening study) in rats. In addition, there are a 90-day dermal toxicity study in rats and several mutagenicity studies.

2. There is no evidence of increased susceptibility of infants and children from exposure to low chain aliphatic alcohols. In developmental toxicity studies in rats via the oral route, no developmental toxicity was seen at doses 1,000 mg/kg/day and above. No developmental or systemic toxicity was seen in the developmental toxicity study in rats via the inhalation route of exposure. No evidence of fetal or systemic toxicity was seen at doses up to 2,000 mg/kg/day in the OECD 422 study in rats.

3. There is no indication in the database that n-octyl and n-decyl alcohols are neurotoxic chemicals except when administered in high bolus doses. Therefore, there is no need for a developmental neurotoxicity study. There is no indication of immunotoxicity in the available database; therefore, an immunotoxicity study is not required.

4. There are no long-term studies in the database but there are no concerns for the lack of such data because the available studies indicate that no systemic toxicity was seen at the limit dose or above except in one developmental gavage study in rats in which the salivation was seen at the high dose of 1,000 mg/kg/day. This effect is considered to be due to bolus gavage dosing. This study and endpoint was used for the chronic reference dose (RfD), therefore, providing conservative estimates.

5. There are no residual uncertainties identified in the exposure databases. The food and drinking water assessment is not likely to underestimate exposure to any subpopulation, including those comprised of infants and children. The dietary exposure assessments are considered to be highly conservative as they are based on the use of the highest tolerance level from the surrogate pesticides for every food and 100% crop treated is assumed for all crops. EPA also made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to n-octyl alcohol and n-decyl alcohol in drinking water. These assessments will not underestimate the exposure and risks posed by both alcohols. Based on the above considerations; EPA has reduced the FQPA factor to 1X.

D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic population adjusted dose (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 point of departures (PODs) to ensure that an adequate margin of exposure (MOE) exists.

1. *Acute aggregate (food and drinking water) risk.* No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, n-octyl alcohol and n-decyl alcohol are not expected to pose an acute risk.

2. *Chronic aggregate (food and drinking water) risk.* A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for chronic exposure, the chronic dietary exposure from food and water to n-octyl alcohol and n-decyl alcohol is 5.1% of the cPAD for the U.S. population and 16.6% of the cPAD for children 1–2 years old, the most highly exposed population subgroup. The chronic dietary exposure estimates for food and drinking water are below the Agency's level of concern (<100% cPAD) for the U.S. population and all population subgroups.

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). Short- term quantitative aggregate risk assessment was not conducted because there is low hazard via the oral, dermal and inhalation routes of exposure. The endpoint of concern for the chronic RfD was based on the conservative NOAEL of 375 mg/kg/day. This NOAEL was based on salivation seen at the LOAEL of 1,000 mg/kg/day in a developmental toxicity study in rats. The dietary exposure from food and water is estimated to be 5.1% of the cPAD. The short-term residential exposure is not expected to be 95% of the cPAD because dermal and inhalation exposures are not likely to be significant since the alcohols will be readily volatized and dissipated in the environment. Therefore, aggregate short-term exposure does not pose a risk concern.

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). Intermediate-term quantitative aggregate risk assessment was not conducted because there is low hazard via the oral, dermal and inhalation routes of exposure. The endpoint of concern for the chronic RfD was based on the conservative NOAEL of 375 mg/kg/day. This NOAEL was based on salivation seen at the LOAEL of 1,000 mg/kg/day in a developmental toxicity study in rats. The dietary exposure from food and water is estimated to be 5.1% of the cPAD. The intermediate-term residential exposure is not expected to be 95% of the cPAD because dermal and inhalation exposure are not likely to be significant since the alcohols will be readily volatized and dissipated in the environment. Therefore quantitative short-term residential exposure assessment was not conducted.

5. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to n-octyl alcohol and n-decyl alcohol.

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 n-octyl alcohol and n-decyl alcohol residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residue of n-octyl alcohol and n-decyl alcohol in or any food commodities.

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 n-octyl and n-decyl alcohol.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for of n-octyl alcohol (CAS Reg. No. 111–87–5); and n-decyl alcohol (CAS Reg. No. 112–30–1) when used as an inert ingredient (solvent or co-solvent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest under 40 CFR 180.910.

VII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance 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 exemptions 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).

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: January 24, 2011.

Lois Rossi,

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. In § 180.910, the table is amended by adding alphabetically two new 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
* * * * *	*	*
n-Decyl alcohol (CAS Reg. No. 112–30–1)		Solvent or co-solvent.
* * * * *	*	*
n-Octyl alcohol (CAS Reg. No. 111–87–5)		Solvent or co-solvent.
* * * * *	*	*

* * * * *

§ 180.920 [Amended]

■ 3. Section 180.920 is amended by removing from the table the entries for "n-Decyl alcohol" and "n-Octyl alcohol".

[FR Doc. 2011–2398 Filed 2–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0733; FRL–8860–6]

(S,S)-Ethylenediamine Disuccinic Acid Trisodium Salt; 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 (S,S)-ethylenediamine disuccinic acid trisodium salt (CAS Reg. No. 178949–82–1) when used as an inert ingredient (sequestrant or chelating agent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest under EPA regulations. Innospec Limited 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 (S,S)-ethylenediamine disuccinic acid trisodium salt.

DATES: This regulation is effective February 4, 2011. Objections and requests for hearings must be received on or before April 5, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION** section).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0733. 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: Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8353; e-mail address: *debesai.alganesh@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://www.gpoaccess.gov/ecfr.*

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–2010–0733 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 April 5, 2011. 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–2010–0733, by one of the following methods:

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

II. Petition for Exemption

In the **Federal Register** of September 23, 2010 (75 FR 57942) (FRL–8845–4), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 0E7753) by Innospec Limited, c/o Walter G. Talarek, PC, 1008 Riva Ridge Drive, Great Falls, VA 22066–1620. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of (S,S)-ethylenediamine disuccinic acid trisodium salt (CAS Reg. No. 178949–82–1) when used as an inert ingredient as sequestrant or chelating agent in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. That notice referenced a summary of the petition

prepared by Innospec Limited, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing. For ease of reading in this document, (S,S)-ethylenediamine disuccinic acid trisodium salt is referred to as (S,S)-EDDS trisodium salt.

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 no toxicity; 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 and 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 section 408(c)(2)(A) of FFDCA, 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 (S,S)-EDDS trisodium salt including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with (S,S)-EDDS trisodium salt follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their 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.

The Agency completed a risk assessment on October 28, 2008 for the approval of an exemption from the requirement of a tolerance under 40 CFR 180.920 for pre-harvest use for a substantially similar chemical, i.e., (S,S)-ethylenediamine disuccinic acid, (CAS Reg. No. 20846–91–7) which is referred to as (S,S)-EDDS. This risk assessment as well as data on another similar compound, ethylenediamine tetraacetic acid (EDTA), was used to evaluate the current request for (S,S)-EDDS trisodium salt (CAS Reg. No. 178949–82–1) because it is likely that (S,S)-EDDS trisodium salt, EDTA, and (S,S)-EDDS readily disassociates in the body to their respective salts or acids and the active moiety ethylenediamine. Therefore, these toxicological data can be bridged.

Briefly, studies show that (S,S)-EDDS has low acute and subchronic toxicity, is a mild eye irritant, and is not a dermal irritant or skin sensitizer. Based on the results of submitted mutagenicity studies, (S,S)-EDDS is not likely to be mutagenic. No carcinogenicity studies are available on (S,S)-EDDS, however, NTP tested trisodium EDTA in mice and rats and it showed no carcinogenic potential. Based on its similarity with EDTA and lack of mutagenicity, (S,S)-EDDS is not likely to be carcinogenic to humans at low doses. In addition, metabolism studies show that (S,S)-EDDS is poorly absorbed but rapidly excreted within 72 hours.

The (S,S)-EDDS studies indicate developmental toxicity only at high dosage levels that resulted in maternal toxicity (limit dose levels). In a developmental toxicity study in rats, the maternal toxicity low observed adverse effect level (LOAEL) is 944.1 milligrams/kilograms/body weight/day (mg/kg bw/day) (16,000 parts per million (ppm)) (limit dose) based on reductions in body weight, body weight gain, feed consumption, and blood levels of zinc, iron, and copper, and the no observed adverse effect level (NOAEL) is 551.1 mg/kg bw/day (8,000 ppm). The developmental toxicity LOAEL of 944.1 was based on an increase in fetal death, reduced fetal growth, and multiple developmental malformations and variations affecting almost all major organ systems and skeletal structures, and the NOAEL is 551.1 mg/kg bw/day (8,000 ppm). Therefore, the maternal and developmental NOAEL are both 551.1 mg/kg bw/day (8,000 ppm). The results of this dietary study indicate qualitative evidence of increased susceptibility; however, the concern for this increased susceptibility is low for the reasons discussed in Unit IV.D.

Specific information on the studies received and the nature of the adverse effects caused by (S,S)-EDDS as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in the document for Petition #4E6818 (S,S)-ethylenediaminedisuccinic acid (CAS Reg. No. 20846–91–7) for tolerance exemption under 40 CFR 180.920 under docket ID number EPA–HQ–OPP–2008–0250.

B. Toxicological Points of Departure/Levels of Concern

Due to the low potential hazard of this chemical, quantitative dietary or occupational and residential exposure assessment is not necessary. However, EPA conducted quantitative chronic dietary assessment using the NOAEL of 551.0 mg/kg/day based on reductions in body weight, body weight gain, feed consumption seen at the LOAEL of 944

mg/kg/day observed in a developmental toxicity study in rats with uncertainty factor of 100 (10x for intraspecies variability and 10x for interspecies extrapolation). The Food Quality Protection Act (FQPA) safety factor (SF) was reduced to 1X.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses and drinking water.* Since toxicity effects were seen only at the limit dose for (S,S)-EDDS, a quantitative exposure assessment for (S,S)-EDDS trisodium salt is not needed. Any possible dietary exposure to (S,S)-EDDS trisodium salt from its use as an inert ingredient in pesticide products would be through consumption of food to which pesticide products containing it have been applied, although the rapid biodegradation properties will reduce the amount of (S,S)-EDDS trisodium salt that is available for uptake by plants. Run-off into surface water is not anticipated due to rapid biodegradation, and therefore, contributions of concern to drinking water are not expected.

To further support this conclusion, the Agency performed a dietary (food and drinking water) exposure assessment for (S,S)-EDDS trisodium salt using worst case assumptions as detailed below. This exposure assessment assumed that:

i. (S,S)-EDDS trisodium salt would be used as an inert ingredient in all food use pesticide formulations applied to all crops.

ii. One hundred percent of all food crops would be treated with pesticides containing (S,S)-EDDS trisodium salt.

iii. (S,S)-EDDS trisodium salt residues would be present in all crops at levels equal to or exceeding the highest established tolerance levels for any pesticide active ingredient for the use, and

iv. A conservative default value of 100 parts per billion (ppb) for the concentration of an inert ingredient in all sources of drinking water was used.

This approach is highly conservative as it is extremely unlikely that (S,S)-EDDS trisodium salt would have such use as pesticide product inert ingredients and be present in food commodities and drinking water at such high levels.

EPA also considered whether it should quantitatively aggregate exposure to (S,S)-EDDS trisodium salt and EDTA (ethylenediamine tetraacetic acid) and its salts and S,S-ethylenedamine disuccinic acid (S,S-EDDS) in assessing risk. However, because these chemicals are chelating agents, it is not expected that more than one of these chemicals would be present in the same pesticide formulation. Further, in quantitatively assessing risk, EPA has assumed that (S,S)-EDDS trisodium salt would be present in all foods and at extremely high values. Thus, EPA believes that its approach to aggregate exposure is conservative and health protective.

2. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

(S,S)-EDDS trisodium salt may be used as an inert ingredient in pesticide products that are registered for specific uses that may result in both outdoor and indoor residential exposures. In addition, (S,S)-EDDS trisodium salt may be used in and around the home. Although dermal and inhalation exposures are possible from residential use of pesticide products containing this inert ingredient, negligible inhalation and dermal absorption is expected based on its low toxicity, poor absorption, and rapid biodegradation properties of the chemical and therefore, an aggregate risk assessment was not performed.

3. *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."

As explained above, EPA has based its assessment of the toxicity of (S,S)-EDDS trisodium salt on data on the toxicity of EDTA (ethylenediamine tetraacetic acid) and its salts and S,S-ethylenedamine disuccinic acid (S,S-EDDS). For the same reason, EPA believes that aggregate exposure to these compounds would have cumulative toxic effects. EPA's approach to aggregating exposures to these compounds is discussed in Unit IV.C.1.

EPA has not found (S,S)-EDDS trisodium salt to share a common mechanism of toxicity with any other substances, and (S,S)-EDDS trisodium salt does not appear to produce a toxic metabolite produced by any other substances. For the purposes of this tolerance action, therefore, EPA has assumed that (S,S)-EDDS trisodium salt does not have a common mechanism of toxicity with any 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*.

However, these chemicals are chelating agents, therefore, it is not expected that all of these chemicals would be present in the same pesticide formulation. A quantitative aggregate exposure assessment was not performed for this class of chemicals since highly conservative dietary exposure assessments (food and water) for U.S. general population was less than 5% of the cPAD.

D. Safety Factor for Infants and Children

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.

EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

1. EPA has sufficient data to assess the toxicity of (S,S)-EDDS trisodium salt. Although the toxicological database on (S,S)-EDDS trisodium salt is limited, adequate long term studies are available on structurally related compounds such as (S,S)-EDDS calcium disodium EDTA, and trisodium EDTA. Based on the structural similarities in these compounds, EPA concluded the database for (S,S)-EDDS trisodium salt is adequate.

2. EPA has low concern regarding the potential developmental effects of (S,S)-EDDS trisodium salt. The (S,S)-EDDS studies indicate developmental toxicity only at high dosage levels that resulted in maternal toxicity (limit dose levels). In evidence of increased susceptibility; however, the concern for this increased susceptibility is low because:

i. Effects were seen only at the limit dose and in the presence of maternal toxicity.

ii. There is a well characterized NOAEL (551.1 mg/kg/day) protecting from these effects.

iii. The presence of zinc, iron and copper may have contributed to the observed developmental toxicity, since other chelating agents (such as EDTA) have been shown to impact zinc, iron, and copper levels and some of the developmental toxicity.

iv. The results were not reproduced in a concurrently conducted gavage study in rats at doses up to 1,000 mg/kg/day.

3. Neurotoxicity studies are not available in the database; however, there is no evidence of clinical signs of neurotoxicity in the available studies. Therefore, developmental neurotoxicity study is not required.

4. Immunotoxicity study is not available; however, there is no evidence of immune system involvement in the available studies.

5. In the absence of actual exposure data on (S,S)-EDDS trisodium salt, a highly conservative exposure estimate was utilized thereby reducing uncertainty associated with exposures by infants and children to (S,S)-EDDS trisodium salt.

E. Aggregate Risks and Determination of Safety

Considering the low toxicity, poor absorption, and rapid biodegradation properties of (S,S)-EDDS trisodium salt, residues of concern are not anticipated from dietary exposures (food and drinking water) or from residential exposures (inhalation and dermal). Utilizing a highly conservative aggregate exposure assessment, EPA has concluded that aggregate exposures to (S,S)-EDDS trisodium salt are more than three orders of magnitude less than the dose at which no adverse effects were seen in the most sensitive animal study and are therefore below the level of concern. In addition, this highly conservative exposure assessment is protective of any possible non-occupational exposures to (S,S)-EDDS trisodium salt as it results in exposure estimates orders of magnitude greater than the high-end exposure estimates for residential uses of pesticides routinely used by the Office of Pesticide Programs. The Agency has not identified any concern for carcinogenicity related to (S,S)-EDDS trisodium salt.

Taking into consideration all available information on (S,S)-EDDS trisodium salt, EPA has determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to (S,S)-EDDS trisodium salt under reasonable foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.910 for residues of (S,S)-EDDS trisodium salt when used as an inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for (S,S)-EDDS trisodium salt nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for (S,S)-EDDS trisodium salt (CAS Reg. No. 178949–82–1) when used as an inert ingredient (sequestrant or chelating agent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

VII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance 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 exemption 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).

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: January 24, 2011.

Lois Rossi,

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. In § 180.910, the table is amended by adding alphabetically the following inert ingredient:

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

* * * * *

Inert ingredients	Limits	Uses
* * * * * * *		
(S,S)-Ethylenediamine disuccinic acid trisodium salt (CAS Reg. No. 178949–82–1).		Sequestrant or chelating agent.
* * * * * * *		

[FR Doc. 2011–2399 Filed 2–3–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[Docket No. USCG–2010–0517]

RIN 1625–AB48

Great Lakes Pilotage: 2011 Annual Review and Adjustment

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is increasing the rates for pilotage service on the Great Lakes to generate sufficient revenue to cover allowable expenses, target pilot compensation, and return on investment. This increase reflects a projected August 1, 2011, increase in benchmark contractual wages and benefits and an adjustment for deflation. This rule promotes the Coast Guard's strategic goal of maritime safety.

DATES: This final rule is effective August 1, 2011.

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–2010–0517 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2010–0517 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Paul Wasserman, Chief, Great Lakes Pilotage Division, Commandant (CG–5522), Coast Guard; telephone 202–372–1535, or e-mail *Paul.M.Wasserman@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

AMOU American Maritime Officer Union
CFR Code of Federal Regulations
FR **Federal Register**
GLPAC Great Lakes Pilotage Advisory Committee
MISLE Marine Information for Safety, and Law Enforcement
NAICS North American Industry Classification System
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
U.S.C. United States Code

II. Regulatory History

On August 19, 2010, we published a notice of proposed rulemaking (NPRM) entitled "Great Lakes Pilotage Rates: 2011 Annual Review and Adjustment" in the **Federal Register** (75 FR 51191). We received three comments on the proposed rule. No public meeting was requested and none was held.

III. Basis and Purpose

The basis of this rulemaking is the Great Lakes Pilotage Act of 1960 ("the Act") (46 U.S.C. chapter 93), which requires vessels engaged in foreign trade to use U.S. registered pilots while transiting the St. Lawrence Seaway and the Great Lakes system. The Act also requires the Secretary of Homeland Security to "prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services." 46 U.S.C. 9303(f). The Secretary's duties and authority under the Act have been delegated to the Coast Guard, and Coast Guard regulations implementing the Act appear in parts 401 through 404 of Title 46, Code of Federal Regulations (CFR).

The Act requires annual pilotage rate reviews to be completed by March 1 of each year, with a "full ratemaking" to establish new base rates at least once every five years. The purpose of this rulemaking is to comply with 46 U.S.C. 9303(f) by applying the ratemaking methodology described in Appendix C to 46 CFR part 404, which will satisfy the requirement for the annual pilotage rate review for 2011.

IV. Background

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Coast Guard Director of Great Lakes Pilotage to operate a pilotage pool. It is

important to note that, while we set rates, we do not control the actual number of pilots an association maintains, so long as the association is able to provide safe, efficient, and reliable pilotage service, nor do we control the actual compensation that pilots receive. The actual compensation is determined by each of the three district associations, which use different compensation practices.

District One, consisting of Areas 1 and 2, includes all U.S. waters of the St. Lawrence River and Lake Ontario. District Two, consisting of Areas 4 and 5, includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. District Three, consisting of Areas 6, 7, and 8, includes all U.S. waters of the St. Mary's River, Sault Ste. Marie Locks, and Lakes Michigan, Huron, and Superior. Area 3 is the Welland Canal, which is serviced exclusively by the Canadian Great Lakes Pilotage Authority and, accordingly, is not included in the U.S. rate structure. Areas 1, 5, and 7 have been designated by Presidential Proclamation, pursuant to the Act, to be waters in which pilots must at all times be fully engaged in the navigation of vessels in their charge. Areas 2, 4, 6, and 8 have not been so designated because they are open bodies of water. Under the Act, pilots assigned to vessels in these areas are only required to "be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master." 46 U.S.C. 9302(a)(1)(B).

Our pilotage regulations implement the Act's requirement for annual reviews of pilotage rates and a full ratemaking at least once every five years. 46 CFR 404.1. To assist in calculating pilotage rates, the regulations require pilotage associations to submit annual financial statements prepared by certified public accounting firms. In addition, every fifth year, in connection with the full ratemaking, we contract with an independent accounting firm to conduct a full audit of the accounts and records of the pilotage associations and prepare and submit financial reports relevant to the ratemaking process. In those years when a full ratemaking is conducted, we generate the pilotage rates using Appendix A to 46 CFR Part 404. The last Appendix A review was concluded in 2006 (71 FR 16501, April 3, 2006). Between the five-year full ratemaking intervals, we annually review the pilotage rates using Appendix C to Part 404 and adjust rates when deemed appropriate. We conducted Appendix C reviews in 2007, 2008, 2009, and 2010 and increased rates in each year. The 2010 final rule was published on February 23, 2010 (75 FR 7958) and took effect on August 1, 2010. The terms and formulas used in Appendix A and Appendix C are defined in Appendix B to Part 404.

This final rule concludes the annual Appendix C rate review for 2011 and increases rates over those that took effect August 1, 2010.

V. Discussion of Comments and Changes

We received comments from three persons during the NPRM public comment period.

Comments outside the scope of the rule. One commenter made several statements which, although they are outside the scope of this rule, require correction or clarification. The commenter said we improperly base our ratemaking calculations on union contracts, do not allow for consultation with pilots or industry, provide no meaningful opportunity for appealing decisions made by the Director, and no longer "maintain" the Great Lakes Pilotage Advisory Committee (GLPAC). The use of union contracts in calculating pilot benefits and compensation as part of the overall rate calculation is an explicit requirement of the current methodology. 46 CFR 404.5, 46 CFR part 404, App. A, step 2.A. All of our ratemakings are subject to notice and comment procedure, providing ample opportunity for input from pilots, industry, and the general public. Decisions of the Director may be appealed pursuant to 46 CFR subpart 1.03, and ultimately all Coast Guard decisions are subject to judicial review. The Coast Guard has not only taken all necessary steps to maintain GLPAC, but in recent years we have sharpened our focus on using GLPAC to provide us with the type of consultation the commenter appears to have in mind. Congress established GLPAC specifically for that purpose.

Ratemaking methodology. Two commenters recommended that we suspend any rate increase until the ratemaking methodology is reviewed and updated as needed. We requested public comments in 2009 on the need for, and content of, any change to that methodology, and we forwarded those comments to GLPAC (74 FR 35838, July 21, 2009). GLPAC has these comments under consideration, but no action can be taken before the March 1, 2011 deadline for establishing the annual rate adjustment for 2011.

Pilot dispute. One commenter recommended we suspend any rate increase until a dispute between two of the pilotage associations is resolved. The subject matter of this comment is not within the scope of this rulemaking.

Calculations. One commenter disagreed with the way we applied the methodology in calculating bridge hours and the number of pilots in Areas 4 and 5. We performed all calculations in accordance with Appendix C to Part 404. We used our forecast of bridge hour demand and the Director's discretion to determine the number of pilots. As we stated in the NPRM (75 FR at 51197), this determination applied the same reasoning we have used since the 2008 ratemaking, which was explained in the 2008 final rule (74 FR 220, 221–22, Jan. 5, 2009) and also discussed at length in the 2009 ratemaking final rule (74 FR 35812, 35813–14, Jul. 21, 2009).

One commenter said that our ratemaking is arbitrary and capricious because we count delay and detention in calculating bridge hours for Areas 6, 7, and 8 but not in Areas 4 and 5. Under Step 1 of the Appendix C methodology, we do not count pilot delay or detention in the calculation of bridge hours. No information was provided by the commenter to substantiate this claim, which runs counter to our discussion of bridge hour calculations in ratemaking documents over many years, and which repeats an allegation made in 2007 and refuted in that year's interim rule: "The Coast Guard has never considered delay, detention, or travel time to be included in the definition of bridge hours and has never knowingly included these items in its bridge hour computations." (72 FR 8117, February 23, 2007). We did not consider delay, detention, or travel time in our bridge hour computations for this final rule.

VI. Discussion of the Final Rule

A. Summary

We are increasing pilotage rates in accordance with the methodology outlined in Appendix C to 46 CFR Part 404 effective August 1, 2011. The new rates are unchanged from what we proposed in the NPRM. Table 1 shows the new rates for each Area.

TABLE 1—2011 AREA RATE CHANGES

If pilotage service is required in:	Then the percentage of increase over the current rate is:
Area 1 (Designated waters)	3.57%
Area 2 (Undesignated waters)	3.77
Area 4 (Undesignated waters)	3.75
Area 5 (Designated waters)	3.52
Area 6 (Undesignated waters)	4.89
Area 7 (Designated waters)	3.56
Area 8 (Undesignated waters)	5.26

Rates for cancellation, delay, or interruption in rendering services (46 CFR 401.420) and basic rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (46 CFR 401.428), have been increased by 6.51 percent in all areas based upon the calculations appearing at Tables 19 through 21, which follow.

B. Calculating the Rate Adjustment

The Appendix C ratemaking calculation involves eight steps:

Step 1: Calculate the total economic costs for the base period (pilot compensation expense plus all other recognized expenses plus the return element, which is net income plus interest) and divide by the total bridge hours used in setting the base period rates;

Step 2: Calculate the "expense multiplier," the ratio of other expenses, and the return element to pilot compensation for the base period;

Step 3: Calculate an annual "projection of target pilot compensation" using the same procedures found in Step 2 of Appendix A;

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2;

Step 5: Adjust the result in Step 4, as required, for inflation or deflation;

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs;

Step 7: Divide prospective unit costs in Step 6 by the base period unit costs in Step 1; and

Step 8: Adjust the base period rates by the percentage changes in unit cost in Step 7.

The base data used to calculate each of the eight steps comes from the 2010 Appendix C review. The Coast Guard also used the most recent union contracts between the American Maritime Officers Union (AMOU) and vessel owners and operators on the Great Lakes to estimate target pilot compensation. However, the current AMOU contracts expire in July 2011, and the Coast Guard has been informed that the contract negotiations will not begin until sometime after that, which is well after the pilotage statute requires that we establish a rate. Accordingly, we have reviewed the terms of both existing and past AMOU contracts and have projected, for the purpose of this ratemaking, that the AMOU contracts effective in 2011 would provide increases in compensation equal to 3%, which is the increase called for in the AMOU contracts over the past two years. We project all other benefits to remain fixed at current levels with the exception of medical plan contributions. Medical plan contributions have increased 10% per year from 2006 through 2010 in the current AMOU contracts. Thus, we forecast an increase of 10% over 2010 medical plan contributions for the AMOU contracts in 2011. Bridge hour projections for the 2011 season have been obtained from historical data, pilots, and industry. All documents and records used in this rate calculation have been placed in the public docket for this rulemaking and are available for review at the addresses listed under **ADDRESSES**.

Some values may not total exactly, due to rounding for presentation in charts. The rounding does not affect the integrity or truncate the actual value of all calculations in the ratemaking methodology described below.

Step 1: Calculate the total economic cost for the base period. In this step, for each area, we add the total cost of target pilot compensation, all other recognized expenses, and the return element (net income plus interest). We divide this sum by the total bridge hours for each area. The result is the cost in each area of providing pilotage service per bridge hour for the base period. Tables 2 through 4 summarize the Step 1 calculations:

TABLE 2—TOTAL ECONOMIC COST FOR BASE PERIOD (2010), AREAS IN DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario
Base operating expense	$578,569	$590,032
Base target pilot compensation	+ $1,677,397	+ $1,020,120
Base return element	+ $11,571	+ $17,701
Subtotal	= $2,267,537	= $1,627,853
Base bridge hours	÷ 5,203	÷ 5,650
Base cost per bridge hour	= $435.81	= $288.12

TABLE 3—TOTAL ECONOMIC COST FOR BASE PERIOD (2010), AREAS IN DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI
Base operating expense	$541,103	$848,469
Base target pilot compensation	+ $816,096	+ $1,677,397
Base return element	+ $27,055	+ $33,939
Subtotal	= $1,384,254	= $2,559,805
Base bridge hours	÷ 7,320	÷ 5,097
Base cost per bridge hour	= $189.11	= $502.22

TABLE 4—TOTAL ECONOMIC COST FOR BASE PERIOD (2010), AREAS IN DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior
Base operating expense	$877,638	$428,384	$691,435
Base target pilot compensation	+ $1,632,191	+ $1,118,265	+ $1,428,167
Base return element	+ $35,106	+ $12,852	+ $20,743
Subtotal	= $2,544,935	= $1,559,501	= $2,140,345
Base bridge hours	÷ 13,406	÷ 3,259	÷ 11,630
Base cost per bridge hour	= $189.84	= $478.52	= $184.04

Step 2. Calculate the expense multiplier. In this step, for each area, we add the base operating expense and the base return element. Then we divide the sum by the base target pilot compensation to get the expense multiplier for each area. Tables 5 through 7 show the Step 2 calculations.

TABLE 5—EXPENSE MULTIPLIER, AREAS IN DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario
Base operating expense	$578,569	$590,032
Base return element	+ $11,571	+ $17,701
Subtotal	= $590,140	= $607,733
Base target pilot compensation	÷ $1,677,397	÷ $1,020,120
Expense multiplier	0.35182	0.59575

TABLE 6—EXPENSE MULTIPLIER, AREAS IN DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI
Base operating expense	$541,103	$848,469
Base return element	+ $27,055	+ $33,939
Subtotal	= $568,158	= $882,408
Base target pilot compensation	÷ $816,096	÷ $1,677,397
Expense multiplier	0.69619	0.52606

TABLE 7—EXPENSE MULTIPLIER, AREAS IN DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior
Base operating expense	$877,638	$428,384	$691,435
Base return element	+ $35,106	+ $12,852	+ $20,743
Subtotal	= $912,744	= $441,236	= $712,178
Base target pilot compensation	÷ $1,632,191	÷ $1,118,265	÷ $1,428,167
Expense multiplier	0.55921	0.39457	0.49867

Step 3. Calculate annual projection of target pilot compensation. In this step, we determine the new target rate of compensation and the new number of pilots needed in each pilotage area, to determine the new target pilot compensation for each area.

(a) Determine new target rate of compensation. Target pilot compensation is based on the average annual compensation of first mates and masters on U.S. Great Lakes vessels. For pilots in undesignated waters, we approximate the first mates' compensation and, in designated waters, we approximate the master's compensation (first mates' wages multiplied by 150% plus benefits). To determine first mates' and masters' average annual compensation, we use data from the most recent AMOU contracts with the U.S. companies engaged in Great Lakes shipping. Where

different AMOU agreements apply to different companies, we apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement.

As of July 2010, there are two current AMOU contracts, which we designate Agreement A and Agreement B. Agreement A applies to vessels operated by Key Lakes, Inc., and Agreement B applies to all vessels operated by American Steamship Co. and Mittal Steel USA, Inc.

Both Agreement A and Agreement B will expire on July 31, 2011. Based on the discussions with AMOU officials, these contracts are not expected to be negotiated until 2011. This does not provide sufficient time to incorporate new rates into the ratemaking process for the 2011 shipping season. The Coast Guard projects that when new AMOU contracts are negotiated in 2011, they will provide for a 3% wage increase effective August 1, 2011. This is in keeping with the recent contractual wage raises under the existing union contracts. Both 2009 and 2010 saw wage raises of 3%. Under Agreement A, we project that the daily wage rate would increase from $270.61 to $278.73. Under Agreement B, the daily wage rate would be increased from $333.58 to $343.59. All other benefits and calculations for these contracts are forecasted to remain identical to the current AMOU contracts, with the exception of the health benefit plan discussed below. The pension plan contribution, which has been a fixed amount, the 401k employers matching contribution of 5% of wages, which is also a set amount, and the monthly contract multipliers are all projected to remain fixed at current AMOU levels. These benefits have not changed their numerical or percentage values over the courses of the previous AMOU agreements still in effect. We do not project that the 2011 contracts will have any impact on these fixed costs.

To calculate monthly wages, we apply Agreement A and Agreement B monthly multipliers of 54.5 and 49.5, respectively, to the daily rate. Agreement A's 54.5 multiplier represents 30.5 average working days, 15.5 vacation days, 4 days for four weekends, 3 bonus days, and 1.5 holidays. Agreement B's 49.5 multiplier represents 30.5 average working days, 16 vacation days, and 3 bonus days.

To calculate average annual compensation, we multiply monthly figures by 9 months, the length of the Great Lakes shipping season.

Table 8 shows new wage calculations based on Agreements A and B effective August 1, 2011.

TABLE 8—WAGES

Monthly component	Pilots on undesignated waters	Pilots on designated waters (undesignated x 150%)
Agreement A:		
$278.73 daily rate × 54.5 days	$15,191	$22,786
Agreement A:		
Monthly total × 9 months = total wages	136,716	205,074
Agreement B:		
$343.59 daily rate × 49.5 days	17,008	25,511
Agreement B:		
Monthly total × 9 months = total wages	153,068	229,602

Both Agreements A and B include a health benefits contribution rate of $88.76. On average, this benefit contribution has increased at a rate of 10% per year throughout the lives of the existing five-year contracts. Accordingly, for the purposes of the 2011 rate we project that when the new AMOU contracts are negotiated in 2011, this contribution would increase to $97.64 effective August 1, 2011. We project that Agreement A would continue to include a pension plan contribution rate of $33.35 per man-day. Agreement B would continue to include a pension plan contribution rate of $43.55 per man-day. Similarly, we expect both Agreements A and B to continue to provide a 5% 401k employer matching provision. Accordingly, for purposes of the 2011 rate, we will continue to use these values in calculating total pilot compensation. Currently, neither Agreement A nor Agreement B includes a clerical contribution that appeared in earlier contracts, and we project that this would not be a feature of any new AMOU contracts negotiated in 2011. We project that the multiplier used to calculate monthly benefits would remain the same at 45.5 days.

Table 9 shows new benefit calculations based on Agreements A and B, effective August 1, 2011.

TABLE 9—BENEFITS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
Agreement A		
Employer contribution, 401k plan (Monthly Wages × 5%)	$759.53	$1,139.30
Pension = $33.35 × 45.5 days	1,517.43	1,517.43
Health = $97.64 × 45.5 days	4,442.62	4,442.62
Agreement B:		
Employer contribution, 401k plan (Monthly Wages × 5%)	850.38	1,275.57
Pension = $43.55 × 45.5 days	1,981.53	1,981.53
Health = $97.64 × 45.5 days	4,442.62	4,442.62
Agreement A:		
Monthly total benefits	= 6,719.58	= 7,099.35

TABLE 9—BENEFITS—Continued

Monthly component	Pilots on undesignated waters	Pilots on designated waters
Agreement A:		
Monthly total benefits × 9 months	= 60,476	= 63,894
Agreement B:		
Monthly total benefits	= 7,274.52	= 7,699.71
Agreement B:		
Monthly total benefits × 9 months	= 65,471	= 69,297

TABLE 10—TOTAL WAGES AND BENEFITS

	Pilots on undesignated waters	Pilots on designated waters
Agreement A: Wages	$136,716	$205,074
Agreement A: Benefits	+ 60,476	+ 63,894
Agreement A: Total	= 197,192	= 268,968
Agreement B: Wages	153,068	229,602
Agreement B: Benefits	+ 65,471	+ 69,297
Agreement B: Total	= 218,539	= 298,900

Table 11 shows that approximately one third of U.S. Great Lakes shipping deadweight tonnage operates under Agreement A, with the remaining two thirds operating under Agreement B.

TABLE 11—DEADWEIGHT TONNAGE BY AMOU AGREEMENT

Company	Agreement A	Agreement B
American Steamship Company		815,600
Mittal Steel USA, Inc		38,826
Key Lakes, Inc	361,385	.....
Total tonnage, each agreement	361,385	854,426
Percent tonnage, each agreement	361,385	854,426
	÷ 1,215,811	÷ 1,215,811
	= 29.7238%	= 70.2762%

Table 12 applies the percentage of tonnage represented by each agreement to the wages and benefits provided by each agreement, to determine the projected target rate of compensation on a tonnage-weighted basis.

TABLE 12—PROJECTED TARGET RATE OF COMPENSATION, WEIGHTED

	Undesignated waters	Designated waters
Agreement A:		
Total wages and benefits × percent tonnage	$197,192	$268,968
	× 29.7238%	× 29.7238%
	= $58,613	= $79,948
Agreement B:		
Total wages and benefits × percent tonnage	$218,539	$298,900
	× 70.2762%	× 70.2762%
	= $153,581	= $210,055
Total weighted average wages and benefits = projected target rate of compensation	$58,613	$79,948
	+ $153,581	+ $210,055
	= $212,194	= $290,003

(b) Determine number of pilots needed. Subject to adjustment by the Coast Guard Director of Great Lakes Pilotage to ensure uninterrupted service, we determine the number of pilots needed for ratemaking purposes in each area by dividing each area's projected bridge hours, either by 1,000 (designated waters) or by 1,800 (undesignated waters).

Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service. Projected bridge hours are based on the vessel traffic that pilots are expected to serve. Based on historical data and information provided by pilots and industry, we project that vessel traffic in the 2011

navigation season in Districts 1 and 2 would remain unchanged from the 2010 projections noted in Table 13 of the 2010 final rule. In District 3, in both Areas 6 and 8, decreasing bridge hours require the removal of two unused authorizations for pilots, one for each Area. There are no pilots currently in either of these slots and no jobs are being lost as a result of this action. The removal of these two pilot billets merely attempts to mitigate a significant downward trend across the undesignated waters of District 3. The bridge hours for the designated waters of Area 7, like Districts 1 and 2, would remain unchanged from the 2010 projections.

Table 13, below, shows the projected bridge hours needed for each area, and the total number of pilots needed for ratemaking purposes after dividing those figures either by 1,000 or 1,800. As we have done since the 2008 ratemaking, and for the reasons described in detail in the 2008 final rule (74 FR 220, 221–22, Jan. 5, 2009), we rounded up to the next whole pilot except in Area 2 where we rounded up from 3.14 to 5, and in Area 4 where we rounded down from 4.07 to 4.

TABLE 13—NUMBER OF PILOTS NEEDED

Pilotage area	Projected 2011 bridge hours	Divided by 1,000 (designated waters) or 1,800 (undesignated waters)	Pilots needed (total = 40)
Area 1	5,203	1,000	6
Area 2	5,650	1,800	5
Area 4	7,320	1,800	4
Area 5	5,097	1,000	6
Area 6	11,606	1,800	7
Area 7	3,259	1,000	4
Area 8	9,830	1,800	6

(c) Determine the projected target pilot compensation for each area. The projection of new total target pilot compensation is determined separately for each pilotage Area by multiplying the number of pilots needed in each Area (*see* Table 13) by the projected target rate of compensation (*see* Table 12) for pilots working in that Area. Table 14 shows this calculation.

TABLE 14—PROJECTED TARGET PILOT COMPENSATION

Pilotage area	Pilots needed (Total = 38)	Multiplied by target rate of compensation	Projected target pilot compensation
Area 1	6	× $290,003	$1,740,018
Area 2	5	× 212,194	1,060,970
Area 4	4	× 212,194	848,776
Area 5	6	× 290,003	1,740,018
Area 6	7	× 212,194	1,485,357
Area 7	4	× 290,003	1,160,012
Area 8	6	× 212,194	1,273,164

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2. This step yields a projected increase in operating costs necessary to support the increased projected pilot compensation. Table 15 shows this calculation.

TABLE 15—PROJECTED OPERATING EXPENSE

Pilotage area	Projected target pilot compensation	Multiplied by expense multiplier	Projected operating expense
Area 1	$1,740,018	× 0.35182	= $612,171
Area 2	1,060,970	× 0.59575	= 632,069
Area 4	848,776	× 0.69619	= 590,909
Area 5	1,740,018	× 0.52606	= 915,350
Area 6	1,485,357	× 0.55921	= 830,633
Area 7	1,160,012	× 0.39457	= 457,708
Area 8	1,273,164	× 0.49867	= 634,883

Step 5: Adjust the result in Step 4, as required, for inflation or deflation, and calculate projected total economic cost. Based on data from the U.S. Department of Labor's Bureau of Labor Statistics available at *http://www.bls.gov/*

xg_shells/ro5xg01.htm, we have multiplied the results in Step 4 by a 0.994 deflation factor, reflecting an average deflation rate of 0.6% between 2008 and 2009, the latest years for which data are available. Table 16 shows this calculation and the projected total economic cost.

TABLE 16—PROJECTED TOTAL ECONOMIC COST

Pilotage area	A. Projected operating expense	B. Increase, multiplied by deflation factor (= A × 0.994)	C. Projected target pilot compensation	D. Projected total economic cost (= B+C)
Area 1	$612,171	$608,498	$1,740,018	$2,348,516
Area 2	632,069	628,277	1,060,970	1,689,246
Area 4	590,909	587,364	848,776	1,436,140
Area 5	915,350	909,858	1,740,018	2,649,876
Area 6	830,633	825,649	1,485,357	2,311,006
Area 7	457,708	454,962	1,160,012	1,614,974
Area 8	634,883	631,074	1,273,164	1,904,237

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs. Table 17 shows this calculation.

TABLE 17—TOTAL UNIT COSTS

Pilotage area	A. Projected total economic cost	B. Projected 2011 bridge hours	Prospective (total) unit costs (A divided by B)
Area 1	$2,348,516	5,203	$451.38
Area 2	1,689,246	5,650	298.98
Area 4	1,436,140	7,320	196.19
Area 5	2,649,876	5,097	519.89
Area 6	2,311,006	11,606	199.12
Area 7	1,614,974	3,259	495.54
Area 8	1,904,237	9,830	193.72

Step 7: Divide prospective unit costs (total unit costs) in Step 6 by the base period unit costs in Step 1. Table 18 shows this calculation, which expresses the percentage change between the total unit costs and the base unit costs. The results, for each Area, are identical with the percentage increases listed in Table 1.

TABLE 18—PERCENTAGE CHANGE IN UNIT COSTS

Pilotage area	A. Prospective unit costs	B. Base period unit costs	C. Percentage change from base (A divided by B; result expressed as percentage)
Area 1	$451.38	$435.81	3.57
Area 2	298.98	288.12	3.77
Area 4	196.19	189.11	3.75
Area 5	519.89	502.22	3.52
Area 6	199.12	189.84	4.89
Area 7	495.54	478.52	3.56
Area 8	193.72	184.04	5.26

We use the percentage change between the prospective overall unit cost and the base overall unit cost to adjust rates for cancellation, delay, or interruption in rendering services (46 CFR 401.420) and basic rates and charges for carrying a U.S. pilot beyond the normal change point or for boarding at other than the normal boarding point (46 CFR 401.428). This calculation is derived from the Appendix C ratemaking methodology found at 46 CFR 404.10 and differs from the area rate calculation by using total costs and total bridge hours for all areas. Tables 19 through 21 show this calculation.

TABLE 19—CALCULATION OF BASE PERIOD OVERALL UNIT COST

	A. Base period (2010) overall total economic costs	B. Base period (2010) overall bridge hours	C. Base period (2010) overall unit cost (A divided by B)
Sum of all Areas	$14,084,230	51,565	$273.14

TABLE 20—CALCULATION OF PROJECTED PERIOD OVERALL UNIT COST

	A. Projected period (2011) overall total economic costs	B. Projected period (2011) overall bridge hours	C. Base period (2011) overall unit cost (A divided by B)
Sum of all Areas	$13,953,996	47,965	$290.92

TABLE 21—PERCENTAGE CHANGE IN OVERALL PROSPECTIVE UNIT COSTS/BASE UNIT COST

	A. Prospective overall unit cost	B. Base period overall unit cost	C. Percentage change from overall base unit cost (A divided by B)
Across all Areas	$290.92	273.14	6.51%

Step 8: Adjust the base period rates by the percentage change in unit costs in Step 7. Table 22 shows this calculation.

TABLE 22—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS *

Pilotage area	A. Base period rate	B. Percentage change in unit costs (Multiplying factor)	C. Increase in base rate (A × B%)	D. Adjusted rate (A + C, rounded to nearest dollar)
Area 1:		3.57(1.0357)		
—Basic pilotage	$17.73/km, $31.38/mi		$0.63/km, $1.12/mi	$18.36/km, $32.50/mi
—Each lock transited	$393		$14.03	$407
—Harbor movage	$1,287		$45.95	$1,333
—Minimum basic rate, St. Lawrence River.	$858		$30.63	$889
—Maximum rate, through trip	$3,767		$134.48	$3,901
Area 2:		3.77(1.0377)		
—6-hr. period	$861		$32.46	$893
—Docking or undocking	$821		$30.95	$852
Area 4:		3.75(1.0375)		
—6 hr. period	$762		$28.58	$791
—Docking or undocking	$587		$22.01	$609
—Any point on Niagara River below Black Rock Lock.	$1,498		$56.18	$1,554
Area 5 between any point on or in:		3.52(1.0352)		
—Toledo or any point on Lake Erie W. of Southeast Shoal.	$1,364		$48.01	$1,412
—Toledo or any point on Lake Erie W. of Southeast Shoal & Southeast Shoal.	$2,308		$81.24	$2,389
—Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit River.	$2,997		$105.49	$3,102
—Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit Pilot Boat.	$2,308		$81.24	$2,389
—Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat).	$4,020		$141.50	$4,162

TABLE 22—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS *—Continued

Pilotage area	A. Base period rate	B. Percentage change in unit costs (Multiplying factor)	C. Increase in base rate (A × B%)	D. Adjusted rate (A + C, rounded to nearest dollar)
—Port Huron Change Point & Toledo or any point on Lake Erie W. of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat).	$4,657		$163.93	$4,821
—Port Huron Change Point & Detroit River.	$3,020		$106.30	$3,126
—Port Huron Change Point & Detroit Pilot Boat.	$2,349		$82.68	$2,432
—Port Huron Change Point & St. Clair River.	$1,670		$58.78	$1,729
—St. Clair River	$1,364		$48.01	$1,412
—St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat).	$4,020		$141.50	$4,162
—St. Clair River & Detroit River/ Detroit Pilot Boat.	$3,020		$106.30	$3,126
—Detroit, Windsor, or Detroit River.	$1,364		$48.01	$1,412
—Detroit, Windsor, or Detroit River & Southeast Shoal.	$2,308		$81.24	$2,389
—Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie W. of Southeast Shoal.	$2,997		$105.49	$3,102
—Detroit, Windsor, or Detroit River & St. Clair River.	$3,020		$106.30	$3,126
—Detroit Pilot Boat & Southeast Shoal.	$1,670		$58.78	$1,729
—Detroit Pilot Boat & Toledo or any point on Lake Erie W. of Southeast Shoal.	$2,308		$81.24	$2,389
—Detroit Pilot Boat & St. Clair River.	$3,020		$106.30	$3,126
Area 6:		4.89(1.0489)		
—6 hr. period	$656		$32.08	$688
—Docking or undocking	$623		$30.46	$653
Area 7 between any point on or in:		3.56(1.0356)		
—Gros Cap & De Tour	$2,559		$91.10	$2,650
—Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour.	$2,559		$91.10	$2,650
—Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & Gros Cap.	$964		$34.32	$998
—Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour.	$2,145		$76.36	$2,221
—Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap.	$964		$34.32	$998
—Sault Ste. Marie, MI & De Tour.	$2,145		$76.36	$2,221
—Sault Ste. Marie, MI & Gros Cap.	$964		$34.32	$998
—Harbor movage	$964		$34.32	$998
Area 8:		5.26(1.0526)		
—6 hr. period	$578		$30.40	$608
—Docking or undocking	$549		$28.88	$578

* Rates for "Cancellation, delay or interruption in rendering services (§ 401.420)" and "Basic Rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (§ 401.428)" are not reflected in this table but have been increased by 6.51% across all areas (*see* Table 21).

VII. 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.

A. 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 received no comments that would alter our assessment of impacts in the NPRM. We have found no additional data or information that would change our assessment of the impacts in the NPRM. We have adopted the analysis in the NPRM for this rule as final. A summary of the analysis follows:

The Coast Guard is required to conduct an annual review of pilotage rates on the Great Lakes and, if necessary, adjust these rates to align compensation levels between Great Lakes pilots and industry. *See* the "Background" section for a detailed explanation of the legal authority and requirements for the Coast Guard to conduct an annual review and provide possible adjustments of pilotage rates on the Great Lakes. Based on our annual review, we are adjusting the pilotage rates for the 2011 shipping season to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment.

This final rule will implement rate adjustments for the Great Lakes system over the current rates adjusted in the 2010 final rule that was published on February 23, 2010 (75 FR 7958) and took effect on August 1, 2010. These adjustments to Great Lakes pilotage rates meet the requirements set forth in 46 CFR part 404 for similar compensation levels between Great Lakes pilots and industry. They also include adjustments for deflation and projected changes in association expenses to maintain these compensation levels. *See* "B. Calculating the Rate Adjustment" for details on these adjustments.

In general, we expect an increase in pilotage rates for a certain area to result in additional costs for shippers using pilotage services in that area, while a decrease would result in a cost reduction or savings for shippers in that area. The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in the foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302.

In the NPRM, we estimated the average annual number of vessels affected by the rate adjustment to be about 208 vessels. These vessels entered the Great Lakes by transiting through or in part of at least one of the pilotage areas before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips by the 208 vessels, there were an estimated 923 annual U.S. port arrivals before the vessels left the Great Lakes system, based on findings in the NPRM.

The impact of the rate adjustment to shippers is estimated from pilotage revenues. These revenues represent the costs that shippers must pay for pilotage services. The Coast Guard sets rates so that revenues equal the estimated costs of pilotage.

We estimate the additional impact (costs or savings) of the rate adjustment in this final rule to be the difference between the projected total economic cost needed to cover costs based on the 2010 rate adjustment and the projected total economic cost needed to cover costs in this final rule for 2011. Table 23 details additional costs or savings by area.

TABLE 23—ADDITIONAL IMPACT OF THE FINAL RULE BY AREA

[$U.S.; non-discounted]

	Projected total economic costs in 2010	Change in projected expenses	Projected total economic costs in 2011 *	Additional cost or savings of this rule
Area 1	$2,267,537	1.0357	$2,348,516	$80,979
Area 2	1,627,853	1.0377	1,689,246	61,393
Area 4	1,384,253	1.0375	1,436,140	51,887
Area 5	2,559,805	1.0352	2,649,876	90,071
Area 6	2,544,935	0.9081	2,311,006	(233,929)
Area 7	1,559,501	1.0356	1,614,974	55,473
Area 8	2,140,345	0.8897	1,904,237	(236,108)

Notes to Table 23:
* The derivation of these values is detailed in Table 16.
Some values may not total due to rounding.
See "B. Calculating the Rate Adjustment" for further details on the rate adjustment methodology.
"Additional Cost or Savings of this Rule" = "Projected Total Economic Cost in 2011" minus "Projected Total Economic Cost in 2010."

After applying the rate change in this final rule, the resulting difference between the projected total economic cost in 2010 and the projected total economic cost in 2011 is the annual impact to shippers from this rule. This figure would be equivalent to the total additional payments or savings that shippers would incur for pilotage services from this final rule. As discussed earlier, we consider a reduction in payments to be a cost savings.

The impact of the rate adjustment in this final rule to shippers varies by area. The annual costs of the rate adjustments range from $51,887 to $90,071 for most affected areas. However, Areas 6 and 8 would experience annual cost savings of approximately $234,000 and $236,000, respectively. The annual savings is due to a projected decrease in the number of billeted pilots in Areas 6 and 8 from 2010 to 2011. This decrease in the number of pilots would reduce the projected revenue needed to cover costs of pilotage services in Areas 6 and 8.

This rate adjustment would result in a savings for Areas 6 and 8 that would outweigh the combined costs of the other areas. We measure the impact of this rule by examining the changes in costs to shippers for pilotage services. With savings in Areas 6 and 8 exceeding the combined costs in other areas, the net impact of this rule would be a cost savings for pilotage services in the Great Lakes system. The overall impact of the final rule would be a cost savings to shippers of about $130,000 if we sum across all affected areas.

B. 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.

In the NPRM, we certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities. We received no public comments that would alter our certification in the NPRM. We have found no additional data or information that would change our findings in the NPRM. We have adopted the certification in the NPRM for this final rule. *See* the "Small Entities" section of the NPRM for additional details. A summary of the NPRM analysis follows.

We found entities affected by the rule to be classified under the North American Industry Classification System (NAICS) code subsector 483–Water Transportation, which includes one or all of the following 6-digit NAICS codes for freight transportation: 483111–Deep Sea Freight Transportation, 483113–Coastal and Great Lakes Freight Transportation, and 483211–Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

In the NPRM, we found that large, mostly foreign-owned, shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes. We assume that new industry entrants will be comparable in ownership and size to these shippers.

There are three U.S. entities affected by the rule that receive revenue from pilotage services. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships and one operates as a corporation. These associations are classified with the same NAICS industry classification and small entity size standards described above, but they have far fewer than 500 employees: approximately 65 total employees combined. We expect no adverse impact to these entities from this final rule since all associations receive enough revenue to balance the projected expenses associated with the projected number of bridge hours and pilots.

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

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

D. 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).

E. 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 because there are no similar State regulations and the States do not have the authority to regulate and adjust rates for pilotage services in the Great Lakes system.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an

explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.405, revise paragraphs (a) and (b), including the footnote to Table (a), to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic pilotage ...	$18.36 per Kilometer or $32.50 per mile.[1]
Each Lock Transited.	$407.[1]
Harbor Movage	$1,333.[1]

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $889, and the maximum basic rate for a through trip is $3,901.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-hour period	$893
Docking or undocking	852

■ 3. In § 401.407, revise paragraphs (a) and (b), including the footnote to Table (b), to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six-hour period	$791	$791
Docking or undocking	609	609
Any Point on the Niagara River below the Black Rock Lock	N/A	1,554

(b) Area 5 (Designated Waters):

Any point on or in	Southeast shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit pilot boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$2,389	$1,412	$3,102	$2,389	N/A
Port Huron Change Point	[1] 4,162	[1] 4,821	3,126	2,432	$1,729
St. Clair River	[1] 4,162	N/A	3,126	3,126	1,412
Detroit or Windsor or the Detroit River	2,389	3,102	1,412	N/A	3,126
Detroit Pilot Boat	1,729	2,389	N/A	N/A	3,126

[1] When pilots are not changed at the Detroit Pilot Boat.

■ 4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St Mary's River.

* * * * *

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-hour period	$688
Docking or undocking	653

(b) Area 7 (Designated Waters):

Area	De tour	Gros cap	Any harbor
Gros Cap	$2,650	N/A	N/A

Area	De tour	Gros cap	Any harbor
Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario	$2,650	$998	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	2,221	998	N/A
Sault Ste. Marie, MI	2,221	998	N/A
Harbor Movage	N/A	N/A	$998

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-Hour Period	$608
Docking or Undocking	578

§ 401.420 [Amended]

■ 5. In § 401.420—

■ a. In paragraph (a), remove the text "$119" and add, in its place, the text "$127"; and remove the text "$1,867" and add, in its place, the text "$1,989";

■ b. In paragraph (b), remove the text "$119" and add, in its place, the text "$127"; and remove the text "$1,867" and add, in its place, the text "$1,989"; and

■ c. In paragraph (c)(1), remove the text "$705" and add, in its place, the text "$751"; and in paragraph (c)(3), remove the text "$119" and add, in its place, the text "$127", and remove the text "$1,867" and add, in its place, the text "$1,989".

§ 401.428 [Amended]

■ 6. In § 401.428, remove the text "$719" and add, in its place, the text "$766".

Dated: January 28, 2011.

Dana A. Goward,

Director Marine Transportation Systems Management, U.S. Coast Guard.

[FR Doc. 2011–2456 Filed 2–3–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XA195

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

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the southern Florida west coast subzone in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) to commercial king mackerel fishing using run-around gillnets. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 6 a.m., local time, February 2, 2011, through 6 a.m., local time, January 17, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Susan.Gerhart@noaa.gov.*

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

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with run-around gillnets and hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

The southern subzone is that part of the Florida west coast subzone, which from November 1 through March 31, extends south and west from 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL, boundary) to 25°20.4′ N. lat. (a line directly east from the Monroe/Miami-Dade County, FL, boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone which is between 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL, boundary) and 25°48′ N. lat. (a line directly west from the Collier/Monroe County, FL, boundary), *i.e.,* the area off Collier County (50 CFR 622.42(c)(1)(i)(A)(*3*)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial sector when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined that the commercial quota of 520,312 lb (236,010 kg) for Gulf group king mackerel for vessels using run-around gillnet gear in the southern Florida west coast subzone will be reached on February 3, 2011. Accordingly, commercial fishing for such vessels in the southern Florida west coast subzone is closed at 6 a.m., local time, February 3, 2011, through 6 a.m., local time, January 17, 2012, the beginning of the next fishing season, i.e., the day after the 2012 Martin Luther King Jr. Federal holiday.

Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B). Such procedures would be unnecessary because the rule implementing the quota and the associated requirement for closure of the commercial harvest when the quota is reached or projected to be reached has already been subject to notice and comment, and all that remains is to notify the public of the closure.

Providing prior notice and opportunity for public comment on this action would be contrary to the public interest because any delay in the closure of the commercial harvest could result

in the commercial quota being exceeded. There is a need to immediately implement this action to protect the king mackerel resource because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

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

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

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

Dated: February 1, 2011.

James P. Burgess,

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

[FR Doc. 2011–2531 Filed 2–1–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 24
Friday, February 4, 2011

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

DEPARTMENT OF AGRICULTURE

7 CFR Part 2902

RIN 0503–AA39

Designation of Biobased Items for Federal Procurement

AGENCY: Departmental Management, USDA.

ACTION: Proposed rule; amendments.

SUMMARY: The U.S. Department of Agriculture (USDA) is proposing to amend its Guidelines for Designating Biobased Products for Federal Procurement, to be consistent with certain statutory changes to section 9002 of the Farm Security and Rural Investment Act (FSRIA) that were effected when the Food, Conservation, and Energy Act (FCEA) of 2008 was signed into law on June 18, 2008. Elsewhere in this issue of the **Federal Register**, we are publishing a companion direct final rule. This proposed rule will provide a procedural framework to finalize the rule in the event we receive significant adverse comment and withdraw the direct final rule.

DATES: USDA will accept public comments on these proposed rule amendments until April 5, 2011.

ADDRESSES: Please submit any comments, or a notice of intent to submit comments, identified by "Proposed Technical Amendments to BioPreferred Program Guidelines" or Regulatory Information Number (RIN) 0503–AA39, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: biopreferred@usda.gov.* Include RIN number 0503–AA39 and "Proposed Technical Amendments to BioPreferred Program Guidelines" on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202) 720–2600 (voice) and (202) 690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St., SW., Washington, DC 20024; e-mail: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov*.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Changes
IV. Regulatory Information
A. Executive Order 12866: Regulatory Planning and Review
B. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
C. Executive Order 12988: Civil Justice Reform
D. Executive Order 13132: Federalism
E. Unfunded Mandates Reform Act of 1995
F. Executive Order 12372: Intergovernmental Review of Federal Programs
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Paperwork Reduction Act

I. Authority

The Guidelines for Designating Biobased Products for Federal Procurement (the Guidelines) are established under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102, as amended by the Food, Conservation, and Energy Act of 2008 (FCEA). (Section 9002 of FSRIA, as amended by the FCEA, is referred to in this document as "section 9002".)

II. Background

As originally enacted, section 9002 provides for the preferred procurement of biobased products by Federal agencies. USDA proposed guidelines for implementing this preferred procurement program on December 19, 2003 (68 FR 70730–70746). The Guidelines were promulgated on January 11, 2005 (70 FR 1792), and are contained in 7 CFR part 2902, "Guidelines for Designating Biobased Products for Federal Procurement."

The Guidelines identify various procedures Federal agencies are required to follow in implementing the requirements of section 9002. They were modeled in part on the "Comprehensive Procurement Guidelines for Products Containing Recovered Materials" (40 CFR part 247), which the Environmental Protection Agency (EPA) issued pursuant to the Resource Conservation Recovery Act ("RCRA"), 40 U.S.C. 6962.

On June 18, 2008, the FCEA was signed into law. Section 9001 of the FCEA includes several provisions that amend section 9002 of FSRIA. Some of these provisions require programmatic changes to the preferred procurement program. Other provisions of the FCEA simply clarify terminology and requirements for the preferred procurement program. USDA is continuing to resolve issues related to implementing the programmatic changes and will propose additional amendments to the Guidelines at a later date. For example, the Guidelines' definition of "biobased product" will be later revised to include intermediate ingredients and feedstocks, pending such programmatic changes. The purpose of today's proposed rule amendments is to revise the Guidelines (*i.e.,* 7 CFR part 2902) to make them consistent with certain technical changes to section 9002 of FSRIA as required by the FCEA.

This proposed rule is a companion to a direct final rule published in the final rules section of this issue of the **Federal Register**. The direct final rule and this companion proposed rule are substantively identical. This companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the comment period of this companion proposed rule. Any comments received in response to this companion proposed rule will also be considered as comments regarding the direct final rule and vice versa. We

will not provide additional opportunity for comment.

If we receive any significant adverse comment, we intend to withdraw the final rule before its effective date by publishing a notice in the **Federal Register** within 30 days after the comment period ends. If we withdraw the direct final rule, all comments received will be considered under this companion proposed rule in developing a final rule under the usual notice-and-comment procedures.

III. Summary of Changes

USDA is proposing to amend eight sections of 7 CFR part 2902, as described below.

A. 7 CFR 2902.1—Purpose and Scope

In response to the promulgation of the FCEA, USDA is proposing to amend 7 CFR 2902.1(a) to refer to compliance with that law's requirements.

B. 7 CFR 2902.2—Definitions

In response to section 9001 of the FCEA, USDA is proposing to amend 7 CFR 2902.2 by revising the definition of "biobased product" to add the word "including." This is to ensure that the Guidelines do not violate U.S. trade agreements by applying exclusively to domestic agricultural materials. Additionally, a definition for "FCEA" has been added.

C. 7 CFR 2902.3—Applicability to Federal Procurements

USDA is proposing to amend 7 CFR 2902.3(c) to state that procuring agencies must comply with section 9002(a)(2) regarding the procuring of products composed of the highest percentage of biobased *content* practicable. Section 2902.3(c) now incorrectly includes the phrase "highest percentage of biobased *products*."

D. 7 CFR 2902.4—Procurement Programs

USDA has revised paragraph (b)(2)(ii) to read "section 9002" as it refers to both FSRIA and the FCEA.

E. 7 CFR 2902.5—Item Designation

USDA is proposing to amend 7 CFR 2905.5(c) by adding heating oil to the list of exclusions to this program, because it was added to the list pursuant to section 9001 of the FCEA.

F. 7 CFR 2902.6—Providing Product Information to Federal Agencies

In response to a name change, USDA is proposing to amend 7 CFR 2902.6(a) to refer to the USDA information Web site at "*http://www.biopreferred.gov*" rather than to "*http://www.biobased.oce.usda.gov*."

Additionally, USDA is proposing to amend 7 CFR 2902.6(b) to include a reference to the BioPreferred "Guidelines for Marketing the BioPreferred Program," and a link to the Federal Trade Commission "Guides for the Use of Environmental Marketing Claims."

G. 7 CFR 2902.8—Determining Life Cycle Costs, Environmental and Health Benefits, and Performance

USDA is proposing to revise 7 CFR 2902.8 to comply with section 9002(a)(3)(D), which states that guidelines issued under this paragraph may not require a manufacturer or vendor of biobased products, as a condition of the purchase of biobased products from the manufacturer or vendor, to provide to procuring agencies more data than would be required to be provided by manufacturers or vendors offering products for sale to a procuring agency, other than data confirming the biobased content of a product.

H. 7 CFR 2902.9—Funding for Testing

In response to a name change, USDA is proposing to amend 7 CFR 2902.9(b) to refer to the USDA information Web site at "*http://www.biopreferred.gov*" rather than to "*http://www.biobased.oce.usda.gov*."

IV. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

This proposed rule has been reviewed under Executive Order 12866. It has been determined that this proposed rule, which amends the Guidelines, is not a "significant regulatory action" under the terms of Executive Order 12866, because its purpose is only to implement statutory amendments to section 9002. Therefore, this proposed rule has not been reviewed by the Office of Management and Budget (OMB).

B. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This proposed rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

C. Executive Order 12988: Civil Justice Reform

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

D. Executive Order 13132: Federalism

This proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

E. Unfunded Mandates Reform Act of 1995

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

F. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Today's proposed rule does not significantly or uniquely affect "one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes." Thus, no further action is required under Executive Order 13175.

H. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under the Guidelines is currently approved under OMB control number 0503–0011.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture is proposing to amend 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

2. Section 2902.1 is revised to read as follows:

§ 2902.1 Purpose and scope.

(a) *Purpose.* The purpose of the guidelines in this part is to assist procuring agencies in complying with the requirements of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171, 116 Stat. 476 (7 U.S.C. 8102), as amended by the Food, Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, as they apply to the procurement of the products designated in subpart B of this part.

(b) *Scope.* The guidelines in this part designate items that are or can be produced with biobased products and whose procurement by procuring agencies will carry out the objectives of section 9002.

3. Section 2902.2 is amended by revising the definition of "biobased product" and adding a definition for "FCEA" to read as follows:

§ 2902.2 Definitions.

* * * * *

Biobased product. A product determined by USDA to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials.

* * * * *

FCEA. The Food, Conservation and Energy Act of 2008, Public Law 110–246.

* * * * *

4. Section 2902.3 is amended by revising paragraph (c) to read as follows:

§ 2902.3 Applicability to Federal procurements.

* * * * *

(c) *Procuring products composed of the highest percentage of biobased content.* Section 9002(a)(2) requires procuring agencies to procure designated items composed of the highest percentage of biobased content practicable or such products that comply with the regulations issued under section 103 of Public Law 100–556 (42 U.S.C. 6914b–1), consistent with maintaining a satisfactory level of competition, considering these guidelines. Procuring agencies may decide not to procure such products if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.

* * * * *

5. Section 2902.4 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 2902.4 Procurement programs.

* * * * *

(b) * * *

(2) * * *

(ii) A policy of setting minimum biobased products content specifications in such a way as to assure that the biobased products content required is consistent with section 9002 and the requirements of the guidelines in this part except when such items:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

* * * * *

6. Section 2902.5 is amended by revising paragraph (c)(1) to read as follows:

§ 2902.5 Item designation.

* * * * *

(c) *Exclusions.* (1) Motor vehicle fuels, heating oil, and electricity are excluded by statute from this program.

* * * * *

7. Section 2902.6 is amended by revising the first sentence of paragraph (a) and by revising paragraph (b) to read as follows:

§ 2902.6 Providing product information to Federal agencies.

(a) *Informational Web site.* An informational USDA Web site implementing section 9002 can be found at: *http://www.biopreferred.gov.*

* * *

(b) *Advertising, labeling and marketing claims.* Manufacturers and vendors are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to the Federal Trade Commission "Guides for the Use of Environmental Marketing Claims," 16 CFR part 260 (see: *http://www.access.gpo.gov/nara/cfr/waisidx_08/16cfr260_08.html*). For further requirements, click on the link to the "Guidelines for Marketing the BioPreferred Program."

8. Section 2902.8 is amended by revising paragraph (a) to read as follows:

§ 2902.8 Determining life cycle costs, environmental and health benefits, and performance.

(a) *Providing information on life cycle costs and environmental and health benefits.* Federal agencies may not require manufacturers or vendors of biobased products to provide to procuring agencies more data than would be required to be provided by other manufacturers or vendors offering products for sale to a procuring agency, other than data confirming the biobased contents of the products, as a condition of the purchase of biobased products from the manufacturer or vendor.

* * * * *

9. Section 2902.9 is amended by revising paragraph (b)(1) to read as follows:

§ 2902.9 Funding for testing.

* * * * *

(b) * * *

(1) Subject to the availability of funds and paragraph (a) of this section, USDA will announce annually the solicitation of proposals for cost sharing for life cycle costs, environmental and health benefits, and performance testing of biobased products in accordance with the standards set forth in § 2902.8 to carry out this program. Information regarding the submission of proposals for cost sharing also will be posted on the USDA informational Web site, *http://www.biopreferred.gov.*

* * * * *

Dated: January 25, 2011.

Pearlie S. Reed,

Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2011–2012 Filed 2–3–11; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 100827401–0619–01]

RIN 0648–BA20

Olympic Coast National Marine Sanctuary Regulations Revisions

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Extension of public comment period.

SUMMARY: On January 14, 2011, NOAA published a proposed rule in the

Federal Register to revise the regulations for the Olympic Coast National Marine Sanctuary (76 FR 2611). This notice extends the public comment period stated in that proposed rule by an additional 10 days.

DATES: NOAA will accept public comments on the proposed rule published at 76 FR 2611 (January 14, 2011) through March 25, 2011. Dates, times, and location of the public hearings mentioned in that proposed rule have not changed.

ADDRESSES: The instructions for submitting comments are detailed in the proposed rule published on January 14, 2011 (76 FR 2611).

FOR FURTHER INFORMATION CONTACT: George Galasso at (360) 457–6622, extension 12.

Dated: January 28, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries.

[FR Doc. 2011–2453 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–131151–10]

RIN 1545–BJ89

Rewards and Awards for Information Relating to Violations of Internal Revenue Laws

Correction

In proposed rule document 2011–928 appearing on pages 2852–2853 in the issue of Tuesday, January 18, 2011 make the following correction:

On page 2852, in the third column, in the second paragraph under the heading Background and Explanation of Provision, in the 12th line, "of the information provided z5" should read "of the information provided."

[FR Doc. C1–2011–928 Filed 2–3–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2010–0092]

RIN 0651–AC52

Changes To Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) requested comments on a proposal to provide applicants with greater control over when their utility and plant applications are examined and to promote greater efficiency in the patent examination process (3-Track). The Office, in addition to requesting written comments, conducted a public meeting to collect input, and has subsequently considered the wide range of comments received. The Office is in the process of refining the 3-Track proposal in light of the input. While that process continues, and in light of the fact that the vast majority of public input was supportive of the Track I portion of the 3-Track proposal, the Office proposes by this Notice to proceed with immediate implementation of the Prioritized Examination Track (Track I), providing fast examination for applicants desiring it, upon payment of the applicable fee and compliance with the additional requirements as described below.

DATES: *Comment Deadline Date:* Written comments must be received on or before March 7, 2011. No public hearing will be held.

ADDRESSES: Comments concerning this notice should be sent by electronic mail message over the Internet addressed to *track_I_comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Robert A. Clarke, Deputy Director, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy. Although comments may be submitted by mail, the Office prefers to receive comments via the Internet.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. *See* the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Internet (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Robert A. Clarke, Eugenia A. Jones, or Joni Y. Chang, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7735, (571) 272–7727 or (571) 272–7720, or by mail addressed to: Mail Stop Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Robert A. Clarke.

SUPPLEMENTARY INFORMATION: In June 2010, the Office requested comments from the public on a proposal to provide applicants with greater control over when their original utility or plant applications are examined and promote work sharing between intellectual property offices. *See Enhanced Examination Timing Control Initiative; Notice of Public Meeting,* 75 FR 31763 (June 4, 2010), 1355 *Off. Gaz. Pat. Office* 323 (June 29, 2010) Specifically, the Office proposed to adopt procedures under which an applicant would be able to: (1) Request prioritized examination of an original utility or plant nonprovisional application (Track I); (2) request a delay in docketing the application for examination by filing a request for delay in payment of the search fee, the examination fee, the claims fees and the surcharge (if appropriate) for a maximum period not to exceed thirty months in an original utility or plant application filed under 35 U.S.C. 111(a) (Track III); or (3) obtain processing under the current examination procedure (Track II) by not requesting either Track I or Track III processing.

The Office is proposing to amend the rules of practice to implement the proposal to provide applicants with the option to request prioritized examination at the time of filing of an application upon payment of the appropriate fees (Track I). The Office is limiting requests for prioritized examination under 37 CFR 1.102(e) to a maximum of 10,000 applications for the first year. The Office will revisit this

annual cap at the end of the year to evaluate what the appropriate maximum should be, if any.

The Office is also in the process of developing proposed changes to the rules of practice to provide applicants with the option to request a delay in docketing the application for examination by filing a request for delay in payment of the search fee, the examination fee, the claims fees and the surcharge (if appropriate) for a maximum period not to exceed thirty months in an original utility or plant application filed under 35 U.S.C. 111(a) (Track III).

The Office is proposing changes to rules of practice to implement the option to request prioritized examination of an application (Track I) at this time and separately from a proposal to implement Track III so that applicants who want to make use of this option will be able to do so as quickly as possible. The following proposed changes that were considered in the notice published in June of 2010 are *not* being proposed in this rule making: (1) The provision that requires applicant to file a copy of the search report (if any), a copy of the first office action from the foreign office and an appropriate reply to the foreign office action when requesting prioritized examination or to obtain processing under the current procedure; and (2) the provision for requesting a supplemental search from a participating intellectual property granting office.

Prioritized Examination of a utility or plant patent application: For some applicants with a currently financed plan to commercialize or exploit their innovation or a need to have more timely examination results to seek additional funding, more rapid examination is necessary. While some programs are currently available to prioritize applications (*e.g.,* the accelerated examination program and the petition to make special program), some applicants neither want to perform the search and analysis required by the accelerated examination program nor can they seek special status based on the conditions set forth in 37 CFR 1.102. For such applicants, the Office is proposing optional prioritized examination upon applicant's request and payment of the appropriate fees upon filing. On granting of prioritized status, the application would be placed in the queue for prioritized examination.

The prioritized examination fee is being proposed to be set at a level to recover the full cost of the resources necessary to increase the work output of the Office so that the non-prioritized applications would not be delayed due to resources being diverted to process the prioritized applications. In other words, the fee for prioritized examination would include the cost of hiring and training a sufficient number of new employees to offset the production time used to examine prioritized applications. Specifically, the Office plans to hire additional examiners above the number of planned hires, based on the number of requests for Track I prioritization received by the Office, so that the non-prioritized applications would not be delayed due to resources being diverted to process the prioritized applications. Under the Office's current statutory authority, the Office is not permitted to discount the fee for small entity applicants. If legislation is passed providing a fifty percent fee reduction for providing prioritized examination under 37 CFR 1.102(e) for small entities under 35 U.S.C. 41(h)(1) and that the prioritized examination fees be set to recover the estimated cost of the prioritized examination program, the Office would set the prioritized examination fee at $4,800 ($2,400 for small entities), since 27.8 percent of the new serialized utility and plant applications filed in fiscal year 2010 were by small entities (based upon data from the Office's Patent Application Monitoring and Locating (PALM) system).

Under Track I prioritized examination, an application would be accorded special status and placed on the examiner's special docket throughout its entire course of prosecution before the examiner until a final disposition is reached in the application. The aggregate goal for handling applications under Track I prioritized examination would be to provide a final disposition within twelve months of prioritized status being granted. The final disposition for the twelve-month goal means: (1) Mailing of a notice of allowance, (2) mailing of a final Office action, (3) filing of a notice of appeal, (4) declaration of an interference by the Board of Patent Appeals and Interferences (BPAI), (5) filing of a request for continued examination, or (6) abandonment of the application, within twelve months from the date prioritized status has been granted. An application in Track I, however, would *not* be accorded special status throughout its entire course of appeal or interference before the BPAI.

The Office is also proposing to require that the application be filed via the Office's electronic filing system (EFS-Web) and be complete under 37 CFR 1.51(b) with any excess claims fees paid on filing, and to limit the number of claims in a prioritized application to four independent and thirty total claims. Thus, a request for prioritized examination under Track I would require that: (1) The application be an original utility or plant nonprovisional application filed under 35 U.S.C. 111(a); (2) the application be filed via the Office's electronic filing system (EFS-Web) and be complete under 37 CFR 1.51(b) with any excess claims fees paid on filing; (3) the applicant pay the required fees for requesting prioritized examination; and (4) the application contains or is amended to contain no more than four independent claims and thirty total claims. *See* proposed 37 CFR 1.102(e). The request for prioritized examination, the prioritized examination fee set forth in 37 CFR 1.17(c), the processing fee set forth in 37 CFR 1.17(i), and the publication fee set forth in 37 CFR 1.18(d) must be filed with the application. The proposed procedure for Track I would be available only for applications filed on or after the implementation date (including new continuing applications filed on or after the implementation date).

Unlike the accelerated examination program, the time periods set in Office actions for applications in Track I would be the same as set forth in section 710.02(b) of the *Manual of Patent Examining Procedure* (MPEP) (8th ed. 2001) (Rev. 8, July 2010). Where, however, an applicant files a petition for an extension of time to extend the time period for filing a reply, the prioritized examination of the application will be terminated.

To maximize the benefit of Track I, applicant should consider one or more of the following: (1) Acquiring a good knowledge of the state of the prior art to be able to file the application with a clear specification having a complete schedule of claims from the broadest to which the applicant believes he is entitled in view of the state of the prior art to the narrowest to which the applicant is willing to accept; (2) submitting an application in condition for examination; (3) filing replies that are completely responsive to the prior Office action and within the shortened statutory period for reply set in the Office action; and (4) being prepared to conduct interviews with the examiner. What it means for an application to be in condition for examination is discussed with respect to the current Accelerated Examination program at MPEP § 708.02(a) (subsection VIII.C).

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.17: The Office is proposing optional prioritized examination (Track I) upon applicant's request and payment of a fee at the time of filing of the application, without meeting the requirements of the accelerated examination program (*e.g.,* examination support document). *See* proposed § 1.102(e). Section 1.17(c) is proposed to be amended to set the fee for filing a request for prioritized examination under § 1.102(e) at $4,000.00.

Section 1.102: Section 1.102 is proposed to be revised to provide for the Track I procedure in which applicant has the option to request prioritized examination on the date the application is filed. Particularly, § 1.102(a) is proposed to be revised by adding a reference to paragraph (e) so that applications may be advanced out of turn for examination or for further action upon filing a request under proposed § 1.102(e). Proposed § 1.102(e) would be added to set forth the requirements for filing a request for prioritized examination, which would provide that a request for prioritized examination will not be granted unless: (1) The application is an original utility or plant nonprovisional application filed under 35 U.S.C. 111(a) filed via the Office's electronic filing system (EFS-Web), that is complete as defined by § 1.51(b), with any fees due under § 1.16 (the filing fee, search fee, examination fee, any applicable excess claims fee, and any applicable application size fee) paid on filing; (2) the request for prioritized examination, including the prioritized examination fee set forth in § 1.17(c), the processing fee set forth in § 1.17(i), and the publication fee set forth in § 1.18(d) are present upon filing; and (3) the application contains or is amended to contain no more than four independent claims, no more than thirty total claims, and no multiple dependent claims.

Response to Comments: The Office published a notice in June of 2010 inviting the public to submit written comments and participate in a public meeting to solicit public opinions on an initiative being considered by the Office to provide applicants with greater control over when their applications are examined and to promote greater efficiency in the patent examination process. *See Enhanced Examination Timing Control Initiative; Notice of Public Meeting,* 75 FR 31763 (June 4, 2010), 1355 *Off. Gaz. Pat. Office* 323 (June 29, 2010) (notice). The public meeting was held on July 20, 2010, in which members of the public made oral presentations. The Web cast and transcript of the meeting are available on the Office's Internet Web site (*http://www.uspto.gov*) at *http://www.uspto.gov/patents/announce/3track.jsp.* The Office received over fifty written comments from government agencies, intellectual property organizations, industry, law firms, individual patent practitioners and the general public. The Office has considered all of the public comments that were received. The comments germane to the changes being proposed in this notice (Track I) and the Office's responses to those comments are provided below.

Comment 1: One comment strongly urged that the Office conduct a voluntary pilot as a first step for implementing the three examination tracks and noted that collecting, analyzing, and publishing data on all aspects of the proposal is important for assessing the success of the program and making needed adjustments. Another comment stated that a thorough study of the three-track proposal is needed before adoption, including a study of the fees needed for Track I, expected applicant demand, Office resources needed, projected effects of Track I on other Office operations, examination quality, pendency, and operations management. A few comments encouraged a phased approach for implementation so that any unforeseen problems can be identified before full implementation. Another comment supported a pilot program with a cap as to the number of applications in which an applicant can elect prioritized examination under Track I, in order to keep costs manageable as demand is measured and resources grow, and with a percentage of these applications being reserved for small entities. The comment stated that this would allow the Office to better plan how many new examiners would be needed, and to add and train examiners in a controlled manner.

Response: The Office is initially limiting requests for prioritized examination under § 1.102(e) for applications to a maximum of 10,000 applications for the first year. Any requests filed after 10,000 proper requests have been received, will not be processed. This will permit the Office to proceed slowly and closely monitor the number of applications in the different tracks, gauging the ability of the Office to obtain sufficient resources to meet its goals. Elements of prioritized examination, including the ability to track applications and complete examination within accelerated time frames, have already been tested in a number of other programs such as the Accelerated Examination program and the Patent Prosecution Highway (PPH). Unlike the Accelerated Examination program, which requires the filing of a petition and time spent on deciding the petition, there is no petition requirement for prioritized examination under § 1.102(e).

Comment 2: One comment stated that there is no present need to include design patent applications in the three-track proposal and it would not work effectively with many foreign design protection systems (which do not have substantive examination) or the Hague Agreement. The comment stated that the expedited procedure for design patent applications (§ 1.155) is working very well. The comment suggested implementation of the Hague Agreement to achieve the best results for designs.

Response: The proposed rules do not apply to design applications. Design applications can be expedited under § 1.155. In addition, design applications are taken up for examination at a much quicker rate and do not have the same backlog concerns as other applications.

Comment 3: The majority of the comments supported having a track that permits an applicant to pay a fee and have examination of their application expedited.

Response: Consistent with the majority of the comments, the Office is proposing rule changes that include a prioritized examination track.

Comment 4: A few comments were opposed to having such a prioritized track. One comment stated that it rewards those applicants with money and that the patent system should continue to be a level playing field. Another comment stated that it would hurt independent inventors, it goes against historical traditions of the Office, and establishes a new cost barrier to rapid and effective patent protection. The comment stated that the Office should represent the interests of all American citizens and not just the wealthy. As an alternative, the comment suggested raising the patent application fees for all applicants by one hundred dollars. One comment suggested converting the Office to a government-chartered private corporation and ending the practice of fee diversion.

Response: The Office will continue to provide low cost rapid patent protection to applicants through its Accelerated Examination Program. The Office will also continue to provide expedited examination for certain applications via its other existing programs such as the Green Technology Pilot Program or the Petition to Make Special procedure based on the applicant's age or health under § 1.102(c), which do not require a fee for the petition. The Office is simply providing an additional program

under which applicants may obtain prioritized examination of an application. Applicants who cannot afford to or do not wish to pay the fees for prioritized examination and who also are not able to participate in any of the other programs for accelerating or expediting examination will still continue to receive examination of their applications in the same time frames as they would have without implementation of Track I. The suggestion that all patent application fees be increased by one hundred dollars is not within the statutory authority of the Office. The suggestion that the Office be converted to a government corporation is not germane to the request for comments and is also beyond the statutory authority of the Office.

Comment 5: Several of the comments that supported having a prioritized track raised concerns that the pendency of other applications would increase and questioned how the Office would be able to prevent examination of other applications from being delayed. The comments expressed concerns that resources would be diverted from examination of applications that are not accelerated. One comment questioned how the Office would be able to hire and retain the necessary examiners to avoid delays for other applications, given the problems with examiner hiring and retention. A few comments stated that the Office must institute safeguards to ensure that examination of other applications is not delayed, including meaningful metrics. A few comments wanted to know how the Office intends to measure whether the examination of other applications is adversely affected.

Response: The Office will continue to publish its anticipated hiring and pendency targets on the Office's Internet Web site. The prioritized examination fee is being proposed to be set at a level to recover the full cost of the resources necessary to increase the work output of the Office so that the non-prioritized applications would not be delayed due to resources being diverted to examine the prioritized applications. Specifically, the Office will use the revenue generated by the fees paid for Track I applications to hire a sufficient number of additional examiners above planned examiner hires to offset the production time used to examine prioritized applications. The ability of the Office to meet its goals for prioritized examination will be posted on the Office's Internet Web site on a quarterly basis at the work group level.

Comment 6: Some comments that supported having a prioritized track were concerned about the fee. A few comments expressed concerns about the fee being set too high, which would limit access to the program. A few comments expressed concerns about the fee being set too low, which could challenge Office resources to timely examine other applications. Some comments stated that the fee must be used solely for cost recovery for the examination of Track I applications. A few comments raised concerns about fee diversion by Congress and indicated that it is critical that the fee for prioritized examination not be subject to fee diversion. Some comments indicated that the diversion of fees is problematic in determining what fees are appropriate. Some comments expressed concerns about the disproportionate impact on small entities and supported a fee reduction for small entities and micro entities, but recognized that the Office does not currently have the statutory authority to provide such a fee reduction. A few comments questioned how the fee would be set and requested that more detailed information be provided, including information on what the mechanism would be for ongoing assessment or adjustment of the fee.

Response: The Office is not setting the prioritized examination fee based on any perceived level of participation in Track I. The prioritized examination fee is being set based on the estimated average cost to the Office of performing the service, per 35 U.S.C. 41(d)(2). As discussed above, the Office plans to hire additional examiners above the number of planned hires based on the number of requests for Track I prioritization received by the Office. The Office is also setting an annual cap on the number of applications that can be granted prioritized examination in Track I to further ensure that the Office will be able to meet its goal of *providing a final disposition within twelve months of prioritized status being granted.* If the appropriations that the Office receives are not adjusted to reflect the projected fee revenue resulting from the prioritized examination program, then the Office will need to consider eliminating the program. The Office will monitor the program closely and will assess the prioritized examination fee on a regular basis and make any needed adjustments through the rule making process. The Office will also continue to seek additional fee setting authority that would allow it to provide for a small entity fee reduction for the fee for prioritized examination.

Comment 7: Some comments supported having a single queue for examination of all applications that are accelerated or prioritized, while some comments were opposed to having such a single queue. Some comments that supported a single queue identified simplicity and administrative efficiency as the reasons. The comments that opposed a single queue primarily focused on the different requirements for the different programs. One comment stated that it seemed unfair to treat applications filed under the Patent Prosecution Highway (PPH) or the Petition to Make Special procedure (Accelerated Examination) the same as applications filed under Track I or the Project Exchange program since applicants under the PPH program or the Petition to Make Special program (Accelerated Examination) have incurred the greater burden in preparing their applications and thus these applications should be placed in separate queues. One comment stated that applications expedited for reasons of infringement should have precedence over applications expedited merely for policy grounds, such as green technology. One comment suggested unifying the programs to provide an extendable three-month time period for replies by applicant. One comment raised concerns about the PPH fee being reinstated if the programs are integrated. One comment wanted to know how the Office would be able to determine the additional examiner workload attributable to Track I applications if there is a single queue. One comment suggested that the Office consider combining all prioritized applications into a single program, not just a single queue, and provide waivers to accommodate variations. One comment requested clarification on whether all applications in the queue are handled on an expedited basis for all stages of prosecution.

Response: In view of the mixed comments and the different goals of the different programs, the Office is not proposing to provide a single queue in this notice. The Office will continue to monitor the various programs. If prioritized examination under § 1.102(e) is requested on filing with an application, the examination will be expedited until a final disposition is reached (*e.g.,* the filing of a request for continued examination or a notice of appeal) or the prioritized examination of the application is terminated. Regarding the other programs, the Office has posted a comparison chart of domestic acceleration initiatives on the Office's Internet Web site that identifies to what extent applications in each program are accelerated or expedited. *See http://www.uspto.gov/patents/process/file/*

accelerated/comp_chart_dom_accel.pdf. For information on the PPH program, *see http://www.uspto.gov/patents/init_events/pph/index.jsp.*

Comment 8: Some comments supported requiring an applicant who requested prioritized examination to pay the required fee again on filing of a request for continued examination, while other comments stated that a single fee should be sufficient to have prioritized examination throughout the pendency of the application. One comment stated that the Office would need to justify that there is an additional cost to the Office which is not covered by the fee that was paid with the original request for prioritized examination. A few comments indicated that the initial fee should be sufficient to cover the first request for continued examination, but applicants should have to pay the required fee again on filing of any subsequent requests for continued examination if prioritized examination is still desired. A few comments supported requiring a fee for the additional cost of prioritization for the request for continued examination, but questioned whether the fee should be equal to the initial fee.

Response: The proposed fee for prioritized examination of an application does not take into account the additional costs incurred by the Office when a request for continued examination is filed in an application. Therefore, the prioritized examination of the application will be terminated if a request for continued examination is filed. The Office is considering a *sui generis* practice for prioritized applications under which an applicant may file a single submission after final for a fee with the next action being made final if the submission does not place the application in condition for allowance.

Comment 9: Several comments supported prioritized examination being available at any time during examination or appeal to the BPAI. Several comments indicated that the ability to prioritize an application on appeal was important. One comment that supported the ability to file a request at the appeal stage raised concerns about causing delays in other appeals, particularly those appeals that may have been pending a long time, and suggested implementing a transition period where appeals whose resolution is imminent would remain at the front of the queue. One comment questioned whether the fee would be less if the request for prioritized examination is submitted after a substantial amount of examination has occurred. One comment supported the ability to transition in and out of Track I at applicant's discretion at any time during prosecution.

Response: The proposed fee for prioritized examination of an application does not take into account the additional costs incurred by the Office when an appeal is filed in an application. Therefore, the prioritized examination of the application will be terminated in an application on appeal upon filing of a notice of appeal to the BPAI. The Office is considering a prioritized appeals process.

Comment 10: Several comments were opposed to limiting the the number of claims permitted in a prioritized application, while some comments supported limiting the number of claims. One comment supported the Office's proposed limit of four independent claims and thirty total claims as providing sufficient flexibility for applicants. A few comments suggested that the Office consider a lower limit of three independent claims and twenty total claims. A few comments suggested that the Office consider up to six independent claims and forty total claims. One comment suggested that the Office consider different fees for applications of different sizes. One comment that was opposed to limiting the number of claims suggested an additional prioritization surcharge for each excess independent and dependent claim. Another comment suggested that the Office consider a steeper claim fee structure or a tiered claim fee structure for Track I applications. One comment stated that additional surveys or studies should be conducted to ascertain whether the proposed limit on claims is proper. A few comments that supported a limit stated that the Office should perform a cost analysis to determine the relationship between the claim count and the corresponding costs of examination of prioritized applications before specifying a limit on the number of claims. Another comment that expressed concerns about the proposed limitation specifically requested that the Office consider the impact of the proposed limitation on small entities, provide additional information regarding how the Office arrived at the proposed limitation of four independent claims and thirty total claims, and seek comments from small entities on the proposed limitation.

Response: The Office is proposing that Track I applications be limited to four independent claims and thirty total claims. The Office has experience expediting examination under the Accelerated Examination program, which has a limit of three independent claims and twenty total claims. The Office recognizes that many applicants have expressed concerns regarding a limit of three independent claims and twenty total claims as not being sufficient in all cases. At the same time, the Office is aware from its experience in other programs that there does need to be some limit on the number of claims in order for the Office to be able to satisfy its goals for prioritized examination. Thus, the Office is proposing that an application must be limited to no more than four independent and thirty total claims to be eligible for prioritized examination.

Comment 11: Some comments were opposed to having other requirements for use of the prioritized track such as limiting the use of extensions of time, while some comments supported limiting the use of extensions of time. Some comments suggested that if an applicant does request an extension of time in a prioritized application, then the application should simply be removed from the prioritized examination (Track I). One comment suggested that the Office consider permitting extensions of time but imposing higher extension fees for Track I applications. One comment stated that the Office should consider setting reduced shortened statutory time periods for replies to Office actions such as one month, with the applicant having the ability to pay for up to a five-month extension of time. One comment opposed shortening deadlines to reply to Office communications or requiring additional information such as an examination support document. One comment stated that any additional requirements should not be punitive in nature.

Response: The Office will not prohibit the use of extensions of time for applications that have been granted prioritized examination under proposed § 1.102(e) *per se.* Where, however, an applicant files a petition for an extension of time to extend the time period for filing a reply, the prioritized examination of the application will be terminated.

Comment 12: Some comments were opposed to early publication of applications in Track I, while some comments supported it. One comment indicated that early publication should be at applicant's option. A few comments indicated that early publication could affect applicant's ability to file patent applications on related inventions and thus this would discourage applicants from using Track I. A number of comments supported eighteen-month publication of applications for all three tracks.

Response: The Office is not proposing to require early publication of applications in Track I. An applicant may, however, request early publication of an application in Track I, if desired. Furthermore, an applicant may request nonpublication under 35 U.S.C. 122(b)(2)(B)(i) of an application in Track I if the applicant can make the certification required by 35 U.S.C. 122(b)(2)(B)(i) and § 1.213(a).

Comment 13: One comment questioned whether final disposition for the twelve-month goal means final rejection or allowance, or issuance or abandonment.

Response: The final disposition for the twelve-month goal means: (1) Mailing of a notice of allowance, (2) mailing of a final Office action, (3) filing of notice of appeal, (4) declaration of an interference by the BPAI, (5) filing of a request for continued examination, or (6) abandonment of the application, within twelve months from the date prioritized status has been granted. The goal is an aggregate goal for all prioritized applications. The Office plans to post data at the work group level on the Office's Internet Web site that will show whether or not the Office is making its goals. As discussed previously, the prioritized examination of the application will be terminated if applicant files a petition for an extension of time to extend the time period for filing a reply.

Comment 14: A few comments questioned whether the Office will refund or at least partially refund the fee if the Office is not able to meet its obligations and prioritization does not occur. One comment suggested that a better tracking and monitoring system is needed for accelerated applications. One comment suggested that the system should have prioritized printing once a notice of allowance is mailed. One comment questioned whether the Office would grant a partial refund for applicants who request prioritized examination and then opt out.

Response: The Office will not refund the fee required for requesting prioritized examination under § 1.102(e). The twelve-month time period to final disposition is an aggregate goal of the Office for the examination of all Track I applications. The fact that the Office in a particular application did not meet the goal would not entitle the applicant to a refund. It should also be noted that applicants will have received advancement of examination even if the goals are not met. In addition, even if the prioritized examination of the application is terminated, the Office will not refund the fee. The prioritized examination fee would not be a fee paid by mistake. Rather, it would simply be a change in purpose on the part of the applicant after payment of the fee. Therefore, the Office would not have the authority to refund the fee under 35 U.S.C. 42(d). As with other applications that have been made special, applications that have been prioritized under § 1.102(e) will be prioritized in the patent publication process. The Office is working on improvements to its tracking and monitoring system as part of its Patents End-to-End Information Technology (IT) project.

Comment 15: A few comments were concerned about the availability of prior art for applications in Track I and stated that there may be an adverse effect on quality if examination occurs before certain prior art becomes available, such as applications published at eighteen months. One comment questioned how the Office would ensure that potential prior art that is not yet available to the public be taken into consideration. One comment indicated that the one-year provision for interferences (in 35 U.S.C. 135(b)(1)) would give patents granted earlier under Track I unfair advantages and stated that it would be difficult to justify Track I as long as the U.S. is a first-to-invent country.

Response: The Office currently examines applications where potential prior art is not yet available. For example, during examination of an application, the examiner may have knowledge of an unpublished application that may soon be published or patented, and that would be available as prior art in the application under examination upon publication or patenting. In these situations, the Office may suspend an application that is otherwise allowable until the prior art reference becomes available. Furthermore, when a Track I application is being allowed, the examiner would conduct a search of unpublished applications for interference purposes. Applicants must copy claims from a U.S. patent or U.S. patent application within one year under 35 U.S.C. 135(b). Issuing patents earlier as a result of Track I will encourage earlier resolution of interference situations, which would be to the public's benefit. This, of course, assumes that the Office failed to suspend the application that issued as a patent to await the prior art reference.

Comment 16: A few comments questioned whether all of the provisions of the proposal would be implemented prospectively and thus only apply to applications filed on or after the implementation date or whether any of the provisions, such as prioritized examination, would be available for all pending and future applications. Another comment questioned whether continuing applications would be eligible for Track I, whether this would depend on whether the parent application was filed after the implementation date, and whether the parent application was in Track I. One comment questioned whether additional examiners for Track I would need to be hired before the program can be implemented. Another comment supported the availability of Track I for reissue applications and continuing applications.

Response: The provisions will be available only for applications (including new continuing applications) filed on or after the date of implementation. Track I will not be available for reissue applications since reissue applications are already treated as special applications. *See* MPEP § 1442. Additional examiners for Track I will not need to be hired before the program can be implemented.

Comment 17: One comment suggested that the Office consider techniques to encourage compact prosecution for applications in Track I such as providing an incentive for the use of interviews, liberalizing after-final practice, and offering incentives to encourage applicants to reply more promptly. A few comments were concerned about maintaining examination quality for Track I applications. One comment suggested that Track I include measures to maintain high quality examination such as mandatory examiner interviews before a first Office action, required information disclosure statement (IDS) submissions, examination only by primary examiners or supervisory patent examiners, specialized examiner training for fast track processing, incentives for final resolution of the application, extension of the period in § 1.99 for a third party to submit references after publication to four months, and clear instructions for applicants including detailed guidelines. One comment emphasized that the level of review for Track I applications should be the same as other applications and the record should be complete, notwithstanding the accelerated time frame. A few other comments also supported providing for an examiner interview prior to a first Office action in Track I applications at applicant's option.

Response: The Office has been encouraging compact prosecution techniques in all applications and emphasizing the importance and use of interviews over the past few years. It is noted that the suggestion regarding after

final practice would likely increase the number of Office actions and not encourage applicants to present the best reply after the first Office action, which would extend the examination process and make it less likely that the Office would be able to meet its goals. Furthermore, as discussed previously, the Office is considering a *sui generis* practice for prioritized applications under which an applicant may file a single submission after final for a fee with the next action being made final if the submission does not place the application in condition for allowance. The level of review for Track I applications will be the same as for other applications and examiners will be expected to make the record complete and provide the same high quality examination as they do for other applications. It is noted that there does not appear to be any need as a result of implementation of Track I to increase the time period in § 1.99 for a third party to submit references after publication.

Comment 18: One comment suggested a bidding system for Track I in which patent applicants could bid on their place in line, with the highest bids being given the highest priority, which could create a large increase in fee payments and a surplus of resources which could be used to decrease the time for other applications to be examined. Another comment suggested having a nominal fee for Track I, instead of a substantial fee, and permitting any business entity to have a certain number of Track I applications per year, which would keep the number and costs down.

Response: The Office does not have the statutory authority to implement the suggested bidding system. Likewise, the Office does not have the authority to set a nominal fee for requesting prioritized examination. The Office only has the statutory authority to establish fees to recover the estimated average cost of performing the service.

Rulemaking Considerations

A. Regulatory Flexibility Act: For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This notice proposes changes to implement an optional prioritized examination process. The primary impact of the change on the public is that applicants will have the option to request prioritized examination by paying appropriate fees, filing a complete application via the Office's electronic filing system (EFS–Web) with any filing and excess claims fees due paid on filing, and limiting their applications to four independent claims and thirty total claims. No applicant is required to employ this optional prioritized examination process to obtain examination of his or her application under the current procedures for examination of an application for patent, or to obtain a patent provided that the application meets the current conditions for the applicants to be entitled to a patent. In addition, the availability of this prioritized examination process will not have any negative impact on any applicant who elects not to request the prioritized examination process. Therefore, the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12866 (Regulatory Planning and Review): This rule making has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

C. Executive Order 13132 (Federalism): This rule making does *not* contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

D. Executive Order 13175 (Tribal Consultation): This rule making will *not:* (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

E. Executive Order 13211 (Energy Effects): This rule making is not a significant energy action under Executive Order 13211 because this rule making is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

F. Executive Order 12988 (Civil Justice Reform): This rule making meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

G. Executive Order 13045 (Protection of Children): This rule making does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

H. Executive Order 12630 (Taking of Private Property): This rule making will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

I. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars 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. Therefore, this notice is *not* expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

J. Unfunded Mandates Reform Act of 1995: The changes proposed in this notice do *not* involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

K. National Environmental Policy Act: This rule making will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

L. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rule making does not contain provisions which involve the use of technical standards.

M. Paperwork Reduction Act: This rulemaking is proposed to implement an optional prioritized examination process. The primary impact of the

change on the public is that applicants will have the option to request prioritized examination by paying appropriate fees, filing a complete application via the Office's electronic filing system (EFS–Web) with any filing and excess claims fees due paid on filing, and limiting their applications to four independent claims and thirty total claims.

An applicant who wishes to participate in the program must submit a certification and request to participate in the prioritized examination program, preferably by using Form PTO/SB/424. The Office of Management and Budget (OMB) has determined that, under 5 CFR 1320.3(h), Form PTO/SB/424 does not collect "information" within the meaning of the Paperwork Reduction Act of 1995. Therefore, this rule making does not impose additional collection requirements under the Paperwork Reduction Act which are subject to further review by OMB. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.17 is amended by adding paragraph (c) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(c) For filing a request for prioritized examination under § 1.102(e)—$4,000.

* * * * *

3. Section 1.102 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 1.102 Advancement of examination.

(a) Applications will not be advanced out of turn for examination or for further action except as provided by this part, or upon order of the Director to expedite the business of the Office, or upon filing of a request under paragraph (b) or (e) of this section or upon filing a petition or request under paragraph (c) or (d) of this section with a showing which, in the opinion of the Director, will justify so advancing it.

* * * * *

(e) A request for prioritized examination under this paragraph may be filed only with an original utility or plant nonprovisional application under 35 U.S.C. 111(a) filed via the Office's electronic filing system (EFS-Web), that is complete as defined by § 1.51(b), with any fees due under § 1.16 paid on filing. A request for prioritized examination under this paragraph must be present upon filing and must be accompanied by the prioritized examination fee set forth in § 1.17(c), the processing fee set forth in § 1.17(i), and the publication fee set forth in § 1.18(d). Prioritized examination under this paragraph will not be accorded to a design application or reissue application, and will not be accorded to any application that contains or is amended to contain more than four independent claims, more than thirty total claims, or any multiple dependent claim.

* * * * *

Dated: February 1, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–2585 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0805; FRL–9261–8]

Approval of Air Quality Implementation Plans; Indiana and Ohio; Disapproval of Interstate Transport State Implementation Plan Revision for the 2006 24-Hour $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to its authority under the Clean Air Act (CAA), EPA is proposing to disapprove the portions of submittals by the Indiana Department of Environmental Management (IDEM) and the Ohio Environmental Protection Agency (Ohio EPA) that pertain to requirements of the CAA to address interstate transport for the 2006 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). EPA is not, however, currently taking action on the remainder of the State Implementation Plan (SIP) submittals from IDEM and Ohio EPA concerning other basic or "Infrastructure" elements required under the CAA.

DATES: Comments must be received on or before March 7, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0805, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Acting Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Acting Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0805. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886–0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What is the background for this action?
III. What is EPA's evaluation of the States' submittals?
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background for this action?

Section 110(a)(1) of the CAA requires States to submit basic or "Infrastructure" SIPs to address a new or revised NAAQS within three years after promulgation of such standards, or within such shorter period as EPA may prescribe. As provided by section 110(k)(2) of the CAA, within twelve months of a determination that a submitted SIP is complete under 110(k)(1) of the CAA, the Administrator shall act on the plan. As authorized in section 110(k)(3) of the CAA, where portions of the State submittals are severable, within that twelve-month period EPA may approve the portions of the submittals that meet the requirements of the CAA, take no action on certain portions of the submittals, and disapprove the portions of the submittals that do not meet the requirements of the CAA. When the deficient provisions are not severable from all of the submitted provisions, EPA must propose disapproval of the submittals, consistent with section 110(k)(3) of the CAA.

Section 110(a)(2) of the CAA lists the elements that such new Infrastructure SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions, also known as the CAA "good neighbor" provisions.

On December 18, 2006, EPA revised the 24-hour average $PM_{2.5}$ primary and secondary NAAQS from 65 micrograms per cubic meter (μg/m^3) to 35 μg/m^3 (see, 71 FR 61144).[1] On September 25, 2009, EPA issued its "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2009 Guidance). EPA developed the 2009 Guidance for States making submissions to meet the requirements of section 110, including 110(a)(2)(D)(i) for the revised 2006 24-hour $PM_{2.5}$ NAAQS.

As identified in the 2009 Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each State to submit a SIP that prohibits emissions that adversely affect another State in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the State from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other States; (2) interfere with maintenance of the NAAQS in other States; (3) interfere with provisions to prevent significant deterioration of air quality in other States; or (4) interfere with efforts to protect visibility in other States.

In the 2009 Guidance, EPA indicated that SIP submissions from States pertaining to the "significant contribution" and "interfere with maintenance" requirements of section 110(a)(2)(D)(i) should contain adequate provisions to prohibit air pollutant emissions from within the State that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other State. EPA further indicated that the State's submission should explain whether or not emissions from the State have this impact and, if so, address the impact. EPA stated that the State's conclusion should be supported by an adequate technical analysis. EPA recommended the various types of information that could be relevant to support the State SIP submission, such as information concerning emissions in the State, meteorological conditions in the State and the potentially impacted States, monitored ambient concentrations in the State, and air quality modeling. Furthermore, EPA indicated that States should address the "interfere with maintenance" requirement independently, which requires an evaluation of impacts on areas of other States that are meeting the 2006 24-hour $PM_{2.5}$ NAAQS, not merely areas designated nonattainment. Lastly, in the 2009 Guidance, EPA stated that States could not rely on the Clean Air Interstate Rule (CAIR) to comply with the section 110(a)(2)(D)(i) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS because CAIR does not address this NAAQS.

EPA promulgated CAIR on May 12, 2005 (see, 70 FR 25162). CAIR required

[1] The rule for the revised $PM_{2.5}$ NAAQS was signed by the Administrator and publically disseminated on September 21, 2006. Because EPA did not prescribe a shorter period for 110(a) SIP submittals, these submittals for the 2006 24-hour $PM_{2.5}$ NAAQS were due on September 21, 2009, three years from the September 21, 2006 signature date.

States to reduce emissions of sulfur dioxide and nitrogen oxides that significantly contribute to, and interfere with maintenance of the 1997 NAAQS for $PM_{2.5}$ and/or ozone in any downwind State. CAIR was intended to provide States covered by the rule with a mechanism to satisfy their section 110(a)(2)(D)(i)(I) obligations to address significant contribution to downwind nonattainment and interference with maintenance in another State with respect to the 1997 ozone and $PM_{2.5}$ NAAQS. Many States adopted the CAIR provisions and submitted SIPs to EPA to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(D)(i)(I) obligations for those two pollutants.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008). The Court thereby left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008 opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

In order to address the judicial remand of CAIR, EPA has proposed a new rule to address interstate transport pursuant to section 110(a)(2)(D)(i)(I), the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule).[2] As part of the proposed Transport Rule, EPA specifically examined the section 110(a)(2)(D)(i)(I) requirement that emissions from sources in a State must not "significantly contribute to nonattainment" and "interfere with maintenance" of the 2006 24-hour $PM_{2.5}$ NAAQS by other States. The modeling performed for the proposed Transport Rule shows that both Indiana and Ohio significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in downwind areas.

IDEM and Ohio EPA made submittals on October 20, 2009, and September 4, 2009, respectively, that were intended to demonstrate satisfaction of all Infrastructure SIP elements for the 2006 24-hour $PM_{2.5}$ NAAQS. Both States relied predominantly on their respective EPA-approved CAIR regulations to meet the interstate transport requirements of section 110(a)(2)(D)(i)(I). Indiana further committed to amend its rule once the Federal CAIR is amended or replaced.

III. What is EPA's evaluation of the States' submittals?

Indiana and Ohio each asserted in their submissions that they have met their section 110(a)(2)(D)(i)(I) obligations with respect to the 2006 24-hour $PM_{2.5}$ NAAQS by a series of regulations, including their approved CAIR rules.[3] However, CAIR was promulgated before the 24-hour $PM_{2.5}$ NAAQS were revised in 2006 and does not address interstate transport with respect to the 2006 24-hour $PM_{2.5}$ NAAQS.[4] Thus, as EPA's 2009 Guidance explicitly notes, States cannot rely on CAIR to comply with section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. Furthermore, Indiana and Ohio provided no analyses to assess the quantity of emissions which can be permitted within the State consistent with the requirement to prohibit emissions which interfere with attainment and maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in other States. Because the submittals from Indiana and Ohio relied predominantly on CAIR to address the requirements of section 110(a)(2)(D)(i)(I) with respect to the 2006 24-hour $PM_{2.5}$ NAAQS while CAIR does not address that NAAQS, and because Indiana and Ohio provided no analysis or supplemental rules expressly addressing the requirement to prohibit emissions that interfere with attainment and maintenance of this standard, the submissions are deficient. Furthermore, Indiana and Ohio will not be able to permanently rely upon the emissions reductions predicted by CAIR, because EPA needs to address the concerns of the Court as outlined in its decision remanding CAIR.

For these reasons, EPA cannot approve Indiana's and Ohio's SIP submissions pertaining to the requirement of section 110(a)(2)(D)(i)(I) of the CAA with respect to the 2006 24-hour $PM_{2.5}$ NAAQS. EPA also concludes that the elements of the Infrastructure SIP submittals from Indiana and Ohio addressing the 2006 24-hour $PM_{2.5}$ NAAQS are severable; therefore, EPA is proposing to disapprove those provisions which relate to the section 110(a)(2)(D)(i)(I) demonstration, while taking no action on the remainder of the Infrastructure SIP submittals from each respective State.

In addition to relying on the State's CAIR regulations, Indiana's October 20, 2009 submittal cited various programs that IDEM has adopted and implemented related to interstate transport. These measures include stack height requirements, acid deposition control regulations, and the Nitrogen Oxides Budget Trading Program (NO_X SIP Call). Although EPA's 2009 Guidance directed that a State's submittal must be supported by an adequate technical analysis, no such analysis was provided by IDEM justifying that these measures are sufficient to meet the requirements of section 110(a)(2)(D)(i)(I). Furthermore, programs such as the Nitrogen Oxides Budget Trading Program have limited relevance to the 2006 24-hour $PM_{2.5}$ NAAQS.[5] EPA finds that these measures are not sufficient to meet the requirements of section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. As previously mentioned, EPA is proposing to disapprove the provisions which relate to the section 110(a)(2)(D)(i)(I) demonstration, while taking no action on the remainder of the Infrastructure SIP submittal from Indiana.

Similarly, Ohio also asserted in its September 4, 2009, submittal that other regulations in the State have been adopted and implemented in order to meet the requirements of section 110(a)(2)(D)(i)(I). Specifically, the State referenced rules pertaining to stack height requirements, acid rain permits and compliance, the Nitrogen Oxides Budget Trading Program (NO_X SIP Call), and the Clean Air Mercury Rule. Additionally, Ohio EPA cited instances where the existing SIP was revised to alleviate modeled violations in two neighboring States. Although EPA's 2009 Guidance directed that a State's

[2] *See* "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

[3] Indiana's CAIR regulations were fully approved by EPA on November 29, 2010 (*see,* 75 FR 72956). Ohio's CAIR regulations were fully approved by EPA on September 29, 2009 (*see,* 74 FR 48857).

[4] Further, as explained above and in the Transport Rule proposal, 75 FR 45210 (August 2, 2010), the DC Circuit in *North Carolina* v. *EPA* found that EPA's quantification of States' significant contribution and interference with maintenance in CAIR was improper and remanded the rule to EPA. CAIR remains in effect only temporarily.

[5] The Nitrogen Oxides Budget Trading Program was effectively replaced by CAIR's NO_X ozone season trading program, and only addresses summertime NO_X. $PM_{2.5}$ and SO_2 (a precursor to $PM_{2.5}$) are not addressed.

submittal must be supported by an adequate technical analysis, no such analysis was provided by Ohio EPA justifying that these measures are sufficient to meet the requirements of section 110(a)(2)(D)(i)(I). Furthermore, programs such as the Nitrogen Oxides Budget Trading Program and the Clean Air Mercury Rule have limited relevance to the 2006 24-hour $PM_{2.5}$ NAAQS.[6] EPA finds that these measures are not sufficient to meet the requirements of section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS. As previously mentioned, EPA is proposing to disapprove the provisions which relate to the section 110(a)(2)(D)(i)(I) demonstration, while taking no action on the remainder of the Infrastructure SIP submittal from Ohio.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (section 171—section 193 of the CAA), or is required in response to a finding of substantial inadequacy as described in section 110(k)(5) starts a sanction clock. The provisions in the submittals we are disapproving were not submitted by Indiana or Ohio to meet either of those requirements. Therefore, if EPA takes final action to disapprove these submittals, no sanctions under section 179 will be triggered.

The full or partial disapproval of a SIP revision triggers the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. The proposed Transport Rule, when final, is the FIP that EPA intends to implement for the States of Indiana and Ohio.

IV. What action is EPA taking?

For the reasons discussed above, EPA is proposing to disapprove submittals from Indiana and Ohio intended to demonstrate that each respective State has adequately addressed the elements of section 110(a)(2)(D)(i)(I) of the CAA with regard to the 2006 24-hour $PM_{2.5}$ NAAQS. This action pertains only to section 110(a)(2)(D)(i)(I); the States' submittals for the remainder of the 2006 24-hour $PM_{2.5}$ NAAQS Infrastructure SIPs will be addressed in separate rulemakings.

[6] The Nitrogen Oxides Budget Trading Program was effectively replaced by CAIR's NO_X ozone season trading program, and only addresses summertime NO_X. $PM_{2.5}$ and SO_2 (a precursor to $PM_{2.5}$) are not addressed. The Clean Air Mercury Rule was vacated in 2008.

V. Statutory and Executive Order Reviews

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

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review under the Executive Order.

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (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 today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences *(e.g.,* higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector." EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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 action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997).This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

National Technology Transfer Advancement Act

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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove State choices, based on the criteria of the CAA. Accordingly, this action merely proposes to disapproves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

Statutory Authority

The statutory authority for this action is provided by sections 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: January 28, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–2497 Filed 2–3–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1167]

Proposed Flood Elevation Determinations

Correction

In proposed rule document 2010–31151 beginning on page 77598 in the issue of Monday, December 13, 2010, make the following correction:

§ 67.4 [Corrected]

On page 77599, in § 67.4, in the table St. Charles County, Missouri, and Incorporated Areas, the 12th and 13th entries are corrected to read as set forth below:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
St. Charles County, Missouri, and Incorporated Areas				
*	*	*	*	*
Lake Sainte Louise	Entire shoreline within community	None	+546	City of Lake St. Louis.
Little Dardenne Creek	At the confluence with Dardenne Creek	+553	+554	Unincorporated Areas of St. Charles County.
	Approximately 0.9 mile upstream of Morrison Lane	None	+719	
*	*	*	*	*

[FR Doc. C1–2010–31151 Filed 2–3–11; 8:45 am]

BILLING CODE 1505–01–D

LEGAL SERVICES CORPORATION

45 CFR Part 1609

Fee-Generating Cases

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to amend the Legal Services Corporation's regulation on fee-generating cases to clarify that it applies only to LSC and private non-LSC funds.

DATES: Comments on this NPRM are due on March 7, 2011.

ADDRESSES: Written comments may be submitted by mail, fax or email to Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202–295–1624 (ph); 202–337–6519 (fax); *mcohan@lsc.gov.*

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, 202–295–1624 (ph); *mcohan@lsc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Generally, the substantive LSC restrictions on LSC recipients fall into two categories: "entity restrictions" and "LSC funds restrictions." "Entity restrictions" apply to all activities of a recipient regardless of the funding source (except for the use of tribal funds as intended) and generally originate in section 504 of LSC's FY 1996 appropriations act (the provisions of which have been carried forward in subsequent appropriations). In contrast, "LSC funds restrictions" usually originate from the LSC Act and apply to the use of LSC funds and private funds, but not to tribal or public non-LSC funds used as intended. LSC's regulation at 45 CFR part 1609, Fee-Generating Cases, is based on § 1007(b)(1) of the LSC Act, which provides that no funds made available by the Corporation may be used to provide legal assistance, except as per LSC regulation, with respect to any fee-generating case. The fee-generating case provision of the LSC Act is an "LSC funds restriction." However, § 1609.3(a), as currently written, is not limited to the use of LSC funds. Rather it reads as an "entity restriction" reaching all of an LSC recipient's funds. This language follows the same structure as other entity restrictions such as part 1617—Class Actions, which states that "Recipients are prohibited from initiating or participating in any class action." 45 CFR 1617.3.

From its initial adoption in 1976 through 1996 Part 1609 followed the language of the LSC Act and was expressly applied as an LSC funds restriction. At that time, § 1609.3 provided that: "[n]o recipient shall use *funds received from the Corporation* to provide legal assistance in a fee-generating case unless" one of the regulatory exceptions applied. 41 FR 18528 (proposed rule May 5, 1976), 41 FR 38505 (final rule Sept. 10, 1976), and 49 FR 19656 (final rule May 9, 1984) (the last final rule prior to 1996) (emphasis added).

In 1996 LSC revised part 1609 in conjunction with the enactment of the part 1642 entity prohibition on recipients claiming or collecting and retaining attorneys' fees. In the revision the language was changed from the prior "Corporation funds" prohibition to the more general "no recipient" entity prohibition. Notably though, there is no discussion in the preamble to the proposed or final regulation of any significant substantive change in scope. 61 FR 45765 (proposed rule August 29, 1996) and 62 FR 19398 (final rule April 21, 1997). Nor is there any such discussion in any of the relevant LSC Board transcripts. Rather, the only mention of the change in language is the following discussion of the revised § 1609.3:

> This section defines the limits within which recipients may undertake fee-generating cases. This new section reorganizes and replaces §§ 1609.3 and 1609.4 of the current rule *in order to make them easier to understand.*

Id. (appearing in the preambles to both the proposed and final rules) (emphasis added). The regulatory history contains extensive discussions of policy and regulatory nuances regarding the then-new attorneys' fees provisions and their relationship with the fee-generating case restriction in part 1609. These discussions involved the LSC Board, LSC management, the LSC OIG and representatives of recipients. Considering the attention paid to this and the other regulations implemented in 1996 and 1997, it seems very unusual that LSC would adopt such a significant substantive change to part 1609 without any discussion, any description of the change in the preamble to the rule, or any comments by the OIG or representatives of recipients.

Notwithstanding the 1997 regulatory change, LSC has not applied part 1609 as an entity restriction, but has rather continued to apply it as an restriction applying only to a recipient's LSC and private non-LSC funds. For example, the LSC Compliance Supplement to the LSC Audit Guide, which provides guidance to auditors regarding recipient compliance with the substantive LSC

restrictions, states that part 1609 means that "[r]ecipients may not use Corporation or private funds to provide legal assistance in a fee-generating case unless" one of the regulatory exceptions applies. It does not instruct auditors to read part 1609 as applying to tribal or public non-LSC funds. The Compliance Supplement was last revised in December 1998 (after part 1609 had been amended).

In addition, LSC's regulation on the use of non-LSC funds at 45 CFR part 1610 treats the fee-generating case restriction as an LSC funds restriction, rather than as an entity restriction, notwithstanding than express language of § 1609.3. Generally part 1610 works in tandem with the other regulations; each regulation (other than part 1610) expressly specifies whether it applies to a recipient's use of LSC funds (usually referred to as "Corporation funds") or if it applies to the recipient entirely and part 1610 categorizes each substantive LSC restriction as either an "LSC Act restriction" based on the provisions of the LSC Act [1] or an "entity restriction" (based on Section 504 of the LSC FY 1996 appropriations act) and then variously applies those other regulations to the use of non-LSC funds depending on whether the substantive restriction is an LSC Act (funds) restriction or a Section 504 (entity) restriction. 45 CFR 1610.3 and 1610.4. The definitions section of part 1610 includes the fee-generating case restriction found in section 1007(b)(1) of the LSC Act and part 1609 of the Corporation's regulations as an LSC Act restriction, not as an entity restriction. 45 CFR 1610.2(a)(3).

Section 1610.3 provides a general prohibition regarding the use of non-LSC funds. It states that a recipient may not use non-LSC funds for any purpose prohibited by the LSC Act or for any activity prohibited by or inconsistent with Section 504, unless such use is authorized by §§ 1610.4, 1610.6 or 1610.7.

Section 1610.4(b) provides a public non-LSC funds exception to the LSC Act restrictions but not the Section 504 entity restrictions: "A recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by or inconsistent with Section 504." Thus § 1610.4(b) permits the use of public non-LSC or IOLTA funds for all activities categorized as "LSC Act restrictions" in § 1610.2, which includes part 1609. Normally the exception for public non-LSC funds only applies to regulations that themselves are limited to LSC funds and private funds. part 1609 is an anomaly in that it uses "entity" language to apply to the use of all funds, but is treated by part 1610 as an "LSC Act" restriction that does not apply to public non-LSC funds. There is, thus, a conflict between the language of part 1610 and part 1609.[2]

In sum, while the language of part 1609 changed in 1996 from a restriction on LSC funds to a restriction on all funds, the preamble to the rule indicates that substantive changes to the rule were not intended. In addition, parts 1609 and 1610 are in direct conflict regarding the scope of part 1609. Finally, LSC has not itself applied part 1609 as an entity restriction in practice and has issued guidance in the form of the LSC Compliance Supplement to the Audit Guide applying the restriction only as a restriction on a recipient's LSC and private non-LSC funds (and not applying to a recipient's available public-non LSC funds). Accordingly, LSC believes that the part 1609 needs to be clarified to correct the apparent mistake in drafting and to bring the express language of part 1609 into conformance with the apparent intent of the Corporation in 1996 when it revised part 1609, the clear language of part 1610 and LSC practice.

Proposed Amendment to Part 1609

As discussed above, LSC believes that the 1997 change to the language of Part 1609 appearing to extend the scope of the fee-generating case restrictions beyond LSC and private non-LSC funds to be an entity restriction was not intended, but instead was a mistake made in the attempt to "simplify" the language of the regulation without any substantive change to the meaning of the regulation. LSC bases this belief upon the various indicia discussed above, such as the preamble to the final rule amending part 1609; the clear scope of the language in the LSC Act; the treatment of part 1609 in part 1610; LSC's own guidance in the LSC Compliance Supplement to the Audit Guide and LSC's ongoing practice. LSC thus proposes to amend the language of Part 1609 to clarify that it reaches only LSC and private non-LSC funds.

As an initial matter, LSC believes that amending the regulation in this way is preferable to maintaining the status quo. Although LSC has not previously encountered significant problems being caused by the apparently inaccurate wording of § 1609.3, the matter came to LSC's attention through a question raised in the course of a compliance visit being conducted by the Corporation's Office of Compliance and Enforcement. Given the question being raised internally at LSC and the clear conflict between the regulations (1609 and 1610), LSC does not believe it would be appropriate to permit this situation to continue, particularly when there is a simple and straightforward solution to the problem.

LSC further believes that amending the regulation in this way bring the regulation into conformity with the provisions of the LSC Act (and not be inconsistent with anything in the applicable appropriations acts). Moreover, it would resolve the conflict between Parts 1609 and 1610 and would appear to reflect the intention of the Corporation in 1997 to refrain from making a substantive change to the previously existing (pre-1997) scope of the regulation. In addition, amending 1609 in this way would be consistent with the existing LSC guidance and practice. As noted above, the LSC Compliance Supplement to the Audit Guide guidance to auditors does not instruct them to apply the restrictions to a recipient's public non-LSC funds and to our knowledge the auditors have not been reporting instances of a recipients use of public non-LSC funds as problematic with respect to the regulation. Further, LSC's practice has not been to apply the restriction to a recipient's public non-LSC funds. Finally, to LSC's knowledge, the general understanding and practice in the field has been that the restriction does not apply to a recipient's public non-LSC funds. Thus, it would appear that amending part 1609 to clarify that it applies as a restriction on LSC and private non-LSC funds, rather than as an entity restriction, would not create any

[1] Part 1610 actually refers to the fee-generating case and other "LSC fund" restrictions as "LSC Act restrictions. Referring to these as "LSC Act" restrictions is somewhat of a misnomer in that some of the restrictions in the LSC Act are entity restrictions on all funds and LSC has at times imposed restrictions on recipients' LSC and private funds that do not appear in the LSC Act. Nonetheless, it is the term used by part 1610.

[2] It is worth noting that parts 1609 and 1610 were revised contemporaneously in 1996 and 1997. Parts 1609 and 1610 were issued as interim rules on August 29, 1996. 61 FR 45765 (Part 1609) and 61 FR 45740 (part 1610). At this time, part 1609 contained the revised language while Part 1610 continued to treat it as an LSC Act restriction. part 1609 was finalized on April 21, 1997, with the revised language, while part 1610 was still under revision. 62 FR 19398. A new final rule on part 1610 was subsequently published on May 21, 1997. 62 FR 27695. Notwithstanding the final language of part 1609 (appearing to apply the fee-generating case restriction as an entity restriction), the finalized part 1610 continued to apply the fee-generating case restriction as applying only to LSC and private non-LSC funds as had been the case prior to the revision of part 1609.

substantive change from current practice.

Although a question might be raised as to whether amending the regulation as proposed could be seen to be encouraging recipients to seek out fee-generating cases, LSC notes that the current understanding and practice is generally that the restriction does not apply to public non-LSC funds, and LSC is not aware that recipients are using such funds in any significant measure to undertake fee-generating cases that would otherwise be taken by the private bar. Thus, it seems unlikely that a clarification of the regulation, which would bring it into accord with the LSC Act, prior regulatory language and the current practice, would appear to encourage or increase the incidence of recipients' taking fee-generating cases. Moreover, recipients are subject to the priorities rule (45 CFR part 1620) which requires recipients to provide legal assistance (regardless of the source of funds used for such legal assistance) only in accordance with adopted priorities and the types of cases that the fee-generating case restriction would prohibit are generally not within any recipient's priorities.

It has been suggested that the proposed amendment may result in a regulation that is more complex in administration, in that if the restriction is applied only to LSC and private non-LSC funds, and a recipient takes fee-generating cases with available public non-LSC funds (without otherwise meeting the criteria and procedural requirements of the regulation) the recipient will have to keep sufficient records to demonstrate the segregated and proper use of the funds. However, this is true for all of the LSC Act-only restrictions and tracking and documentation of proper uses of various sources of funds has not, to date, proven to be an insurmountable barrier to effective administration or oversight. Moreover, the flexibility afforded to recipients may be argued to outweigh any complexity in recordkeeping occasioned by the application of the restriction to the source of funds rather than as an entity restriction. Finally, to the extent that current practice has been to enforce the regulation as an LSC funds, rather than an entity, restriction, LSC anticipates no more complex administration of the regulation than has been the case. If anything, having the plain language of the regulation accord with the Act and part 1610, as well as reflect the current understanding of the scope of the rule will clarify and simplify administration of the regulation for both LSC and recipients.

In light of the above, LSC proposes to amend § 1609.3(a) to clarify that a recipient may not use Corporation funds to provide legal assistance in a fee-generating case (unless one of the exceptions apply). As 45 CFR 1610.4 is not proposed to be amended, that provision will continue to subject a recipient's private funds to the fee-generating case restrictions in Part 1609.

List of Subjects in 45 CFR Part 1609

Grant programs—law, Legal services.

For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC proposes to amend 45 CFR part 1609 as follows:

PART 1609—FEE-GENERATING CASES

1. The authority citation for part 1609 continues to read as follows:

Authority: 42 U.S.C. 2996f(b)(1); 42 U.S.C. 2996e(c)(1).

2. Section 1609.3 is amended by revising paragraph (a) introductory text to read as follows:

§ 1609.3 General requirements.

(a) Except as provided in paragraph (b) of this section, a recipient may not use Corporation funds to provide legal assistance in a fee-generating case unless:

* * * * *

Mattie Cohan,

Senior Assistant General Counsel.

[FR Doc. 2011–2488 Filed 2–3–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 100323162–0595–02]

RIN 0648–XV30

Endangered and Threatened Species; 12-Month Finding on a Petition To Delist Coho Salmon South of San Francisco Bay

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

ACTION: Proposed rule; 12-month petition finding; request for comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), are issuing a 12-month finding on a petition to delist coho salmon (*Oncorhynchus kisutch*) in coastal counties south of the ocean entrance to San Francisco Bay, California from the Federal List of Endangered and Threatened Wildlife under the Endangered Species Act (ESA) of 1973, as amended. Coho salmon populations in this region are currently listed under the ESA as part of the endangered Central California Coast (CCC) Evolutionarily Significant Unit (ESU). The petition was accepted on April 2, 2010, triggering a formal review of the petition and a status review of the listed ESU. A biological review team (BRT) was convened to assist in reviewing the petition and the status of the species. Based upon our review of the petitioned action and the status of the species, we conclude that the petitioned action is not warranted and that coho salmon populations south of San Francisco Bay are part of the endangered CCC coho salmon ESU. We further conclude that the southern boundary of the CCC coho ESU should be extended southward from its current boundary at the San Lorenzo River to include Soquel and Aptos Creeks in Santa Cruz County, California, and are proposing this change in the ESU boundary. As a result of this proposal, we are also soliciting comments and any relevant scientific and commercial data concerning the proposed range extension.

DATES: Written comments, data and information relevant to the proposed range extension must be received no later than 5 p.m. local time on April 5, 2011.

ADDRESSES: You may submit comments on the proposed range extension, identified by the RIN 0648–XV30, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Facsimile (fax):* 562–980–4027, Attn: Craig Wingert.
- *Mail:* Submit written comments to the Assistant Regional Administrator, Protected Resources Division, Attn: Craig Wingert, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 5200, Long Beach, CA 90802–4213.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or

protected information. We will accept anonymous comments (if you wish to remain anonymous enter N/A in the required fields). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

A copy of the petition and related documents, our 90-day finding, the BRT report, and other relevant information may be obtained by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Attn: Craig Wingert, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 5200, Long Beach, CA 90802–4213 or from the internet at *http://swr.nmfs.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, NMFS, Southwest Region, (562) 980–4021; or Dwayne Meadows, NMFS, Office of Protected Resources, Silver Spring, MD, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

The Central California Coast (CCC) coho salmon Evolutionarily Significant Unit (ESU) was listed as a threatened species on October 31, 1996 (61 FR 56138), and subsequently reclassified as an endangered species on June 28, 2005 (70 FR 37160). Coho salmon in coastal streams of Santa Cruz and San Mateo counties south of the entrance to San Francisco Bay were found to be part on this ESU at the time of its original listing and subsequent reclassification. For more information on the status, biology, and habitat of this coho salmon ESU, see "Endangered and Threatened Species: Final Listing Determinations for 16 ESUs of West Coast Salmonids and Final 4(d) Protective Regulations for Threatened Salmonid ESUs; Final Rule" (70 FR 37160; June 28, 2005) and "Final Rule Endangered and Threatened Species; Threatened Status for Central California Coast Coho Salmon Evolutionarily Significant Unit (ESU)" (61 FR 56138; October 31, 1996).

On November 25, 2003, we received a petition from Mr. Homer T. McCrary (Petitioner), a Santa Cruz County forestland owner, to redefine the southern extent of the CCC coho salmon ESU by excluding coastal populations of coho salmon south of the entrance to San Francisco Bay, California. An addendum to the petition was received on February 9, 2004, providing additional information to clarify the original petition and respond to new information regarding museum specimens of coho salmon from four coastal streams south of San Francisco Bay.

The ESA authorizes an interested person to petition for the listing or delisting of a species, subspecies, or Distinct Population Segment (DPS) (16 U.S.C. 1533(b)(3)(A). Our ESU policy (November 20, 1991; 56 FR 58612) defines a valid ESU as a DPS under the ESA. The ESA implementing regulations contain the factors to consider for delisting a species (50 CFR 424.11(d)). A species may be delisted only after a review of the best scientific and commercial data substantiates that it is neither endangered nor threatened for one or more of the following reasons: (1) The species is extinct or has been extirpated from its previous range; (2) the species has recovered and is no longer endangered or threatened; or (3) investigations show the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error. The factors, singly or in combination, considered in making a delisting determination are: (1) The present or threatened destruction, modification, or curtailment of a species' habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting a species' continued existence.

Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving a petition, the Secretary shall make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted (90-day finding). Our ESA implementing regulations define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). If a positive 90-day finding is made, then we must conduct a status review of the species concerned and publish a finding indicating whether the petitioned action is or is not warranted (12-month finding) (50 CFR 424.14(b)(3)).

On March 23, 2006, we published a 90-day finding (71 FR 14683) stating that the petition submitted by petitioner did not present substantial information indicating that delisting coho salmon south of San Francisco Bay may be warranted. On March 31, 2006, the petitioner challenged that finding, alleging violations of the ESA and Administrative Procedure Act (*Homer T. McCrary* v. *Carlos Gutierrez et al.,* No. 06–cv–86–MCE) (E.D. Cal.)). The venue for the case was subsequently transferred to the Northern District Court in San Jose, California as case No. C–08–01592–RMW (N.D. Cal.). On February 8, 2010, the court issued an order stating our decision to deny the petition was arbitrary and capricious. The court found that we failed to follow the proper statutory procedures for reviewing petitions under the ESA, by using information beyond the four corners of the petition, and in applying the 12-month standard of whether the petitioned action "is or is not warranted," rather than the 90-day standard of whether the petitioned action "may be warranted." The court vacated our March 23, 2006, finding and remanded the petition to us for processing in accordance with 16 U.S.C. 1533(b)(3)(A).

On April 2, 2010, we published a new 90-day finding (75 FR 16745) in response to the February 8, 2010, U.S. District Court decision, accepting the petition, triggering its formal review and initiation of a status review. In the 90-day finding we solicited information from the public and other concerned stakeholders to ensure that the review was complete and based on the best available scientific and commercial information concerning the issues raised in the petition. The California Department of Fish and Game (DFG) provided the only public comment on the 90-day finding.

In July 2010, we convened a biological review team (BRT) composed of scientists from our Southwest and Northwest Fisheries Science Centers and fishery experts from the U.S. Forest Service and U.S. Geological Survey to specifically review the petitioned action, the information supporting the petitioned information, and other relevant information compiled by the Southwest Fisheries Science Center to assess the petition and its specific issue regarding the distribution of coho salmon south of San Francisco Bay. Following extensive review and discussion, the BRT addressed two key questions pertinent to the petitioned action: (1) Does the available evidence support a southern boundary for CCC coho salmon that excludes streams south of the entrance to San Francisco Bay?, and (2) does the available evidence support a boundary different from the current boundary at the San Lorenzo River? The BRT's review and findings are detailed in Spence *et al.* (2011). In its findings, the BRT concluded the best available scientific and historical information supports a southern boundary for this ESU that includes populations inhabiting coastal streams south of the entrance to San Francisco Bay. Based on their review of the scientific and historical information,

the BRT also recommended extending the southern boundary of the ESU from its current boundary at the San Lorenzo River southward to include populations found in Soquel and Aptos Creeks. Below we summarize and review the petition and the BRTs status report.

Overview of the Petition

The McCrary petition asserts that coho salmon were introduced into Santa Cruz County, California, in 1906 and until that time, aside from possible occasional strays, no self-sustaining native coho populations existed in the coastal streams south of the entrance to San Francisco Bay. The petition asserts the legal and factual criteria supporting the listing of coho salmon under the ESA were in error, as demonstrated by historical and scientific information presented in the petition. The petitioner also asserts that extant populations of coho salmon in the coastal streams south of the entrance to San Francisco Bay are most likely of non-native origin and only persist there due to ongoing artificial propagation efforts. As a consequence, the petitioner argues that these populations do not constitute an important component in the evolutionary legacy of the species. The petition also asserts coho salmon populations in these streams should be delisted because they are not evolutionarily significant populations and their inclusion in the CCC coho salmon ESU is inconsistent with NMFS' ESU policy for Pacific salmon (Waples, 1991). Based on this and other information detailed in the petition and addendums, the petitioner requested that we delist populations of coho salmon in coastal streams south of the entrance to San Francisco Bay and redefine the southern boundary of the CCC coho salmon ESU to an undetermined location north of San Francisco Bay.

Information used to support the petitioner's assertion that coho salmon are not native in coastal streams south of the entrance to San Francisco Bay, and therefore, should not be listed, included: (1) Early scientific and historical accounts indicating that the entrance to San Francisco Bay was the southern boundary for coho salmon; (2) differences in environmental conditions (geology, climate, and hydrology) between regions north and south of San Francisco Bay; (3) information and historical accounts indicating that coho salmon from out of the area were artificially planted into the coastal streams south of the entrance to San Francisco Bay; and (4) the absence of coho salmon remains in the archeological record at sites south of the entrance to San Francisco Bay. Finally, the petitioner also argued that even if coho salmon populations south of the entrance to San Francisco Bay are of native origin they are likely ephemeral populations that contribute little to the evolutionary legacy of the species, and therefore, should not be listed under the ESA.

We considered all additional information provided by the petitioner and others that provided supplemental information on his behalf to be part of the petition. This supplemental information originated as a result of written communication and discussions between our Southwest Region office, the Southwest Fisheries Science Center and the petitioner in 2004 and 2005. We also considered information presented in Kaczynski and Alvarado (2006) which clarified and expanded on some of the information and arguments made by the petitioner.

Summary of BRT Findings

The following summary of the BRT's findings addresses the main points raised in the petition, supplemental information provided by the petitioner, and arguments made in Kaczynski and Alvarado (2006). The summary addresses the following issues raised in the petition: (1) Early scientific and historical accounts; (2) environmental conditions north and south of the entrance to San Francisco Bay; (3) human intervention as it relates to artificial propagation; (4) the archeological record for coho remains at sites south of the entrance to San Francisco Bay; and (5) the relationship of these southern populations to the overall CCC coho salmon ESU and their consideration in the context of our ESU policy.

1. *Early scientific and historical accounts.* The petitioner presented a review of early scientific and historical accounts that suggested coho salmon were not present in coastal streams south of the entrance to San Francisco Bay prior to hatchery planting efforts. In his review, the petitioner found no references to coho salmon in the area until after the initiation of hatchery outplanting efforts which began in 1906. Because the scientific literature prior to 1906 referenced coho salmon as occurring or being abundant north of San Francisco the petitioner concluded coho salmon were absent in coastal streams south of San Francisco. In response to the discovery of coho salmon museum specimens collected in 1895 from four streams south of the entrance to San Francisco Bay, information that was not presented in the original petition, the petitioner argued these specimens were not reliable evidence that coho salmon historically occurred south of San Francisco Bay and instead were likely the result of the fish straying southward because of unusually favorable ocean conditions or of undocumented non-native stock introductions.

The BRT reviewed all available information and concluded that the petitioner's assertions are not supported by the available scientific or historical evidence. The historical record demonstrates that few faunal surveys had been conducted by early fishery scientists in coastal watersheds anywhere in California prior to 1895, and certainly not enough to precisely define the southern boundary of coho salmon in California.

In reviewing historical reports and other information regarding the range of coho salmon in California, the BRT found there was considerable uncertainty and confusion about the identification of the various species of Pacific salmon in the 1800s and into the early 1900s. This confusion raised the BRT's concerns over the reliability and accuracy of popular sources of information (*e.g.,* newspapers) and early scientific accounts to establish freshwater range limits for coho salmon in California. This widespread confusion regarding species identification was due to several factors, including a poor understanding of salmonid life histories and life stages, the use of different common names (which sometimes varied between geographic localities) for the same species, and the use of the same common name for different species. These factors contributed to the frequent misidentification of salmon species and the resultant conflicting descriptions of the species' geographic range. After a careful review of the early literature, the BRT found evidence that coho salmon were likely missidentified as chum salmon (*O. keta*) or steelhead (*O. mykiss*) which led early fishery scientists to inaccurately describe the presence and/or distribution of coho salmon in California.

The BRT concluded that museum collections currently held at the California Academy of Sciences (CAS) provide direct evidence coho salmon were present in coastal streams south of the entrance to San Francisco Bay prior to 1906. The collection of these specimens represents the first known scientific effort to document the presence of freshwater fish species, including salmonids, in coastal streams south of the entrance to San Francisco Bay. The petitioner contends these specimens are not reliable indicators of

coho presence south of the entrance to San Francisco Bay for several reasons including: (1) The original misidentification of the specimens as species other than coho salmon; (2) the possibility that the collections were "contaminated" during the 1906 San Francisco earthquake where some specimen bottles in the original museum collection at Stanford University were broken; and (3) a "broken chain" of custody for the 1895 specimens. The petitioner also asserted even if these specimens were collected from local streams, they are not evidence of persistent populations south of San Francisco Bay, but rather may have been the result of unusually favorable ocean survival conditions in the early 1890s that led to an ephemeral colonization event in these streams by coho salmon.

The BRT was not persuaded by either of the first two arguments. The misidentification of species was commonplace in this era when there was substantial confusion surrounding the taxonomy and nomenclature of Pacific salmon and a poor understanding of the early life stages of these species. The correct identification of these fish as coho salmon was made sometime later, most likely before the Stanford collection was transferred to the CAS (D. Catania, CAS, pers. comm., 14 November 2004, in Spence *et al.,* 2011). Further, the timing of these collections (June) and size of individuals (50–85 mm) is most consistent with coho salmon, which reside in fresh water for a full year. Three of the four lots were originally identified as chum salmon. However, chum salmon emigrate shortly after emergence in the spring at very small sizes (usually < 50 mm); thus, a June collection of fish > 50 mm would be highly unlikely. Thus, the most reasonable explanation is that the 1895 specimens collected by the Carmel River Expedition were coho salmon that were misidentified. Adams *et al.* (2007) reached the same conclusion.

The BRT also concluded that the assertion that the museum specimens or labels were mixed up or "contaminated" after the 1906 San Francisco earthquake lacks support. The BRT noted that extensive efforts were made by museum staff after the earthquake to match specimens with the correct collection information and that all unmatched specimens were discarded. They also believed that the petitioner's assertion that contamination had occurred would have necessitated several improbable events to have occurred, making that scenario highly unlikely.

The BRT did not specifically address the "chain of custody" argument made by the petitioner regarding these specimens, but as Adams *et al.* (2007) pointed out, this concept is normally applied to evidence handling in legal proceedings and not the handling of scientific museum specimens. We believe this is an inappropriate standard in a situation such as this and that few if any museum collections, even contemporary collections, could meet this legal evidence standard.

The BRT also found the petitioner's argument that coho salmon colonized these streams in the 1890s as a result of unusually favorable ocean conditions to be highly speculative and without a credible basis. The BRT concluded the collection of coho salmon in four different streams south of San Francisco Bay during a fairly brief field survey in 1895 strongly suggested their presence was not caused by a random colonization event resulting from favorable ocean conditions.

Finally, the BRT found clear evidence from multiple historical sources that coastal streams south of the entrance to San Francisco Bay supported at least two, if not more, species of anadromous salmonids on a recurring basis in the late 1800s and early 1900s. One of the species was undoubtedly steelhead, which is still present in these coastal streams south of San Francisco Bay. Based on the known historical and current distributions of the five species of Pacific salmon, the second species could only be coho salmon or Chinook (*O. tshawytscha*) salmon. Given the different ecological requirements of these two species and the nature of local stream habitats, the BRT concluded that coho salmon rather than Chinook salmon is most likely to have been the other salmonid species regularly observed in the coastal streams south of the entrance to San Francisco Bay. To conclude otherwise, the BRT stated, would be inconsistent with all that is known about the comparative ecology and habitat requirements of the two species.

In summary, the BRT found clear evidence that coho salmon were present in the coastal streams south of San Francisco Bay prior to 1906. Evidence cited by the BRT includes museum specimens collected in 1895 and a large body of information indicating that at least two species of salmonids were present in the area, one of which was likely coho salmon. The BRT also found widespread confusion regarding the identification of salmonids in the early popular and scientific literature indicating that these sources of information could not be reliably used to define the southern freshwater range limit of coho salmon in California.

2. *Environmental conditions.* In the petition and other written correspondence the petitioner presented information contending that the environmental conditions in coastal streams south of the entrance to San Francisco Bay are too harsh or extreme to support persistent populations of coho salmon. Environmental factors identified by the petitioner and Kazcynski and Alvarado (2006) were stream hydrology, precipitation, sedimentation, drought conditions, and stream access.

After reviewing the available information characterizing the environmental conditions in streams immediately north and south of San Francisco Bay, the BRT disagreed with the petitioner's contention. The BRT concluded that the relatively small differences in stream hydrology (baseflow and dynamic range) between the northern and southern watersheds were not biologically meaningful to coho salmon. The BRT also concluded that the petitioner's analysis of hydrology was flawed because it failed to account for the effects of regulated flow releases in Lagunitas Creek (Marin County, California) and major summer water diversions in Soquel Creek (Santa Cruz County, California), both of which alter the natural hydrograph in these streams.

The petitioner's arguments regarding the unsuitability of habitat south of San Francisco Bay were also discussed by Kaczynski and Alvarado (2006), who compared precipitation regimes in different watersheds and concluded that the frequency of extreme storms is significantly greater in Santa Cruz County than in Marin County. Adams *et al.* (2007) evaluated this analysis and concluded that the differences in extreme storm frequency were so slight that they were unlikely to be biologically significant to coho salmon. The BRT concurred with the Adams *et al.* (2007) assessment.

Kazcynski and Alvarado (2006) also contended that habitat conditions were significantly different in watersheds immediately north and south of San Francisco Bay. Specifically, they argued that drought conditions are more severe south of San Francisco Bay, freshwater temperatures are warmer south of San Francisco Bay, and that coho salmon may not be able to access spawning habitat during drought periods south of San Francisco Bay. The BRT concluded that these conditions are not unique to streams south of San Francisco Bay, nor would they significantly hinder habitat

availability or use by coho salmon in streams south of San Francisco Bay.

The petitioner noted that coastal streams south of the entrance to San Francisco Bay are subject to high amounts of fine sediment input which can make habitat unsuitable and deleterious to coho salmon. The BRT noted this problem is neither new nor unique to streams south of San Francisco Bay, and that coho salmon occupy streams such as the Eel River, Mad River, and Redwood Creek (in Humboldt County, California), which have some of the highest sediment yields in the United States (Milliman and Syvitski, 1992).

The petitioner and Kazcynski and Alvarado (2006) contended that some of the streams south of San Francisco are in excellent condition and cited a number of recent documents attesting to the difficulties that coho salmon have coping with environmental conditions in these streams. The BRT did not dispute the fact that coho salmon are significantly challenged by the current habitat conditions in these streams, but they strongly disagreed that some streams in Santa Cruz County are now in excellent condition. Based on their understanding of habitat conditions in streams south of San Francisco Bay and the history of anthropogenic disturbance in these watersheds, the BRT does not believe there is a single watershed that exhibits the pristine habitat complexity that existed prior to the 1800s when significant anthropogenic alteration of these watersheds first began. The BRT concluded that these anthropogenic disturbances are the major factor affecting coho salmon use of these watersheds rather than the inherent characteristics of the watersheds themselves.

In summary, the BRT found no compelling evidence that environmental conditions are appreciably different in coastal streams south of the entrance to San Francisco Bay compared with streams north of San Francisco Bay where the historical (and current) presence of coho salmon is not disputed.

3. *Human intervention by artificial propagation.* The petitioner contends coho salmon were first introduced into streams south of San Francisco Bay with the delivery of coho salmon eggs from Baker Lake, Washington, to the Brookdale hatchery on the San Lorenzo River in Santa Cruz County in 1906. According to the petition, this introduction was the beginning of an effort to establish a coho salmon fishery in the coastal streams south of San Francisco Bay. Petitioner then asserts that the first credible observation of coho salmon in the region did not occur until after the introductions began in 1906. The petitioner concludes that all subsequent observations of coho salmon in these streams were likely the result of the 1906 or later introductions.

The BRT reviewed and evaluated past coho salmon hatchery out-planting activities in streams south of San Francisco Bay to address three issues: (1) Whether the substantial numbers of coho salmon that occurred in these streams were the result of the Baker Lake and subsequent introductions; (2) whether the CAS coho salmon specimens collected in 1895, prior to the start of hatchery out-planting, could have been the result of earlier hatchery activities; and (3) whether the current populations of coho salmon in streams south of the entrance to San Francisco Bay are the result of these and subsequent introductions of fish from watersheds north of San Francisco Bay.

The BRT concluded that it is highly unlikely that the introduction of modest numbers of coho salmon fry from Baker Lake could account for the substantial numbers of coho salmon observed by Shapovalov and Taft (1954) in Waddell Creek by the 1930s. The BRT based this determination on several considerations including evidence indicating that all of these early coho salmon releases into streams south of San Francisco Bay consisted of fish at the fry life stage. The BRT indicated that fish released at the fry stage would be expected to have very low survival rates even with modern hatchery practices, let alone the practices used in the early 1900s. The BRT also noted the habitat characteristics of the streams south of the entrance to San Francisco Bay are substantially different from those in which the Baker Lake stock is found. The Baker Lake stock of coho salmon evolved in a cold, snowmelt-dominated watershed of the northern Cascade Range under environmental conditions vastly different from those found in streams on the central coast of California, which may have limited the success of any released fish. The most notable adaptation of coho salmon to the Baker Lake habitat conditions is the summer run timing (July–August) of returning adult spawners. This pattern contrasts significantly with the winter run timing of coho salmon in central California. Adult run timing of salmonids, including coho salmon, is under strong genetic control and the summer run timing of Baker Lake coho salmon would be extremely maladaptive for the coastal streams south of the entrance to San Francisco Bay since most stream entrances in this area become inaccessible due to sand bars during summer and are not accessible until late November or December in most years. Given the summer run timing of the Baker Lake stock and the inaccessibility of many stream mouths during the summer south of San Francisco Bay, returning Baker Lake coho would have had a very difficult time accessing these streams in order to spawn.

The BRT evaluated whether coho salmon observed prior to 1906 could have been the result of hatchery plantings. The petition addendum indicated such a possibility might exist due to information suggesting there were fish plantings from northern California and elsewhere into streams of the Santa Cruz Mountains occurring at least as early as 1878. The BRT found no credible evidence to support this point and substantial evidence to the contrary. Published records clearly demonstrate that neither Federal nor State-owned hatcheries produced or released coho salmon into waters south of San Francisco prior to the 1906 introduction of Baker Lake fish. While some small-scale privately owned hatcheries and rearing ponds operated in the state prior to 1906, the BRT found no evidence that any of these facilities reared or distributed coho salmon south of the entrance to San Francisco Bay.

Based on the limited production of coho salmon in hatcheries anywhere in the Pacific Northwest and the lack of any evidence that coho salmon were stocked into streams south of San Francisco Bay prior to 1906, the BRT determined that it is highly unlikely that the CAS collection of coho salmon from four Santa Cruz Mountain streams in 1895 by the Carmel River Expedition were the consequence of hatchery activities pre-dating these collections.

The BRT also investigated whether existing populations of coho salmon in coastal streams south of San Francisco Bay could be the result of introductions from other areas by reviewing several genetic datasets for coho salmon from throughout California and elsewhere in the species' range. Molecular genetic data are extensively used in fisheries research to provide inferences about population structure and the ancestry of populations and individual fish. If the coho salmon populations currently found in streams south of San Francisco had been established using fish out-planted in the early 1900s from streams in the northern portion of the species range, we would expect these current populations south of San Francisco to have genetic characteristics similar to those of northern populations.

The genetic data reviewed by the BRT provided consistent results regarding

the ancestry of coho salmon populations in the coastal streams south of San Francisco Bay. The Garza (manuscript in preparation) dataset discussed in Spence *et al.* (2011) is particularly relevant to the claim in the petition that these populations are non-native and derived from an out-of-ESU source. This dataset consists of molecular genetic data from coho salmon populations located throughout California, as well as from populations located throughout the rest of the species' range, including Canada, Alaska and Russia. This dataset also includes genetic data for coho salmon from the Samish River which is the watershed immediately north of the Skagit River in Puget Sound where the Baker Lake stock cited by the petitioner as the original source for coho salmon in 1906 originated. Analysis of these data show that coho salmon from populations in the southernmost portion of the range of the CCC coho salmon ESU are unambiguously similar to coho salmon populations elsewhere within the range of this ESU and not with populations from other ESUs located further north. This analysis clearly rules out the possibility that the genetic ancestry of coho salmon populations south of the entrance to San Francisco Bay is substantially derived from an out-of-ESU source (*e.g.,* Baker Lake or 1980s imports from Washington and Oregon stocks). The analysis definitively establishes that fish from northern populations are not the primary contributors to the current populations south of San Francisco, nor were they established by out-planting of fish from northern populations within the ESU or outside the ESU, including imports from the Noyo River.

Based on its review of hatchery out-planting in the streams south of the entrance to San Francisco Bay after 1906, hatchery and rearing pond efforts prior to 1895, and the available genetic information, the BRT concluded the available evidence did not support the petitioner's assertions. In fact, the available information strongly suggests that early hatchery out-planting efforts were unsuccessful at establishing new populations of coho salmon in the streams south of the entrance to San Francisco Bay. Although the available genetic information cannot rule out the possibility that coho salmon from streams in the northern portion of the ESU may have contributed to the genetic ancestry of current populations south of San Francisco, these data indicate that any such contribution was not large and that current populations are native to the area.

4. *Archeological record.* The petitioner cited the studies of Gobalet and Jones (1995) and Gobalet *et al.* (2004) that failed to identify the archeological remains of coho salmon from Indian middens in Santa Cruz and San Mateo counties as additional evidence that coho salmon were not native to the streams south of the entrance to San Francisco Bay.

The BRT concurred that archaeological studies can provide important evidence for the distribution of plant and animal species through their use by native inhabitants (Gobalet and Jones, 1995). A recent paper on this topic (Gobalet manuscript in press as cited in Spence *et al.,* 2011) addresses the southern extent of coho salmon distribution in California specifically. Gobalet (manuscript in press) reports on findings from newly examined archeological material from five locations in coastal California south of the entrance to San Francisco Bay, and from a re-examination of materials from Elkhorn Slough (near the historical mouth of the Salinas River) that had previously been identified as steelhead. From these materials Gobalet (manuscript in press) identified two, and possibly three, archaeological locations as having remains of coho salmon. Of the two locations where coho salmon remains were independently verified, one was from a historical home site in Santa Barbara (Santa Barbara County, California) and one was located at the Año Nuevo State Reserve in southern coastal San Mateo County. The third location was at Elkhorn Slough where three elements (vertebrae) were determined to be coho salmon. However, these elements will require confirmation by another specialist before a conclusion can be reached that coho salmon occurred as far south as Monterey County.

Based on its review, the BRT concluded that the identification of coho salmon archeological specimens from locations in coastal streams south of San Francisco Bay indicates coho salmon are native to this area. Based on the most recent archaeological evidence, the BRT concluded that: (1) Archaeological evidence from the Año Nuevo site establishes the historical presence of coho salmon south of the entrance to San Francisco Bay; and (2) independent confirmation of vertebrae identified from the Elkhorn Slough site may extend the southern limit of historical coho salmon distribution to northern Monterey County.

5. *Contribution of populations south of San Francisco to the overall CCC coho salmon ESU.* The petitioner and his representatives questioned the basis for the federal listing of coho salmon in the streams south of the entrance to San Francisco Bay. The issues raised fall into three categories: (1) That coho salmon were introduced to the area in question, and therefore, do not qualify for Federal listing; (2) listing of these southern populations conflicts with NMFS' ESU policy (56 FR 58612) and Waples (1991) regarding the issue of evolutionary legacy; and (3) the southern populations are ephemeral or sink populations, and therefore, do not contribute to the evolutionary legacy of the CCC coho salmon ESU. The BRT disagreed with the petitioner and his representatives on all three issues. The BRT concluded that the weight of the evidence indicates coho salmon are native to the area and do qualify for Federal listing. As stated in the BRT report (Spence *et al.,* 2011), the CAS specimens and recent genetic information clearly demonstrate that coho salmon in the streams south of the entrance to San Francisco Bay are native.

The BRT concluded that the petitioner misinterpreted our ESU policy. The petitioner argued that the ESU policy requires a population by population analysis of reproductive isolation and evolutionary legacy. The BRT noted that the evolutionary legacy criterion in the policy applies to the ESU as a whole, and not to individual populations within an ESU. Our ESU policy has no requirement that each constituent population or group of populations within an ESU contribute uniquely to the evolutionary legacy of the species. In fact, if the southern coho salmon populations had been determined to be reproductively isolated and to constitute an important part of the evolutionary legacy of the species, they would have been considered a separate ESU.

The BRT did not believe there was compelling evidence that coho salmon populations south of the entrance to San Francisco Bay were ephemeral, at least not at the time scales implied by the petitioner. The petitioner's assertion directly contradicts the finding from NMFS' Technical Recovery Team (Spence *et al.,* 2008) which concluded that at least two independent coho salmon populations (Pescadero Creek in San Mateo County and San Lorenzo River in Santa Cruz County) likely existed in the region prior to the extensive habitat alteration that followed Euro-American settlement.

Finally, the BRT report (Spence *et al.,* 2011) provided an expanded discussion on the relative roles of ephemeral and sink populations and the contribution these populations can make to the resiliency of a salmon ESU. Demographically, these populations

increase overall metapopulation size, increase the size of the source populations, and extend the survival of a declining metapopulation. In contrast to arguments presented by the petitioner and his representatives regarding the importance of ephemeral and sink populations, the BRT noted these populations contribute to maintaining the evolutionary legacy of the ESU as a whole. The BRT concluded that the loss of populations at the edge of a species' range (such as coho salmon south of the entrance to San Francisco Bay) may have a relatively greater negative impact on ESU persistence than loss of populations occurring nearer to the center of the species' distribution. In addition to these demographic benefits, populations near the edge of a species' range provide potential genetic benefits by fostering evolution in a broader ecological niche for the ESU as a whole.

12-Month Finding on the McCrary Petition

We have reviewed the best scientific and commercial information available including the petition, the addendum to the petition, all other correspondence between the petitioner and NMFS, comments on the 90-day finding from DFG, and the BRT's detailed analysis and conclusions regarding the petitioned action (Spence *et al.,* 2011). Based on this review, we conclude that the petitioned action is not warranted.

New Information on Coho Salmon Distribution and Habitat Use South of the San Lorenzo River

The ESU boundaries for West Coast coho salmon ranging from southern British Columbia to Central California were first delineated in a 1994 status review (Weitkamp *et al.,* 1995). In delineating coho ESU boundaries, the 1994 status review evaluated a wide range of information pertaining to West Coast coho salmon, including geography, ecology, and coho salmon genetic characteristics and life history traits. In the proposed listing determination for the CCC coho salmon ESU (60 FR 38011; 25 July 1995), we stated that the current range of the ESU extended to the southernmost extent of the species range in California based on recent data. At that time, we believed the southern extent of the species range was the San Lorenzo River in Santa Cruz County.

For coho salmon in central California, the 1994 status review recognized that the rivers draining the Santa Cruz Mountains formed a cohesive group with respect to environmental conditions, and therefore, concluded that the Pajaro River, which is south of Aptos Creek, was likely the historical southern limit of coho salmon. In determining where the southern boundary of the Central California coast ESU should be placed, the 1994 status review relied heavily on information provided in a status review of coho salmon in Scott and Waddell Creeks (Bryant, 1994). The Bryant (1994) status review indicated there were no recent reports of coho salmon in rivers south of the San Lorenzo River. Faced with uncertainty of whether any coho salmon populations might be present south of San Lorenzo River and the uncertain origins of coho salmon in the San Lorenzo (native or hatchery influenced), the status review concluded that the San Lorenzo River should be the southern-most basin in the ESU. In reaching this conclusion, the 1994 status review and proposed and final listing determinations (60 FR 38011 and 61 FR 56138) stated that any coho salmon found spawning south of the San Lorenzo River that were not the result of stock transfers should be considered part of this ESU.

In reviewing the McCrary petition, the current BRT (Spence *et al.,* 2011) compiled new information about the distribution of coho salmon south of the entrance to San Francisco Bay. Based on a review of this new information, the BRT recommended that the southern boundary of the CCC coho salmon ESU be moved southward from the San Lorenzo River to include any coho salmon populations occurring in Soquel and Aptos Creeks. New information supporting this recommendation includes: (1) Recent observations of coho salmon in Soquel Creek; (2) recent genetic information obtained from coho salmon observed in Soquel Creek; and (3) information indicating that freshwater habitat conditions and watershed processes in Soquel and Aptos Creeks are similar to those found in closely adjacent basins within the current range of the CCC coho salmon ESU.

During the summer of 2008, juvenile coho salmon were observed by our Southwest Fisheries Science Center (SWFSC) scientists in Soquel Creek for the first time in many years. Soquel Creek enters the Pacific Ocean about 6.5 km south of the current ESU boundary at the ocean mouth of the San Lorenzo River. A total of approximately 170 juvenile fish were observed in the East Branch of Soquel Creek and some were photographed. These observations demonstrate that suitable spawning and rearing habitat occurs in Soquel Creek for coho salmon. A total of 28 of these fish were captured for tissue sampling and subsequent genetic analysis.

Genetic analyses of the juvenile coho salmon from Soquel Creek used 18 microsatellite loci to genotype these fish and investigate the origins of their parents and the minimum number of reproductive events that contributed to the observed juveniles. Standard genetic stock identification techniques were used with a baseline reference database that included representative stocks from all regional California groups of coho salmon. The Soquel Creek fish were compared to a coho salmon reference population located south of San Francisco (Scott Creek) and it was determined, with very high confidence, that they were closely related. This comparison demonstrated that: (1) The juvenile fish observed in Soquel Creek were the progeny of locally produced adults returning to reproduce in nearby streams; and (2) they are native to streams draining the Santa Cruz Mountains south of the entrance to San Francisco Bay.

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

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

this Ecoregion indicating they are suitable for coho salmon.

Revised CCC Coho Salmon ESU

To qualify for listing as a threatened or endangered species, identified populations of coho salmon must be considered a "species" under the ESA. The ESA defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Our ESU policy describes how the agency applies the ESA definition of "species" to anadromous salmonid species. This policy provides that a salmonid population will be considered distinct, and hence a species under the ESA, if it represents an ESU of the biological species. A population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other con-specific population units; and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion is met if the population contributes substantially to the ecological/genetic diversity of the species as a whole. Guidance on the application of this policy is contained in Waples (1991). The genetic, ecological, and life history characteristics that we assessed to identify the number and geographic extent of coho salmon ESUs in accordance with this policy, including the CCC coho salmon ESU, are discussed in detail in Weitkamp *et al.* (1995) and in the July 25, 1995, proposed listing determination for three coho salmon ESUs (60 FR 38011). Additional information is presented in the original threatened listing determination for the CCC coho ESU in 1996 (61 FR 56138).

As described in the 2005 final listing determination that reclassified the CCC coho salmon ESU as endangered (70 FR 37160), the ESU consists of naturally and hatchery spawned populations of coho salmon in rivers and streams from Punta Gorda in southern Humboldt County, California, to the southern extent of the species' range which was identified as the San Lorenzo River in Santa Cruz County, California (inclusive). The ESU also includes populations from several San Francisco Bay tributaries. The four listed hatchery stocks are those propagated by the Don Clausen Fish Hatchery Captive Broodstock Program, Scott Creek/King Fisher Flats Conservation Program, the Scott Creek Captive Broodstock Program, and the Noyo River Fish Station egg-take Program. The Noyo River program was discontinued after the 2005 listing.

The recent information compiled by the BRT clearly indicates that adult coho salmon entered Soquel Creek and successfully spawned during the 2007–2008 winter period. The juvenile progeny of those spawning adults were observed by a SWFSC scientist during the summer of 2008. The genetic information collected from these fish clearly indicate they are closely related to other coho salmon in the Santa Cruz Mountains Diversity Stratum and not the result of strays from outside the ESU or streams to the north of the entrance to San Francisco Bay. Since there had been no recent evidence of coho salmon presence in Soquel Creek prior to 2008, it is likely that the adult coho salmon which successfully spawned during the winter of 2007–2008 were strays from nearby watersheds within the Santa Cruz Mountains Diversity Stratum.

Aptos Creek, like Soquel Creek, is part of Coast Range Ecoregion and is believed to have historically supported a coho salmon population (Anderson 1995). NMFS biologists familiar with the habitat requirements of coho salmon have determined that Aptos Creek has freshwater habitat suitable for successful spawning and rearing of coho salmon. Because Aptos Creek has suitable habitat for coho salmon and is in close proximity to Soquel Creek and other streams that support coho salmon, the BRT recommends that any coho found in Aptos Creek be considered part of the ESU. Although there is no current information indicating coho salmon occur in Aptos Creek, this may be the result of limited survey efforts in the watershed.

While the BRT believes that Pajaro River tributaries draining the Santa Cruz Mountains (*e.g.,* Corralitos Creek and perhaps others) may have also supported coho salmon in the past, the lack of historical or recent evidence of naturally occurring coho salmon in this watershed makes inclusion of these streams within the ESU more difficult to justify. The BRT concludes, however, that any coho salmon found spawning in Santa Cruz Mountain streams south of Aptos Creek should be considered part of this ESU unless they are non-native stock transfers.

Status of CCC Coho Salmon ESU

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

As part of a 5-year status review update, the SWFSC has updated the biological status of the coho salmon populations in this ESU (Spence and Williams, 2011). This review concluded that despite the lack of long-term data on coho salmon abundance, available evidence from recent shorter-term research and monitoring efforts demonstrates that the status of coho populations in this ESU have worsened since the Good *et al.* (2005) review. For all available time series, recent population trends have been downward, in many cases significantly so, with particularly poor adult returns from 2006 to 2010. Based on population viability criteria developed to support recovery planning efforts for this ESU (Bjorkstedt *et al.,* 2005; Spence *et al.,* 2008), all of the independent populations are well below low-risk abundance targets (e.g., Ten Mile River, Noyo River, Albion River), and several are, if not extinct, below high-risk depensation thresholds (e.g., San Lorenzo River, Pescadero Creek, Russian River, Gualala River). Though population-level estimates of abundance for most independent populations are lacking, it does not appear that any of the five diversity strata identified by Bjorkstedt *et al.* (2005) currently support a single viable coho salmon population based on viability criteria that have been established by Spence *et al.* (2008). Based on a consideration of the updated biological status information for this ESU, including the status of the newly discovered coho salmon population in Soquel Creek, we conclude that the CCC coho salmon ESU continues to be in danger of extinction.

Summary of Factors Affecting the Revised CCC Coho Salmon ESU Including Soquel and Aptos Creeks

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

Our review of factors affecting the CCC coho salmon ESU concluded that

logging, agriculture and mining activities, urbanization, stream channelization, dams, wetland loss, and water withdrawals and unscreened diversions have contributed to the decline of the CCC coho salmon ESU. Land-use activities associated with logging, road construction, urban development, mining, agriculture, and recreation have significantly altered coho salmon habitat quantity and quality (61 FR 56138; 31 October 1996 and 70 FR 37160; 28 June 2005). Impacts of these activities include alteration of streambank and channel morphology, alteration of ambient stream water temperatures, elimination of spawning and rearing habitat, fragmentation of available habitats, elimination of downstream recruitment of spawning gravels and large woody debris, removal of riparian vegetation resulting in increased stream bank erosion, and degradation of water quality (61 FR 56138; 31 October 1996 and 70 FR 37160; 28 June 2005).

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

The loss and degradation of habitats and flow conditions were identified as a threat to coho salmon in Soquel and Aptos Creeks in the draft recovery plan for this ESU (NMFS, 2010). Although many historically harmful practices have been halted, particularly removal of large woody debris by Santa Cruz County, much of the historical damage to habitats limiting coho salmon in these watersheds remains to be addressed. Habitat restoration activities and threat abatement actions will likely require more focused effort and time to stabilize and improve habitat conditions in order to improve the survival of coho salmon in these watersheds. Additionally, in some watersheds, land-use practices such as quarrying and road maintenance practices continue to pose risks to the survival of local coho salmon populations.

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

Previous reviews (61 FR 56138; 31 October 96 and 70 FR 37160; 28 June 2005) concluded that ocean and recreational fisheries had adversely impacted coho salmon populations throughout its range on the west coast and contributed to their decline. Commercial and recreational fisheries have been closed since the mid 1990s for coho salmon in California; however, the coho salmon is this ESU as well as Soquel Creek can still be impacted from fisheries as a result of incidental bycatch. In recent years, ocean fisheries for salmon have been severely constrained; however, incidental bycatch on coho salmon is poorly understood and could potentially be significant for this ESU in watersheds where populations are in low abundance. Recreational fishing for steelhead is still allowed in some portions of this ESU, including Soquel and Aptos Creeks, and therefore, coho salmon, when present, may be unintentionally caught by steelhead anglers. The risk of unintentional capture is believed to be higher in these watersheds than in many other coastal streams because of current fishing regulations that allow catch and release for steelhead based on a calendar dates regardless of river flow. Fishing during low flow periods may expose coho salmon adults to increased rates of incidental capture and injury.

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

C. Disease or Predation

Relative to the effects of fishing, habitat degradation, and hatchery practices, disease and predation are not believed to have been major factors contributing to the decline of West Coast coho salmon populations or this ESU. However, disease and predation may have substantial adverse impacts in localized areas. Specific diseases known to be present in and affect salmonids are listed in 69 FR 33102 (14 June 2004). No current or historical information exists to quantify changes in infection levels and mortality rates attributable to these diseases for coho salmon, including coho salmon populations in Soquel and Aptos Creeks.

Habitat conditions such as low water flows and high water temperatures can exacerbate susceptibility to infectious diseases (69 FR 33102; 14 June 2004). The large quantity of water diverted from Soquel Creek which results in decrease summer flows may increase the susceptibility of rearing coho salmon to disease and predation. Avian predators have been shown to impact some juvenile salmonids in freshwater and near shore environments. In nearby Scott Creek, a SWFSC scientist (Hayes, pers. comm.) has documented substantial predation impacts on outmigrating smolts based on the discovery of pit tags in gull nesting areas. Predation may significantly influence salmonid abundance in some local populations when other prey are absent and physical conditions lead to the concentration of adults and juveniles (Cooper and Johnson, 1992). Low flow conditions in these watersheds may enhance predation opportunities, particularly in streams where adult coho may congregate at the mouth of streams waiting for high flows for access (DFG, 1995). These type of conditions could lead to significant predation in Soquel Creek because of the low abundance of coho salmon. Marine predation is a concern in some areas (*i.e.,* seal and sea lions) given the dwindling abundance of coho salmon across the range of this ESU; however, it is generally considered by most investigators to be an insignificant contributor to the population declines that have been observed in Central California.

D. Inadequacy of Existing Regulatory Mechanisms

At the time of listing, most Federal and non-Federal regulatory efforts were not found to adequately protect coho salmon in this ESU due to a variety of factors. Detailed information on these regulatory mechanisms and protective efforts is provided in NMFS' Draft Proposed Recovery Plan for CCC Coho Salmon (NMFS, 2010) and in the 1996 (61 FR 56138) and 2005 (70 FR 37160) final listing determinations. Since the listing, these Federal and non-Federal regulatory efforts have not been significantly improved or implemented differently to reduce threats to this species. A variety of State and Federal regulatory mechanisms exist to protect coho salmon habitat and address the factors causing the decline of this ESU, but they have not been adequately implemented (61 FR 56138; NMFS, 2010).

In Soquel and Aptos Creeks, the only significant program change has been the curtailed funding and implementation of the Santa Cruz County's large instream wood removal program in 2009. Curtailment of this program is anticipated to result in eventual improvement to coho salmon summer and winter rearing habitats during the freshwater lifestage. Other regulatory efforts, including lack of oversight and enforcement of State water law pertaining to permitted and unpermitted diversions are a significant concern in Soquel and Aptos Creeks.

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

Long-term trends in rainfall and marine productivity associated with atmospheric conditions in the North Pacific Ocean have a major influence on coho salmon production. Natural climatic conditions may have exacerbated or mitigated the problems associated with degraded and altered riverine and estuarine habitats (69 FR 33102). Detailed discussions on these factors can be found the 1996 and 2005 listing determinations (61 FR 56138 and 70 FR 37160). No significant changes to this factor have occurred since listing and the threats remain for the ESU and Soquel and Aptos Creeks.

The best available scientific information indicates that the Earth's climate is warming, driven by the accumulation of greenhouse gasses in the atmosphere (Oreskes, 2004; Battin, *et al.,* 2007; Lindley *et al.,* 2007). Because coho salmon depend upon freshwater streams and the ocean during all stages of their life history cycle, the populations in this ESU are likely to be significantly impacted by climate change in the decades ahead, including populations in Soquel and Aptos Creeks.

Protective Efforts

At the time of its reclassification in 2005, existing protective efforts for this ESU were not considered sufficiently certain in terms of their implementation or effectiveness to ameliorate its extinction risk (70 FR 37160; 28 June 2005). Extinction risk of this ESU has increased since 2005 (Spence, 2011) and we continue to believe that there are insufficient protective efforts for ESU as a whole to ameliorate its extinction risk.

Proposed Determination

Based on a careful consideration of all available information, including new information on the presence of coho salmon in Soquel Creek and the similarilty of habitat in Aptos Creek we propose to extend the southern boundary of the CCC coho salmon ESU southward to include Soquel and Aptos Creeks in Santa Cruz County, California. Based on an updated assessment of coho salmon populations throughout the range of the ESU, including the newly discovered population in Soquel Creek, and a consideration of the factors affecting this species throughout the range of the ESU, we propose to list the redefined ESU as endangered.

Section 9 Take Prohibitions

The CCC coho salmon ESU is listed as an endangered species. Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These section 9(a) prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. If this proposed rule is finalized and the southern boundary of the ESU is moved southward to include populations of coho salmon in Soquel and Aptos Creeks, then the section 9 take prohibitions will apply to all naturally produced coho salmon in these watersheds. Depending on their activities, some individuals, organizations and agencies in Soquel and Aptos Creeks may be subject to these take prohibitions if this proposed rule is finalized.

Other Protections

Section 7(a)(2) of the ESA and the NMFS-U.S. Fish and Wildlife Service (USFWS) joint implementing regulations require Federal agencies to confer with us on actions likely to jeopardize the continued existence of species proposed for listing or to result in the destruction or adverse modification of proposed critical habitat. If a proposed species is ultimately listed, Federal agencies must consult on any action they authorize, fund, or carry out if those actions may affect the listed species or critical habitat. Federal agencies carrying out such actions in Soquel and Aptos Creeks may be subject to these requirements.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for peer review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act, is intended to enhance the quality and credibility of the Federal Government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005.

On July 1, 1994, the NMFS and USFWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. To satisfy our obligations under the OMB Bulletin, we obtained independent peer review of the BRT report (Spence *et al.,* 2011) which supports this 12-month finding and proposed rule to extend the southern boundary of the CCC coho salmon ESU. Both peer reviewers strongly supported the BRT's findings, analyses, and conclusions. Minor technical and other comments from the peer reviewers will be addressed prior to dissemination of the final BRT report.

Critical Habitat

Critical habitat is defined in section 3 of the ESA as: "(i) the specific areas within the geographic area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species" (16 U.S.C. 1532(5)(A)). Conservation means the use of all methods and procedures needed

to bring the species to the point at which listing under the ESA is no longer necessary. Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. If critical habitat is not then determinable, however, section 4(b)(6)(C)(ii) allows for a one-year extension. Section 4(b)(2) requires that designation of critical habitat be based on the best scientific data available, after taking into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat.

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

Critical habitat was designated for the CCC coho salmon ESU in 1999 (64 FR 24049) and includes all accessible reaches of rivers between Punta Gorda and the San Lorenzo River, which is the current southern boundary of the ESU. Within this area, the critical habitat includes all waterways, substrate and adjacent riparian habitat below longstanding, natural impassable barriers and some specific dams. Critical habitat is not presently being proposed for designation in the Soquel and Aptos Creek watersheds as it is not now determinable. We are seeking public input and information to assist in gathering and analyzing the best available scientific data to support the possible designation of critical habitat in Soquel and Aptos Creeks. After considering all the available information, we may initiate rulemaking by publishing a proposed rule in the **Federal Register** to designate critical habitat in these watersheds. Any proposed rule will provide an opportunity for public comments and a public hearing, if requested.

Public Comments Solicited

To ensure that the proposed range extension of the CCC coho salmon ESU is based on the best available information and will be as accurate as possible, we solicit comments and suggestions from the public, other governmental agencies, the scientific community, industry, environmental groups, and any other interested party (See Dates and Addresses for submitting comments). Specifically, we are interested in the following information for Soquel and Aptos Creeks: (1) Historical and any recent information, including photographs, regarding the presence and run size of coho salmon in these streams; (2) information on the current suitability of habitat in these streams to support coho salmon spawning, rearing and migration, as well as threats to these habitat features; (3) biological or other relevant information concerning any current or planned activities that may threaten coho salmon or its habitat in these streams; (4) efforts being made to protect coho salmon in these streams; and (5) potential economic costs or other impacts of designating critical habitat in these streams.

References

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

Classification

National Environmental Policy Act

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

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

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

Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt State law, or impose substantial direct compliance costs on state and local governments (unless required by statute). In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be given to the State of California and the relevant State agencies for their review and comment. We have consulted with the State of California through CDFG regarding the issue of coho salmon populations south of San Francisco Bay and considered their comments. CDFG also commented on the 90-day finding for the petition in question and we have considered their comments in reviewing the petition and this proposed rule. As we proceed with this rulemaking, we intend to continue engagement with the State and relevant agencies, as well as local government entities, to ensure we provide them ample opportunity to comment on the proposal and fully consider their comments.

List of Subjects in 50 CFR Part 224

Endangered marine and anadromous species.

Dated: January 31, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 224 is proposed to be amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

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

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

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

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(a) * * *

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

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

[FR Doc. 2011–2537 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 24
Friday, February 4, 2011

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

Forest Service

Alpine County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Alpine County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on Tuesday, March 15, 2011 and will begin at 6 p.m.

ADDRESSES: The meeting will be held in Alpine County at the Alpine Early Learning Center, 100 Foothill Road, Markleeville, CA 96120.

FOR FURTHER INFORMATION CONTACT: Daniel Morris, RAC Coordinator, USDA, Humboldt-Toiyabe National Forest, Carson Ranger District, 1536 S. Carson Street, Carson City, NV 89701, (775) 884–8140; e-mail *danielmorris@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include:

(1) Review and recommend funding allocation for proposed projects. (2) Determine timeframes for the next round of project proposals. (3) Public Comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 31, 2011.

Genny E. Wilson,

Designated Federal Officer.

[FR Doc. 2011–2514 Filed 2–3–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lawrence County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lawrence County Resource Advisory will meet in Spearfish, SD. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The committee has received three formal project proposals. The purpose of the meeting is to solicit additional information from project proponents and vote on project proposals.

DATES: The meeting will be held March 6, 2011 at 5 p.m.

ADDRESSES: The meeting will be held at the Northern Hills Ranger District Office at 2014 N. Main. Written comments should be sent to Rhonda O'Byrne, 2014 N. Main, Spearfish, SD 57783. Comments may also be sent via e-mail to *rlobyrne@fs.fed.us,* or via facsimile to 605–642–4156.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Northern Hills Ranger District office. Visitors are encouraged to call ahead at 605–642–4622 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rhonda O'Byrne, District Ranger, Northern Hills Ranger District, 605–642–4622.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: review proposed projects. If Committee members have enough information, they may choose to vote on project proposals submitted to the committee for Title II. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by Friday, March 4, 2011 will have the opportunity to address the Committee at those sessions.

Dated: January 31, 2011.

Craig Bobzien,

Forest Supervisor.

[FR Doc. 2011–2518 Filed 2–3–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Request for Comments on the Strategy for American Innovation

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice and request for information.

SUMMARY: The America COMPETES Reauthorization Act of 2010 directs the Department of Commerce (DOC), in consultation with the National Economic Council (NEC), to deliver to Congress a study by January 4, 2011 on our nation's innovative capacity and international competitiveness. Section 604, Public Law No: 111–358. To assist with that effort, the DOC is initiating a series of public engagements, seeking input on a range of policy matters that can affect our innovativeness and competitiveness. The subject area is quite broad. As a starting point, DOC publishes this Notice and Request for Information (RFI) to obtain comment on the Administration's Innovation Strategy (*see http://www.Commerce.gov/competes* for a link to the report). This strategy document summarizes policy initiatives that aim to improve our national innovation system, and thereby accelerate our economic growth by increasing the international competitiveness of American businesses and workers. This RFI provides an opportunity for interested parties to discuss those initiatives. In the coming months, DOC will create additional opportunities for the public to comment on a range of related topics, such as those specifically identified in the America COMPETES Reauthorization Act but not mentioned in the Strategy.

DATES: Comments must be postmarked or submitted by no later than April 1, 2011.

ADDRESSES: You may submit comments, identified by "Innovation Strategy RFI" by any of the following methods: E-mail: *competiveness@doc.gov.* Mail: Office of the Chief Economist, U.S. Department of Commerce, 1401 Constitution Avenue, NW., HCHB Room 4852, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Sabrina L. Montes, E-mail: *SMontes@doc.gov*. Telephone: 202 482–3659.

SUPPLEMENTARY INFORMATION:

Background

The Administration's Innovation Strategy details its efforts to strengthen our nation's competitiveness and long-run economic growth. The document explains the essential role of innovation in American prosperity, the central importance of the private sector as the engine of innovation, and the critical, targeted roles of government in supporting our innovation system. The document further describes longer-run goals and milestones for our nation. The Strategy organizes the Administration's existing policy initiatives into three parts:

(1) Invest in the Building Blocks of American Innovation

The premise here is that economic growth builds upon investments in the basic foundations of society—such as education, basic research, and modern infrastructure—and that without such investments innovation cannot thrive. In line with the Strategy, the Administration's pro-innovation initiatives seek to generate the highest returns on investments in each of these areas: in education and training systems that can increase opportunities for American workers and increase their innovative capacity; in basic research that can unearth and unleash fundamental scientific breakthroughs that, in turn, often can lead to cascades of commercial innovations, as well as the birth of new enterprises and industries; and in critical infrastructure, including our nation's transportation and electricity systems and the information and computer networks that increasingly drive 21st century economies.

(2) Promote Market-Based Innovation

The Strategy also recognizes that American businesses and the marketplace are the engines of innovation. Through its various initiatives, the Administration seeks to ensure that commercial innovation remains the driving force for our economic growth, that businesses enjoy the right competitive landscape for innovation at home and abroad, and that the government administers central responsibilities, such as those surrounding intellectual property rights, competition policy, international trade, spectrum auctions, corporate taxation, and regulatory law, in an optimal manner to promote innovation.

(3) Catalyze Breakthroughs for National Priorities

Finally, the Strategy points out that in areas of well-defined national importance, public investments often can catalyze advances, bringing about key breakthroughs and establishing U.S. leadership faster than what might be possible otherwise. Here, the Administration seeks to make strategic investments beyond the ken of the private sector, using the right mechanisms, in the best portfolio of national priority areas, including clean energy, biotechnology, nanotechnology, educational and health information technologies, and space technologies.

Request for Information

This RFI focuses on how the Administration can improve its efforts in these areas. The Administration recognizes that good ideas come from many corners, which is a driving force for the success of our marketplace in generating commercial innovations and the success of our research institutions in generating fundamental scientific breakthroughs. This RFI seeks to draw on that same American ingenuity, expertise, and insight to improve those governmental activities that nurture the innovation potential of our nation.

The following questions should be seen as a framework for providing comments on the specific policies outlined in the Administration's Strategy for American Innovation. Commenters should not feel constrained by them. We are not only interested in feedback on existing pro-innovation initiatives, but also seek guidance on how these initiatives might be adjusted for the coming years. And, we seek recommendations for related, new initiatives. Commenters should not hesitate to offer new ideas, including new strategic priorities, for achieving the longer-run goals of accelerating economic growth and competitiveness. The following list is intended to assist in the formulation of comments but not to restrict the issues that might be addressed.

(1) *Government research and development:* How can the economic impacts of basic research funding (*e.g.,* NSF, NIH) be better measured and evaluated? What methods can the Federal Government use to prioritize funding areas of basic research, both within an area of science and across areas of science? How can existing Federal government institutions (not just organizations, but also programs, policies, and laws) devoted to basic research and innovation be improved? Are there new institutions of these types that are needed to achieve national innovation goals? How could the government increase support for industry-led, pre-competitive R&D?

(2) *Entrepreneurship:* Through what measures can government policy better facilitate the creation and success of innovative new businesses? What obstacles limit entrepreneurship in America, and which of these obstacles can be reduced through public policy? What are the most important policy, legal, and regulatory steps that the federal government could take to expand access to capital for high-growth businesses?

(3) *Intellectual Property:* What are the key elements of any legal reform effort that would ensure that our intellectual property system provides timely, high-quality property rights and creates the best incentives for commercial innovation? How can the intellectual property system better serve the dual goals of creating incentives for knowledge creation while also ensuring that knowledge is widely diffused and adopted and moves to its best economic and societal uses?

(4) *Education:* How important is catalyzing greater interest and training in science, technology, engineering and mathematics (STEM) fields? What strategies can be most effective on this score? Can educational technologies be better utilized to this end? What are the critical opportunities and limitations to the creation and adoption of effective education technologies? How can investments in community colleges better leverage public-partnerships to better train Americans for the jobs of today and tomorrow?

(5) *Incentives to innovate:* How could the government better use incentives (including but not limited to procurement, Advanced Market Commitments, incentive prizes, and aggregation of demand) to promote innovation? Are there other economically-sound incentives that the government should provide?

(6) *Manufacturing:* What is the role of advanced manufacturing in driving American economic growth and international competitiveness, and what are the key obstacles to success at

advanced manufacturing? In which manufacturing industries will our nation have comparative advantages?

(7) *Exports:* How could the government better assist small and medium-sized domestic firms sell their products abroad? What policies can be pursued that would help all U.S. businesses increase their exports?

(8) *Implications of changes in the innovative process:* In recent years, some experts have noted that the innovation process itself is changing, and that approaches such as user-driven innovation, open innovation, design thinking, combinatorial innovation, modularity, and multi-disciplinary innovation are growing in importance. What are the policy implications of these and other changes in the innovation process? Should policy makers be thinking differently about our approach to industrial organization and competition policy in light of these changes?

(9) *Innovation in the services sector:* What sectors of the economy have gained less from innovation in the past and—to the extent that innovation could have sustained competitiveness—what are the obstacles to their progress? What are the policy issues that are raised by the nature of innovation in the service sector?

(10) *Enhancing the exchange of ideas:* How can public policy better promote the exchange of ideas among market participants—that is, support "markets for technology"—that enhance the social value of innovations? Similarly, how can the government assist in the diffusion of best practices? Given that ideas and knowledge cannot be traded as readily as are physical goods, what is the government's role in supporting more effective markets?

We recognize that since the initial launch of the Innovation Strategy in 2009, DOC and other parts of the Administration have released other Requests for Information on innovation-related topics. For instance, DOC's Office of Innovation & Entrepreneurship (*http://www.eda.gov/OIE*) has collaborated with the NEC and the Office of Science and Technology Policy on, among other things, an RFI focused on improving the commercialization of university-driven basic research. *See http://www.eda.gov/PDF/WH%20RFI%20Announcement.pdf*. Many of these inquiries are still in-process. Commenters on this RFI are welcome to submit materials generated for those other matters in order to build the record for our January 2012 report to Congress. Additional reports, articles, and analyses are also welcome, although we strongly urge that they be submitted electronically and that commenters identify in their cover letters how those other materials relate to this inquiry.

Issued in Washington, DC on February 1, 2011.

John Connor,

Office of the Secretary of Commerce.

[FR Doc. 2011–2558 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Certain Lined Paper Products From the People's Republic of China: Extension of Time Limits for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Stephanie Moore, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230; telephone: (202) 482–3797 or (202) 482–3692, respectively.

Background

On October 18, 2010, the U.S. Department of Commerce ("Department") published the preliminary results of the antidumping duty administrative review on certain lined paper products ("CLPP") from the People's Republic of China ("PRC"), covering the period September 1, 2008, to August 31, 2009. *See Certain Lined Paper Products From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review,* 75 FR 63814 (October 18, 2010). The final results of review are currently due on February 15, 2011.

Extension of Time Limits for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days. Completion of the final results of the administrative review within the 120-day period is not practicable because an issue arose late in the proceeding regarding improperly submitted business proprietary information. This issue requires the rejection and resubmission of briefs. The Department will need additional time to ensure proper treatment of this information.

Given that the parties have been provided additional time to submit a brief and a rebuttal in this case, only upon receipt of those submissions will the Department be able to consider the arguments raised by parties. This will require additional time for the Department to address the claims in the case and rebuttal briefs the parties will file. Because it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the final results of the administrative review to 180 days, until April 18, 2011, in accordance with section 751(a)(3)(A) of the Act.

We are publishing this notice pursuant to sections 751(a) and 777(i) of the Act.

Dated: January 31, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–2524 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 4, 2011.

SUMMARY: The Department of Commerce ("Department") has determined that a request for a new shipper review ("NSR") of the antidumping duty order on tapered roller bearings ("TRBs") from the People's Republic of China ("PRC") meets the statutory and regulatory requirements for initiation. The period of review ("POR") for this NSR is June 1, 2010, through November 30, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew Medley, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.,

Washington, DC 20230; *telephone:* 202–482–4987.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on TRBs from the PRC was published in the **Federal Register** on June 15, 1987. *See Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China,* 52 FR 22667 (June 15, 1987) ("*Order*"). On December 23, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.214(a), the Department received a NSR request from Xiang Yang Automobile Bearing Co., Ltd. ("ZXY"). ZXY's request was properly made during December 2010, which is the semi-annual anniversary of the *Order. See* 19 CFR 351.214(d). The Department had concerns with ZXY's treatment of its proprietary information in its original submission and requested that ZXY revise and re-submit its NSR request. *See* January 12, 2011 letter to ZXY. In accordance with the Department's request, ZXY revised the treatment of its proprietary information and re-filed the submission on January 14, 2011. For the purpose of initiating this NSR, the Department determines that ZXY's original submission was timely filed.

In its submission, ZXY certified that it is the exporter and producer of the subject merchandise upon which the request was based. Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), ZXY certified that it did not export TRBs to the United States during the period of investigation ("POI"). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), ZXY certified that, since the initiation of the investigation, it has not been affiliated with a Chinese exporter or producer who exported TRBs to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), ZXY also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), ZXY submitted documentation establishing the following: (1) The date on which ZXY first shipped TRBs for export to the United States and the date on which the TRBs were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted U.S. Customs and Border Protection ("CBP") database queries in an attempt to confirm that ZXY's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department also examined whether the CBP data confirmed that such entries were made during the NSR POR.[1] The information which the Department examined was consistent with that provided by ZXY in its request. *See* Memorandum to The File from Andrew Medley, Analyst, "Initiation of Antidumping New Shipper Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China, A–570–601," ("Initiation Checklist") dated concurrently with this notice, at 5. However, the Department has concerns with certain other information contained within the CBP data. Due to the business proprietary nature of this information, please refer to the Initiation Checklist for further discussion. On January 25, 2011, the Department issued a questionnaire to ZXY in order to seek additional information with respect to the CBP data. The Department intends to address this issue after initiation of the NSR.

Period of Review

In accordance with 19 CFR 351.214(g)(1)(i)(B), the POR for an NSR initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semiannual anniversary month. Therefore, under this order, the POR is June 1, 2010, through November 30, 2010. The sales and entries into the United States of subject merchandise produced and exported by ZXY occurred during this six-month POR. Therefore, the POR for this NSR is June 1, 2010 through November 30, 2010.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), the Department finds that the request submitted by ZXY meets the threshold requirements for initiation of a NSR for the shipment of TRBs from the PRC produced and exported by ZXY. *See* Initiation Checklist. However, if the information supplied by ZXY is later found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review or apply adverse facts available pursuant to section 776 of the Act, depending upon the facts on record. The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and the final results no later than 90 days from the issuance of the preliminary determination. *See* section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, the Department will issue a questionnaire to ZXY which will include a section requesting information with regard to ZXY's export activities for separate rates purposes. The review will proceed if the response provides sufficient indication that ZXY is not subject to either *de jure* or *de facto* government control with respect to its export of subject merchandise.

The Department will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from ZXY in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because ZXY certified that it produced and exported the subject merchandise, the Department will apply the bonding privilege to ZXY for all subject merchandise produced and exported by ZXY.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306. This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: January 31, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–2522 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* January 18, 2011, memorandum to the file, regarding "U.S. Customs and Border Protection Data."

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Initiation of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 4, 2011.

SUMMARY: The Department of Commerce (the "Department") has determined that a request for a new shipper review of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China ("PRC"), received on December 20, 2010, meets the statutory and regulatory requirements for initiation. The period of review ("POR") of this new shipper review is June 1, 2010, through December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4037 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on chlorinated isocyanurates from the PRC was published in the **Federal Register** on June 24, 2005. *See Notice of Antidumping Duty Order: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 36561 (June 24, 2005). On December 20, 2010, we received a timely request for a new shipper review from Heze Huayi Chemical Co. Ltd., ("Heze Huayi") in accordance with 19 CFR 351.214(c) and 351.214(d). Heze Huayi has certified that it produced all of the chlorinated isocyanurates it exported, which is the basis for its request for a new shipper review.

Pursuant to the requirements set forth in 19 CFR 351.214(b)(2)(i), 19 CFR 351.214(b)(2)(ii) and 19 CFR 351.214(b)(2)(iii), in its request for a new shipper review, Heze Huayi, as an exporter and producer, certified that: (1) It did not export chlorinated isocyanurates to the United States during the period of investigation; (2) since the initiation of the investigation, Heze Huayi has never been affiliated with any company that exported subject merchandise to the United States during the period of investigation; and (3) its export activities were not controlled by the central government of the PRC.

In accordance with 19 CFR 351.214(b)(2)(iv), Heze Huayi submitted documentation establishing the following: (1) The date on which it first shipped chlorinated isocyanurates for export to the United States and the date on which the chlorinated isocyanurates were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted U.S. Customs and Border Protection ("CBP") database queries in an attempt to confirm that Heze Huayi's shipment of subject merchandise had entered the United States for consumption and that liquidation had been properly suspended for antidumping duties. The information which the Department examined was consistent with that provided by Heze Huayi in its request. *See* Memorandum to The File from Krisha Hill, Analyst, "Initiation of Antidumping New Shipper Review: Chlorinated Isocyanurates, from the People's Republic of China, A–570–898," ("New Shipper Initiation Checklist") dated concurrently with this notice, at Page 6. However, the Department has concerns with certain other information contained within the CBP data. Due to the business proprietary nature of this information, please refer to the New Shipper Initiation Checklist for further discussion. The Department intends to address this issue after initiation of the new shipper review.

Period of Review

Pursuant to 19 CFR 351.214(g)(1)(i)(B), the POR for a new shipper review initiated in the month immediately following the semiannual anniversary month, will normally be the six-month period immediately preceding the semiannual anniversary month, in this instance June 1, 2010, through November 30, 2010. However, when the new shipper's first shipment has entered after the POR, the Department may expand the POR, unless an expansion would be likely to prevent the completion of the review within the time limits set by the Department's regulations. *See* 19 CFR 351.214(f)(2)(ii). The documentation provided by Heze Huayi indicates that its first shipment entered one day after the end of the six-month POR, and that its first sale to an unaffiliated customer occurred during the six-month POR. In accordance with 19 CFR 351.214(f)(2)(ii), we are extending the POR by 31 days to December 31, 2010, to capture the entry of Heze Huayi's first shipment. The Department finds that this delay does not prevent the completion of the review within the time limits set by the Department's regulations. Therefore, the POR for this new shipper review is June 1, 2010, through December 31, 2010.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the "Act") and 19 CFR 351.214(d)(1), we find that the request submitted by Heze Huayi meets the threshold requirements for initiation of a new shipper review for shipments of chlorinated isocyanurates from the PRC produced and exported by Heze Huayi. *See* Memorandum to the File through Wendy Frankel, Office Director, New Shipper Initiation Checklist, dated concurrently with this notice. However, if the information supplied by Heze Huayi is later found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review or apply adverse facts available pursuant to section 776 of the Act, depending upon the facts on record.

The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and the final results no later than 90 days from the issuance of the preliminary results. *See* section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Heze Huayi, which will include a separate rate section. The review will proceed if the response provides sufficient indication that Heze Huayi is not subject to either *de jure* or *de facto* government control with respect to its export of chlorinated isocyanurates.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Heze Huayi in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Heze Huayi certified that it both produced and exported the subject merchandise, the sale of which is the basis for this new shipper review request, we will apply the bonding privilege to Heze Huayi

only for subject merchandise which Heze Huayi both produced and exported.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: January 31, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–2526 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Billfish Certificate of Eligibility

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 5, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Margo Schulze-Haugen, (301) 713–2347 or *Margo.Schulze-Haugen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), NOAA is responsible for management of the Nation's marine fisheries. In addition, NOAA must comply with the United States' (U.S.) obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*). A Certificate of Eligibility (COE) for Billfishes is required under 50 CFR part 635 to accompany all billfish, except for a billfish landed in a Pacific state and remaining in the state of landing. This documentation certifies that the accompanying billfish was not harvested from the applicable Atlantic Ocean management unit (described on the NOAA sample certificate at *http://www.nmfs.noaa.gov/sfa/hms/GPEA/0216%20Billfish%20COEform.pdf*), and identifies the vessel landing the billfish, the vessel's homeport, the port of offloading, and the date of offloading. The certificate must accompany the billfish to any dealer or processor who subsequently receives or possesses the billfish. The certificate is required for all first receivers of billfish, and dealers or processors who subsequently receive or possess billfish must also retain a copy of the certificate while processing or handling the billfish. A standard certificate format is not currently required to document the necessary information, provided it contains all of the information required. The continuation of this collection is necessary to implement the Consolidated Highly Migratory Species Fishery Management Plan, which contains an objective to reserve Atlantic billfish for the recreational fishery.

II. Method of Collection

A paper document is required to be completed by respondents. The document must be signed, dated, and retained by each dealer or processor who subsequently receives or possesses the billfish.

III. Data

OMB Control Number: 0648–0216.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Response: 20 minutes for initial completion of certificate and 2 minutes for subsequent billfish purchase record keeping.

Estimated Total Annual Burden Hours: 43.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 1, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–2459 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA189

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of receipt of application for a new scientific research and enhancement permit, notice of public meetings, and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a scientific research and enhancement permit (permit 14868) relating to salmon listed under the Endangered Species Act (ESA). The application includes a Hatchery and Genetic Management Plan (HGMP) that provides detailed information regarding the proposed enhancement activities. This document serves to notify the public of the availability of the permit application and HGMP for review and comment. The applications and related documents may be viewed online at: *http://swr.nmfs.noaa.gov/sjrrestorationprogram/salmonreintroduction.htm.* These documents are also available upon written request or by appointment by contacting NMFS by phone (916) 930–3600, fax (916) 930–3629.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (*see* **ADDRESSES**) no later than 5 p.m. Pacific standard time on March 7, 2011.

NMFS will conduct three public scoping meetings in order to provide information and solicit comments for the preparation of the permit. The meetings will be held on: February 3, 2011, at the Chico Masonic Family Center, 1110 West East Avenue Chico, CA 95926 from 5 p.m.–7 p.m., Pacific Time; February 7, 2011, at the Fresno Metropolitan Flood Control District Board Room, 5469 E. Olive Ave., Fresno, CA 93727 from 5 p.m.–7 p.m., Pacific Time; and February 8, 2011, at 830 6th Street, Los Banos, CA 93635–4214 from 5 p.m. to 7 p.m.

ADDRESSES: Written comments on these applications should be submitted to the Protected Resources Division, NMFS, 650 Capitol Mall, Suite 5–100, Sacramento, CA 9581. Comments may also be submitted via fax to (916) 930–6329 or by e-mail to *SJRSpring.Salmon@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Elif Fehm-Sullivan, Sacramento, CA (ph: 916–930–3723, e-mail: *elif.fehm-sullivan@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

This notice is relevant to federally threatened Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*).

Authority

Scientific research and enhancement 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.

Application Received

On September 30, 2010, the U.S. Fish and Wildlife Service (USFWS) submitted an application and supporting documents to NMFS for a section 10(a)(1)(A) permit (permit 14868). USFWS is requesting a 7-year permit to collect Central Valley spring-run Chinook salmon, for the purposes of reintroduction into the San Joaquin River. Multiple life stages would be collected, including eggs, fry, smolts, and adults using various collection methods (backpack electrofisher, red pumping, seining, dip-net) which would then be transported to a hatchery for artificial propagation; and/or they or their progeny will be released into the San Joaquin River and monitored for survival. The overall objective is to collect and reintroduce multiple life stages of spring-run Chinook salmon to develop a naturally-reproducing, self-sustaining population of spring-run Chinook salmon in the San Joaquin River. The target for the experimental population for spring-run Chinook salmon is a minimum annual return of 500 adults by 2019.

The intent is to capture varied and desired genetic and phenotypic characteristics of the fish, and therefore increase the likelihood that the reintroduction of spring-run Chinook salmon to the San Joaquin River would be successful.

The USFWS has proposed measures to minimize adverse impact to the population viability of the Evolutionary Significant Unit and/or the populations within each potential source stream. Finally, the reintroduction and management activities in the restored San Joaquin River must not adversely affect the experimental population and their progeny within the mainstem San Joaquin River.

Collections would occur at all life stages of development: Eggs, fry, smolts, and adults in order to reduce the effect to the existing population and to increase the chances of survival. The propagation and development of the fish at the hatchery involves genetic determination and tracking for both phenotypic and genotypic expressions, and would help ensure survival and re-establishment of a naturally producing, self-sustaining population of spring-run Chinook salmon in the San Joaquin River. The annual level of take will be proposed based on current population status as evaluated against population viability criteria (Lindley *et al.* 2007).

The project has the following five objectives: (1) To implement the stipulation of settlement, *Natural Resource Defense Council, et al.* v. *Rodgers, et al.,* (2) to collect natural and hatchery-origin spring-run Chinook salmon juvenile and adults for reintroduction efforts in the San Joaquin River, (3) to collect natural and hatchery-origin spring-run Chinook salmon eggs and juveniles for the purpose of developing a seed stock for a conservation hatchery program, (4) to increase productivity, intra-population diversity and promote local adaptation, and (5) use spring-run Chinook salmon demographic, biological, and genetic data collected throughout the reintroduction process to develop an adaptive management-based management plan for the species to promote recovery of the Central Valley spring-run Chinook salmon evolutionarily significant unit.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(A) of the ESA. If it is determined that the requirements are met, a permit will be issued to USFWS for the purpose of collecting ESA-listed spring-run Chinook salmon and carrying out the research and enhancement program. NMFS will publish a notice of its final action in the **Federal Register**.

Dated: January 31, 2011.

Therese Conant,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–2533 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA110

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; reopening of comment period.

SUMMARY: NMFS is reopening the comment period for its proposed evaluation and pending determination on the 2010–2014 Puget Sound Chinook Resource Management Plan. The comment period is being reopened to provide additional opportunity for public comment.

DATES: Written comments on the Secretary's proposed evaluation must be received at the appropriate address or fax number (*see* **ADDRESSES**) no later than 5 p.m. Pacific Standard Daylight Time on February 22, 2011.

ADDRESSES: Comments and requests for copies of the proposed evaluation should be addressed to Susan Bishop, Salmon Management Division, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115–0070, or faxed to (206) 526–6736. Comments on this proposed evaluation may be submitted by e-mail. The mailbox address for providing e-mail comments is *2010PSCHNKHARVEST.nwr@noaa.gov.* Include in the subject line the following document identifier: "2010 CHNK PSHARVEST proposed evaluation". The document is also available on the Internet at *http://www.nwr.noaa.gov/Salmon-Harvest-Hatcheries/State-Tribal-Management/PS-Chinook-RMPs.cfm.*

FOR FURTHER INFORMATION CONTACT: Susan Bishop at phone number: 206/526–4587, Puget Sound Harvest Team Leader or e-mail: *susan.bishop@noaa.gov* regarding the RMP.

SUPPLEMENTARY INFORMATION:

Reopening of Comment Period

The comment period will be reopened through February 22, 2011.

Background

NMFS published a document in the **Federal Register** of December 29, 2010, concerning the availability for public comment of the proposed evaluation of the Secretary of Commerce (Secretary) as to how the Puget Sound Chinook Resource Management Plan (RMP) addresses the criteria in Limit 6 of the Endangered Species Act (ESA) 4(d) Rule. The comment period for this action ended Friday, January 28, 2011. The comment period is being reopened to provide additional opportunity for public comment. The Puget Sound Treaty Tribes and the Washington Department of Fish and Wildlife submitted to NMFS, pursuant to the protective regulations promulgated for Puget Sound Chinook salmon under Limit 6 of the ESA 4(d) Rule for salmon and steelhead, a jointly developed RMP. The RMP specifies the future management of commercial, recreational, subsistence and tribal salmon fisheries potentially affecting listed Puget Sound Chinook salmon from May 1, 2010, through April 30, 2015.

Dated: January 31, 2011.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–2536 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA111

Notice of Availability of a Draft Framework for Ranking the Relative Importance of Puget Sound Chinook Salmon Populations and Watersheds for ESU Recovery and Delisting

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

ACTION: Notice; reopening of comment period.

SUMMARY: NMFS is reopening the comment period for a draft technical framework for ranking recovery potential of populations of Puget Sound Chinook salmon and watersheds supporting them. The comment period is being reopened to provide additional opportunity for public comment.

DATES: Information and comments on the draft framework must be received at the appropriate address or fax number (*see* **ADDRESSES**), no later than 5 p.m. on February 22, 2011. We encourage the public's involvement in reviewing this framework.

ADDRESSES: Information and comments on this draft framework should be submitted to Garth Griffin, Chief, Protected Resources Division, NMFS. Comments may also be sent via facsimile (fax) to (503) 230–5435 or by e-mail. The framework document is also available on the Internet at *http://www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Puget-Sound/PS-Chinook-Plan.cfm.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Babcock, NMFS, Northwest Region, (206) 526– 4505.

SUPPLEMENTARY INFORMATION:

Reopening of Comment Period

The comment period will be reopened through February 22, 2011.

Background

NMFS published a document in the **Federal Register** of December 29, 2010, concerning the availability of a draft technical framework for ranking recovery potential of populations of Puget Sound Chinook salmon and watersheds supporting them. The comment period for this action ended Friday, January 28, 2011. The comment period is being reopened to provide additional opportunity for public comment. The draft framework relies on the best available scientific information regarding the status and structure of Puget Sound Chinook salmon populations and their habitat. It builds on the work of the Puget Sound technical recovery team, which provided the technical foundation of the Puget Sound Chinook recovery plan (NMFS 2006).

Dated: January 31, 2011.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–2535 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA193

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Essential Fish Habitat Review Committee (EFHRC) will hold a work session by conference call to follow up on work assignments from its December 20, 2010 meeting.

DATES: The EFHRC conference call will be held Friday, February 25, 2011, from 9 a.m. to 12 p.m. Pacific Time.

ADDRESSES: A public listening station will be available at the Pacific Council office, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220; telephone: (503) 820–2280. Please contact the Council Staff Officer for accommodations.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the EFHRC meeting is to follow up on the December 20, 2010 meeting, and to check on assignments and progress toward developing a report for the April, 2011 Pacific Council meeting. The initial meeting highlighted several issues to address, as the Pacific Council and the National Marine Fisheries Service (NMFS) conduct a review of Essential Fish Habitat (EFH) descriptions for Pacific Coast groundfish species. Major topics of discussion are likely to include schedule and timing; soliciting data and information from

interested parties; components and products of the review; and other topics.

Groundfish EFH was first identified and described by the Pacific Council in 1998, and revised in 1996. The Pacific Council considered proposed revisions to groundfish EFH in 2008, but declined to change EFH descriptions, pending the more thorough review now underway. Detailed information on existing EFH descriptions and identification is available by contacting the Pacific Council directly.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: February 1, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–2512 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA194

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its 106th Scientific and Statistical Committee (SSC), the American Samoa Archipelago Fishery Ecosystem Plan Regional Ecosystem Advisory Committee (REAC), Advisory Panel (AP), and Plan Team (PT). The Council will also hold its 150th meeting to consider advisory group recommendations and take actions on fishery management issues in the Western Pacific Region.

DATES: The meetings will be held from February 22 and March 10, 2011. All meetings will be held in Pago Pago, American Samoa, except for the SSC meeting which will be held in Honolulu, HI. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times and agendas of the several meetings.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** for specific locations of the meetings.

Council address: Western Pacific Regional Fishery Management Council Office, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The SSC will meet on February 22–24, 2011, between 8:30 a.m. and 5 p.m.; The American Samoa REAC will meet on March 4, 2011, between 9 a.m. and 4 p.m.; the AP will meet on March 5, 2011, between 8:30 a.m. and 5 p.m.; the PT will meet on March 7, 2011, between 8:30 a.m. and 5 p.m.; the Council's Executive and Budget Standing Committee will meet on March 7, 2011, between 3 p.m. and 5 p.m.; the 150th Council meeting will meet on March 8–10, 2011, between 8:30 a.m. and 5 p.m.

The SSC meeting will be held at the Western Pacific Regional Fishery Management Council Office, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808) 522–8220. The REAC, and 150th Council meetings will be held at the Governor H. Rex Lee Auditorium (Fale Laumei), Department of Commerce, Government of American Samoa, Pago Pago, American Samoa; telephone: (684) 633–5155. The Council Executive and Budget Standing Committee and AP meetings will be held at Sadie's by the Sea Hotel, Pago Pago, American Samoa; telephone: (684) 633–5981. The Council's PT meeting will be held at the Department of Marine and Wildlife Resources, Government of American Samoa, Pago Pago, American Samoa; telephone: (684) 633–5102.

In addition to the agenda items listed here, the SSC, REAC, AP, PT and Council will hear recommendations from Council advisory groups. Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for 106th SSC Meeting

8:30 a.m.–5 p.m., Tuesday, February 22, 2011

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 104th SSC Meeting Recommendations
4. Report from the Pacific Islands Fisheries Science Center Director
5. Program Planning
A. Annual Catch Limit (ACL) Specification Process
B. Workshop on ACLs for Coral Reef Fisheries
C. National ACL Science Needs Workshop
D. Catch Shares and Communities Workshop
E. Public Comment
F. SSC Discussion and Recommendations
6. Insular Fisheries
A. Mariana Archipelago
1. Plan Team Meetings
2. Advisory Panel Meetings
3. Regional Ecosystem Advisory Committee meetings
4. Biosampling in the Mariana Archipelago
B. Hawaii Archipelago
1. Bottomfish Stock Assessment
2. Bottomfish Essential Fish Habitat (EFH)/Habitat Areas of Particular Concern (HAPC)
3. Puwalu Recommendations
C. American Samoa Archipelago
D. Public Comment
E. SSC Discussion and Recommendations

8:30 a.m.–5 p.m., Wednesday, February 23, 2011

7. Pelagic Fisheries
A. Proposed Changes to American Samoa Large Pelagic Fishing Vessel (> 50 ft) Area Closure (Action)
B. American Samoa Longline Limited Entry Program (Action)
C. American Samoa and Hawaii Longline Quarterly Reports
D. Impacts to Hawaii Longline Fleet from Western and Central Pacific Ocean Bigeye Tuna Closure
E. International Fisheries Meetings
1. Seventh Regular Meeting of the Western and Central Pacific Fisheries Commission (WCPFC7)
F. Public Comment
G. SSC Discussion and Recommendations
8. Protected Species
A. Updates on False Killer Whale Issues
B. Updates on Endangered Species Act Issues
C. American Samoa Longline Fishery Circle Hook Study

D. Mariana Archipelago Green Turtle Workshop Report
E. Better science needed for ecosystem restoration and health assessment
F. Public Comment
G. SSC Discussion and Recommendations

8:30 a.m.–5 p.m., Thursday, February 24, 2011

9. Other Meetings & Workshops
10. Other Business
A. 107th SSC Meeting
11. Summary of SSC Recommendations to the Council

Schedule and Agenda for American Samoa REAC Meeting

9 a.m.–4 p.m., Friday, March 4, 2011

1. Welcome and Introductions
2. Status of 2010 REAC Recommendations
3. Coastal and Marine Spatial Planning Initiative
A. Regional Ocean Partnership
B. Monument Activities and Status
C. Discussion and Recommendations
4. Ecosystem Monitoring and Community Issues
A. American Samoa Bio-Sampling Program
B. Discussion and Recommendations
5. Community Development
A. Status of Fishery Development
B. Marine Conservation Plan
C. Discussion and Recommendations
6. Upcoming Council Action Items
A. Pelagic Action Items
i. Modifying the large pelagic fishing vessel area closure
ii. Potential modifications to the American Samoa Longline Limited Entry Program
B. Other Action Items
C. Discussion and Recommendations
7. Other Business
8. Public Comments
9. Discussion and Recommendations

Schedule and Agenda for American Samoa AP Meeting

8:30 a.m.–5 p.m., Saturday, March 5, 2011

1. Introductions
2. Status of 2010 Meeting Recommendations
3. Coastal and Marine Spatial Planning
4. Ecosystem Monitoring and Community Issues
A. Report on Coral Reef Funded Projects
B. Federal Programs and Projects
i. American Samoa Bio-Sampling Programs
5. Local Activities and Issues
A. Fishery Development
i. American Samoa Marine Conservation Plan
ii. Other Fishery Development
6. Upcoming Council Actions
A. Pelagic Action Items
i. Modifying the large pelagic fishing vessel area closure
ii. Potential modifications to the American Samoa Longline Limited Entry Program
B. Other Action Items
7. Other Fishery Issues
8. Public Comment
9. Discussion and Recommendations

Schedule and Agenda for American Samoa PT Meeting

8:30 a.m.–5 p.m., Monday, March 7, 2011

1. Welcome and Introductions
2. Status of Fishery Monitoring Programs and Research Projects
A. Department of Marine and Wildlife Resources
i. Coral Reef Fisheries
ii. Bottomfish Fisheries
iii. Crustacean Fisheries
B. National Marine Fisheries Service Pacific Islands Fisheries Science Center (PIFSC)/Western Pacific Fisheries Information Network (WPacFIN)
i. Report on PIFSC Bio-Sampling Program
C. Pacific Islands Regional Office (PIRO) Administrative Activities
D. Coral Reef Funded Projects
E. Other Initiatives
3. Update on Recommendations from 2009 Fishery Data Workshop
4. Mariana Archipelago Fishery Ecosystem Plan draft annual report structure
A. Fishery Modules
B. Research and Monitoring Projects
C. Protected Resources
D. Habitat
E. Administration
5. Proposal for Improving Fishery Data Collection for Stock Assessments
6. Council Meeting Actions
A. Pelagic Action Items
i. Modifying the large pelagic fishing vessel area closure
ii. Potential modifications to the American Samoa Longline Limited Entry Program
B. Fishery Development
7. Other Business
8. Public Comment
9. Discussion and Recommendations

Schedule and Agenda for 150th Council Meeting

Monday, March 7, 2011

Standing Committee Meetings
3 p.m.–5 p.m., Executive and Budget Standing Committee

8:30 a.m.–5 p.m., Tuesday, March 8, 2011

1. Opening Ceremony
2. Introductions
3. Approval of Agenda
4. Approval of the 149th Meeting Minutes
5. Executive Director's Report
6. Agency Reports
A. National Marine Fisheries Service
1. Pacific Islands Regional Office
2. Pacific Islands Fisheries Science Center
B. NOAA Regional Counsel
C. U.S. Fish and Wildlife Service
D. Enforcement
1. U.S. Coast Guard
2. NMFS Office for Law Enforcement
3. NOAA General Counsel for Enforcement and Litigation
E. National Marine Sanctuaries Program
F. Public Comment
G. Council Discussion and Action
7. American Samoa Archipelago
A. Motu Lipoti
B. Fono Report
C. Enforcement Issues
D. Fishery Development Projects
E. American Samoa Marine Conservation Plan
F. Community Activities and Issues
G. Education and Outreach Initiatives
H. American Samoa FEP AP Recommendations
I. American Samoa FEP PT Recommendations
K. American Samoa FEP REAC Recommendations
L. SSC Recommendations
M. Public Comment
Council Discussion and Action
Manny Duenas
8. Mariana Archipelago
A. Arongo Flaeey
B. Isla Informe
C. Legislative Report
D. Enforcement Issues
E. Community Activities and Issues
1. Community Monitoring Activities
2. Report on Lunar Calendar Workshop
3. Report on Mariana Aquaculture Workshop
F. Update on Military Activities
G. Education and Outreach Initiatives
H. Marine Conservation Plans
1. CNMI
2. Guam
I. Marianas FEP AP Recommendations
J. Marianas FEP PT Recommendations
K. Marianas FEP REAC Recommendations
1. Guam
2. CNMI
L. SSC Recommendations
M. Public Comment
N. Council Discussion and Action

9. Public Comment on Non-Agenda Items

6 p.m.–9 p.m.—Fishers Forum

8:30 a.m.–5 p.m., Wednesday, March 9, 2011

10. Hawaii Archipelago
A. Moku Pepa
B. Legislative Report
C. Enforcement Issues
D. Main Hawaiian Islands Bottomfish
1. Stock Assessment Review
2. Bottomfish EFH/HAPC
E. Community Activities and Issues
1. Hawaii Puwalu Report
2. Report on scoping meeting for non-commercial, catch shares, ACL and other Council initiatives
F. SSC Recommendations
G. Public Comment
H. Council Discussion and Action
11. Program Planning and Research
A. Action Item
1. Annual Catch Limit (ACL) Specification Process
B. Report of the Coral Reef ACL Workshop
C. NOAA Catch Shares & Communities Workshop
D. Coastal and Marine Spatial Planning/Climate Change
E. Traditional Lunar Calendar Workshop
F. Hawaii, Regional, National & International Education and Outreach
G. Sustainable Fisheries Fund Marine Conservation Plan
H. SSC Recommendations
I. Public Hearing
J. Council Discussion and Action
12. Protected Species
A. Updates on ESA/MMPA issues
B. Report of the American Samoa Longline Circle-hook Study
C. Mariana Archipelago Green Sea Turtle Workshop Report
D. SSC Recommendations
E. Public Comment
F. Council Discussion and Action

8:30 a.m.–5 p.m., Thursday, March 10, 2011

13. Pelagic and International Fisheries
A. Action Items
1. Potential modifications to the American Samoa Longline Limited Entry Program
2. Proposed Changes to the American Samoa Large Pelagic Vessel (≤50 ft) Area Closure
B. American Samoa and Hawaii Longline Quarterly Reports
C. Impacts to Hawaii Longline Fleet from WCPO Bigeye Tuna Closure
D. International Fisheries
1. Seventh Meeting of the Western Central Pacific Fisheries Commission
E. SSC Recommendations
F. Public Hearing
G. Council Discussion and Action
14. Administrative Matters
A. Financial Reports
B. Administrative Reports
C. SOPP Review and Changes
D. Council Family Changes
E. Meetings and Workshops
F. Other Business
G. Standing Committee Recommendations
H. Public Comment
I. Council Discussion and Action
15. Other Business

Although other non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 150th meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: February 1, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–2513 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY93

Marine Mammals; File No. 15654

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that George Church, PhD, Professor of Genetics, Harvard Medical School, 77 Avenue Louis Pasteur, Boston, MA 02115, has been issued a permit to conduct research on bowhead whale (*Balaena mysticetus*) parts.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Amy Sloan, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On September 14, 2010 a notice was published in the **Federal Register** (75 FR 55738) that a request for a permit to conduct research on the species identified above had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Dr. Church is authorized to receive, analyze and archive parts of bowhead whales. Parts will be received from a permitted laboratory (Permit No. 1008–1637–02 issued to John Wise, PhD) and maintained at Harvard University for the proposed study. Cell lines will be developed to sequence the DNA (genome) and RNA (transcriptome). The permit has been issued for a five-year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: January 24, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–2532 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA116

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Pile Replacement Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Navy (Navy) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to construction activities as part of a pile replacement project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the Navy to take, by Level B Harassment only, five species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than March 7, 2011.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *ITP.Laws@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The Navy has prepared a draft Environmental Assessment (EA) titled "Explosives Handling Wharf 1 Pile Replacement Project, Naval Base Kitsap Bangor, Silverdale, WA". This associated document, prepared in compliance with the National Environmental Policy Act (NEPA), is also available at the same Internet address. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on December 16, 2010 from the Navy for the taking of marine mammals incidental to pile driving and removal in association with a pile replacement project in the Hood Canal at Naval Base Kitsap in Bangor, WA (NBKB). This pile replacement project is proposed to occur between July 16, 2011 and July 15, 2013. This IHA would cover only the initial year of this project (July 16, 2011–July 15, 2012), with a subsequent IHA necessary for completion. Pile driving and removal activities would occur only within a window from July 16–October 31, with any required impact driving occurring only from July 16–September 30. Six species of marine mammals are known from the waters surrounding NBKB: Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), killer whales (*Orcinus orca*), Dall's porpoises (*Phocoenoides dalli*), and harbor porpoises (*Phocoena phocoena*). These species may occur year-round in the Hood Canal, with the exception of the Steller sea lion. Steller sea lions are present only from fall to late spring (November–June), outside of the project's pile driving and removal window (July 16–October 31). Additionally, while the Southern Resident killer whale (listed as endangered under the Endangered Species Act [ESA]) is resident to the inland waters of Washington and British Columbia, it has not been observed in the Hood Canal in decades and was therefore excluded from further analysis. Only the five species which may be present during the project's timeline may be exposed to sound pressure levels associated with vibratory and impulsive pile driving, or pneumatic chipping, and will be analyzed in detail in this document.

The Navy proposes to complete necessary repairs and maintenance at the Explosive Handling Wharf #1 (EHW–1) facility at NBKB as part of a pile replacement project to restore and maintain the structural integrity of the wharf and ensure its continued functionality to support necessary operational requirements. The EHW–1

facility, constructed in 1977, has been compromised due to the deterioration of the wharf's existing piling sub-structure. Under the proposed action, ninety-six 24-in (0.6 m) diameter concrete piles, thirty-nine 12-in (0.3 m) diameter steel fender piles, and three 24-in diameter steel fender piles will be removed. In addition, a total of twenty-eight 30-in (0.8 m) diameter steel pipe piles will be installed and filled with concrete on the southwest corner of EHW–1. The proposed action will occur over a two year construction period scheduled to begin in July 2011, of which the first year would be authorized under this IHA. All piles will be driven with a vibratory hammer for their initial embedment depths, and select piles will be impact driven for their final 10–15 ft (3–4.6 m) for proofing, as necessary. "Proofing" involves driving a pile the last few feet into the substrate to determine the capacity of the pile. The capacity during proofing is established by measuring the resistance of the pile to a hammer that has a piston with a known weight and stroke (distance the hammer rises and falls) so that the energy on top of the pile can be calculated. The blow count in "blows per inch" is measured to verify resistance, and pile compression capacities are calculated using a known formula. Noise attenuation measures (*i.e.,* bubble curtain) will be used during all impact hammer operations. Hydroacoustic monitoring will be performed to assess effectiveness of noise attenuation measures.

For pile driving activities, the Navy used NMFS-promulgated thresholds for assessing pile driving and removal impacts (NMFS 2005b, 2009), outlined later in this document. The Navy used recommended spreading loss formulas (the practical spreading loss equation for underwater sounds and the spherical spreading loss equation for airborne sounds) and empirically-measured source levels from other 24–30 in (0.6–0.8 m) diameter pile driving and removal events to estimate potential marine mammal exposures. Predicted exposures are outlined later in this document. The calculations predict that no Level A harassments would occur associated with pile driving or construction activities, and that 2,488 Level B harassments may occur during the pile replacement project from underwater sound. No incidents of harassment were predicted from airborne sounds associated with pile driving. Some assumptions (*e.g.,* marine mammal densities) used to estimate the exposures are conservative, and may overestimate the potential number of exposures and their severity.

Description of the Specified Activity

NBKB is located on the Hood Canal approximately twenty miles (32 km) west of Seattle, Washington (*see* Figures 1–1 and 1–2 in the Navy's application). NBKB provides berthing and support services to Navy submarines and other fleet assets. The entirety of NBKB, including the land areas and adjacent water areas in the Hood Canal, is restricted from general public access. The Navy proposes a pile replacement project to maintain the structural integrity of EHW–1 and ensure its continued functionality to support operational requirements of the TRIDENT submarine program. The proposed actions with the potential to cause harassment of marine mammals within the waterways adjacent to NBKB, under the MMPA, are vibratory and impulsive pile driving operations, and vibratory and pneumatic chipping removal operations, associated with the pile replacement project. The proposed activities that would be authorized by this IHA will occur between July 16, 2011 and July 15, 2012. All in-water construction activities within the Hood Canal are only permitted during July 16–February 15 in order to protect spawning fish populations. The further restriction of in-water work window (July 16–October 31) proposed by the Navy avoids the possibility of incidental harassment of Steller sea lions. The Eastern Distinct Population Segment (DPS) of Steller sea lions, present in the Hood Canal outside of this further restriction of the in-water work window, is listed as threatened under the ESA. Impact pile driving would be further restricted to the period July 16–September 30, per ESA consultation with the U.S. Fish and Wildlife Service (USFWS).

As part of the Navy's sea-based strategic deterrence mission, the Navy Strategic Systems Programs directs research, development, manufacturing, test, evaluation, and operational support for the TRIDENT Fleet Ballistic Missile program. Maintenance and development of necessary facilities for handling of explosive materials is part of these duties. The proposed action for this IHA request includes the removal of the fragmentation barrier, walkway, and 138 steel and concrete piles at EHW–1. Of the piles requiring removal, 96 are 24-in (0.6 m) diameter hollow pre-cast concrete piles which will be excised down to the mud line. An additional three 24-in steel fender piles, and thirty-nine 12-in (0.3 m) steel fender piles, will be extracted using a vibratory hammer. Also included in the repair work is the installation of 28 new 30-in (0.8 m) diameter steel pipe piles, the construction of new cast-in-place pile caps (concrete formwork may be located below Mean Higher High Water [MHHW]), the installation of the pre-stressed superstructure, the installation of five sled-mounted cathodic protection (CP) systems, and the installation or re-installation of related appurtenances. Sound propagation data will be collected through hydroacoustic monitoring during pile installation and removal to support environmental analyses for future repair work that may be necessary to maintain the EHW–1 facility. The presence of marine mammals will also be monitored during pile installation and removal.

The EHW–1 pile replacement project has been designed to restore the structural integrity of the EHW–1 facility which has been compromised due to the deterioration of the wharf's existing piling sub-structure. Under the proposed action, ninety-six 24-in (0.6 m) diameter concrete piles, thirty-nine 12-in (0.3 m) steel fender piles, and three 24-in diameter steel fender piles will be removed. In addition, a total of twenty-eight 30-in (0.8 m) diameter steel pipe piles will be installed and filled with concrete on the southwest corner of EHW–1. The proposed action will occur over a two year construction period scheduled to begin in July 2011.

The removal and installation of piles at EHW–1 is broken up into three components described in detail below and depicted in Figure 1–3 of the Navy's application. The first component of this project would entail (*see* Section A on Figure 1–3 pf the Navy's application):

- The removal of one 24-in diameter steel fender pile and its associated fender system components at the outboard support. A fender pile, typically set beside slips or wharves, guides approaching vessels and is driven so as to yield slightly when struck in order to lessen the shock of contact. The fender system components attach the fender piles to the structure, and are above the water line.
- The installation of sixteen 30-in diameter hollow steel pipe piles (approximately 130 ft [40 m] long), with approximately 100 ft (30 m) of the pile below the Mean Lower Low Water mark.
- The construction of two cast-in-place concrete pile caps. The pile caps would be situated on the tops of the steel piles located directly beneath the structure (*see* Figure 1–4 of the Navy's application for a diagram) and function as a load transfer mechanism between the superstructure and the piles.

Concrete formwork may be located below MHHW.

• The installation of three sled mounted passive CP systems. The passive CP system is a metallic rod or anode that is attached to a metal object to protect it from corrosion. The anode is composed of a more active metal than that on which it is mounted and is more easily oxidized, thus corroding first and acting as a barrier against corrosion for the object to which it is attached. This system would be banded to the steel piles to prevent metallic surfaces of the wharf from corroding due to the saline conditions in Hood Canal.

The second component of this project would require (*see* Section B in Figure 1–3 of the Navy's application):

• The removal of two 24-in diameter steel fender piles at the main wharf and associated fender system components.

• The installation of twelve 30-in diameter hollow steel pipe piles (approximately 74–122 ft [23–37 m] long). The embedment depth of the piles would range from 30–50 ft (9–15 m).

• The construction of four concrete pile caps.

• The installation of a pre-stressed concrete superstructure. The superstructure is the pre-stressed concrete deck of the wharf found above, or supported by, the caps or sills, including the deck, girders, and stringers.

• The installation of two sled mounted passive CP systems.

• The installation or re-installation of related appurtenances, the associated parts of the superstructure that connect the superstructure to the piles. These pieces include components such as bolts, welded metal hangers and fittings, brackets, *etc.*

The final component of this project would be (*see* Section C on Figure 1–3 of the Navy's application):

• The removal of the concrete fragmentation barrier and walkway, used to get from the Wharf Apron to the Outboard Support. These structures will likely be removed by cutting the concrete into sections (potentially three or four in total) using a saw, or other equipment, and removed using a crane. The crane will lift the sections from the existing piles and place them on a barge.

• The removal of the piles supporting the fragmentation barrier including:

○ Thirty-nine 12-in diameter steel fender piles.

○ Ninety-six 24-in diameter hollow pre-cast concrete piles cut to the mud line (includes 72 at fragmentation barrier, four at walkway, four at Bent 8 outboard support, and eight at Bents 9 and 10).

• Concrete piles would be removed with a pneumatic chipping hammer or another tool capable of cutting through concrete. A pneumatic chipping hammer is similar to an electric power tool, such as a jackhammer, but uses compressed air instead of electricity. The pneumatic chipping hammer consists of a steel piston that is reciprocated in a steel barrel by compressed air. On its forward stroke the piston strikes the end of the chisel. The piston reciprocates at a rate such that the chisel edge vibrates against the concrete with enough force to fragment or splinter the pile. The concrete debris would be captured using debris curtains/sheeting and removed from the project area.

Pile removal and installation would occur between July 16 and October 31 during each year of construction, with all impact driving further restricted to July 16–September 30. The installation of the concrete pile caps and sled mounted passive CP systems is out-of-water work, on the tops of the piles themselves or attached to the wharf's superstructure. In a precautionary measure, these activities would nonetheless be limited to the in-water work window from July 16 to February 15—a window established to minimize impacts to fish.

Vibratory driving would be the preferred method for all pile installation, and would be used for removal of all steel piles. During pile installation, depending on local site conditions, it may be necessary to drive some piles for the final few feet with an impact hammer. This technique, known as proofing, may be required due to substrate refusal. As a result of consultation with USFWS under the ESA, impact pile driving, if required for proofing, will not occur on more than five days for the duration of any pile driving window during the implementation of the project, and no more than one pile may be proofed in a given day. Furthermore, impact driving or proofing would be limited to fifteen minutes per pile (up to five piles total). Based on the Navy's experience with pile replacement during previous repair cycles at the EHW–1 facility, the Navy felt that this measure could be complied with. During previous repairs at EHW–1, no use of impact driving has been required to accomplish installation. All piles driven with an impact hammer would be surrounded by a bubble curtain or other sound attenuation device over the full water column to minimize in-water noise. Vibratory pile driving is restricted to the time period between July 16 and October 31, while impact driving would only be performed between July 16 and September 30. Non-pile driving, in-water work can be performed between July 16 and February 15. The Navy will monitor hydroacoustic levels, as well as the presence and behavior of marine mammals during pile installation and removal. Under the proposed action, twenty-eight 30-in steel piles would be installed and 138 piles, steel and concrete, would be removed.

The contractor estimates that steel pile installation and removal will occur at an average rate of two piles per day. For each pile installed, the driving time is expected to be no more than one hour for the vibratory portion of the project. The impact driving portion of the project, when required, is anticipated to take approximately fifteen minutes per pile, with a maximum of five piles per construction window permitted to be impact driven. Impact pile driving will not occur on more than five days for the duration of any pile driving window and no more than one pile will be proofed in a given day. Steel piles will be extracted using a vibratory hammer. Extraction is anticipated to take approximately thirty minutes per pile. Concrete piles will be removed using a pneumatic chipping hammer or other similar concrete demolition tool. It is estimated that concrete pile removal could occur at a rate of five piles per day maximum, but removal will more likely occur at a rate of three piles per day. It is expected to take approximately two hours to remove each concrete pile with a pneumatic chipping hammer.

For steel piles, this results in a maximum of two hours of pile driving per pile or potentially four hours per day. For concrete piles, this results in a maximum of two hours of pneumatic chipping per pile, or potentially six hours per day. Therefore, while 108 days of in-water work time is proposed (July 16–October 31), only a fraction of the total work time per day will actually be spent pile driving. An average work day (two hours post-sunrise to two hours prior to sunset [civil]) ranges from six to twelve hours (for an average of approximately eight to nine hours), depending on the month. While it is anticipated that only four hours of pile driving would take place per day for steel piles, or six hours of pneumatic chipping for concrete piles, the Navy modeled potential impact as if the entire day could be spent pile driving to take into account deviations from the estimated times for pile installation and removal.

Based on the proposed action, the total time from vibratory pile driving during steel pile installation would be approximately fourteen days (28 piles at

an average of two per day). The total time from impact pile driving during steel pile installation would be five days (five piles at one per day). The total time from vibratory pile driving during steel pile removal would be 21 days (42 piles at an average of two per day). The total time using a pneumatic chipping hammer during concrete pile removal would be 32 days (96 piles at an average of three per day).

Description of Noise Sources

Underwater sound levels are comprised of multiple sources, including physical noise, biological noise, and anthropogenic noise. Physical noise includes waves at the surface, earthquakes, ice, and atmospheric noise. Biological noise includes sounds produced by marine mammals, fish, and invertebrates. Anthropogenic noise consists of vessels (small and large), dredging, aircraft overflights, and construction noise. Known noise levels and frequency ranges associated with anthropogenic sources similar to those that would be used for this project are summarized in Table 1. Details of each of the sources are described in the following text.

TABLE 1—REPRESENTATIVE NOISE LEVELS OF ANTHROPOGENIC SOURCES

Noise source	Frequency range (Hz)	Underwater noise level (dB re 1 μPa)	Reference
Small vessels	250–1,000	151 dB root mean square (rms) at 1 m (3.3 ft).	Richardson *et al.* 1995.
Tug docking gravel barge	200–1,000	149 dB rms at 100 m (328 ft)	Blackwell and Greene 2002.
Vibratory driving of 30-in (0.8 m) steel pipe pile.	10–1,500	Approximately 168 dB rms at 10 m (33 ft).	WSDOT 2010a, 2010b.
Impact driving of 30-in steel pipe pile	10–1,500	Approximately 193 dB rms at 10 m	WSDOT 2005, 2008; CALTRANS 2007; Reyff 2005.

In-water construction activities associated with the project would include impact pile driving and vibratory pile driving. The sounds produced by these activities fall into one of two sound types: Pulsed and non-pulsed. Impact pile driving produces pulsed sounds, while vibratory pile driving produces non-pulsed (or continuous) sounds. The distinction between these two general sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.* 2007). Please *see* Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sounds (*e.g.,* explosions, gunshots, sonic booms, seismic pile driving pulses, and impact pile driving) are brief, broadband, atonal transients (ANSI 1986; Harris 1998) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a decay period that may include a period of diminishing, oscillating maximal and minimal pressures. Pulsed sounds generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulse (intermittent or continuous sounds) can be tonal, broadband, or both. Some of these non-pulse sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulse sounds include vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Ambient Noise

By definition, ambient noise is background noise, without a single source or point (Richardson *et al.* 1995). Ambient noise varies with location, season, time of day, and frequency. Ambient noise is continuous, but with much variability on time scales ranging from less than one second to one year (Richardson *et al.* 1995). Ambient underwater noise at the project area is widely variable over time due to a number of natural and anthropogenic sources. Sources of naturally occurring underwater noise include wind, waves, precipitation, and biological noise (*e.g.,* shrimp, fish, cetaceans). There is also human-generated noise from ship or boat traffic and other mechanical means (Urick 1983). Other sources of underwater noise at industrial waterfronts could come from cranes, generators, and other types of mechanized equipment on wharves or the adjacent shoreline.

In the vicinity of the project area, the average broadband ambient underwater noise levels were measured at 114 dB re 1 μPa between 100 Hz and 20 kHz (Slater 2009). Peak spectral noise from industrial activity was noted below the 300 Hz frequency, with maximum levels of 110 dB re 1 μPa noted in the 125 Hz band. In the 300 Hz to 5 kHz range, average levels ranged between 83–99 dB re 1 μPa. Wind-driven wave noise dominated the background noise environment at approximately 5 kHz and above, and ambient noise levels flattened above 10 kHz.

Airborne noise levels at NBKB vary based on location but are estimated to average around 65 dBA (A-weighted decibels) in the residential and office park areas, with traffic noise ranging from 60–80 dBA during daytime hours (Cavanaugh and Tocci 1998). The highest levels of airborne noise are produced along the waterfront and at the ordnance handling areas, where estimated noise levels range from 70–90 dBA and may peak at 99 dBA for short durations. These higher noise levels are produced by a combination of sound sources including heavy trucks, forklifts, cranes, marine vessels, mechanized tools and equipment, and other sound-generating industrial or military activities.

Sound Thresholds

Since 1997, NMFS has used generic sound exposure thresholds to determine when an activity in the ocean that produces sound might result in impacts to a marine mammal such that a take by harassment might occur (NMFS 2005b). To date, no studies have been conducted that examine impacts to marine mammals from pile driving sounds from which empirical noise thresholds have been established. Current NMFS practice regarding exposure of marine mammals to sound is that cetaceans and pinnipeds exposed to impulsive sounds of 180 and 190 dB rms or above, respectively, are considered to have been taken by Level A (*i.e.,* injurious) harassment. Behavioral harassment (Level B) is

considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (*e.g.,* impact pile driving) and 120 dB rms for continuous noise (*e.g.,* vibratory pile driving), but below injurious thresholds. For airborne noise, pinniped disturbance from haul-outs has been documented at 100 dB (unweighted) for pinnipeds in general, and at 90 dB (unweighted) for harbor seals. NMFS uses these levels as guidelines to estimate when harassment may occur.

Distance to Sound Thresholds

Underwater Sound Propagation Formula—Pile driving would generate underwater noise that potentially could result in disturbance to marine mammals transiting the project area. Transmission loss (TL) underwater is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The formula for transmission loss is:

$$TL = B * \log_{10}(R) + C * R$$

where:

B = logarithmic (predominantly spreading) loss

C = linear (scattering and absorption) loss

R = range from source in meters

For all underwater calculations in this assessment, linear loss (C) was not used (*i.e.,* C = 0) and transmission loss was calculated using only logarithmic spreading. Therefore, using practical spreading (B = 15), the revised formula for transmission loss is $TL = 15 \log_{10}(R)$.

Underwater Noise from Pile Driving—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A large quantity of literature regarding sound pressure levels recorded from pile driving projects is available for consideration. In order to determine reasonable sound pressure levels and their associated affects on marine mammals that are likely to result from pile driving at NBKB, studies with similar properties to the proposed action were evaluated. Sound levels associated with vibratory pile removal are the same as those during vibratory installation (CALTRANS 2007) and have been taken into consideration in the modeling analysis. There is a lack of empirical data regarding the acoustic output of chipping hammers. As a result, acoustic information for similar types of concrete breaking instruments, such as jackhammers and concrete saws, was also consulted. Overall, studies which met the following parameters were considered: (1) Pile size and materials: Installation—steel pipe piles (30-in diameter); Removal—steel pipe piles (12 to 24-in diameter); Removal—concrete piles (24-in diameter); (2) Hammer machinery: Installation (steel)—vibratory and impact hammer, Removal (steel)—vibratory hammer; Removal (concrete)—pneumatic chipping and/or jackhammer; and (3) Physical environment—shallow depth (less than 100 feet [30 m]).

TABLE 2—UNDERWATER SOUND PRESSURE LEVELS FROM SIMILAR IN-SITU MONITORED CONSTRUCTION ACTIVITIES

Project and location	Pile size and type	Installation method	Water depth	Measured sound pressure levels
Eagle Harbor Maintenance Facility, WA [1].	30-in (0.8 m) steel pipe pile	Impact	10 m (33 ft)	193 dB re 1 μPa (rms) at 10 m (33 ft).
Richmond-San Rafael Bridge, CA [2].	30-in steel pipe pile	Impact	4–5 m (13–16 ft)	190 dB re 1 μPa (rms) at 10 m.
Friday Harbor Ferry Terminal, WA [3].	30-in steel pipe pile	Impact	10 m	196 dB re 1 μPa (rms) at 10 m.
Various projects [4]	30-in steel CISS [5] pile	Impact	Unknown	192 dB re 1 μPa (rms) at 10 m.
			Average	approximately 193 dB re 1 μPa (rms) at 10 m.

[1] WSDOT 2008.
[2] CALTRANS 2007.
[3] WSDOT 2005.
[4] Reyff 2005.
[5] Cast-in-steel-shell.

Tables presented here detail representative pile driving sound pressure levels that have been recorded from similar construction activities in recent years. Due to the similarity of these actions and the Navy's proposed action, they represent reasonable sound pressure levels which could be anticipated and these values were used in the acoustic modeling and analysis. Table 2 represents sound pressure levels (SPLs) that may be expected during the installation of the 30-in steel pipe piles using an impact hammer, should this be required. Table 3 represents SPLs that may be expected during the installation of the 30-in steel piles using a vibratory hammer. Table 4 represents SPLs that may be expected during the removal of the 12 to 24-in steel pipe piles and the 24-in concrete pilings.

TABLE 3—UNDERWATER SOUND PRESSURE LEVELS FROM SIMILAR IN-SITU MONITORED CONSTRUCTION ACTIVITIES

Project and location	Pile size and type	Installation method	Water depth	Measured sound pressure levels
Keystone Ferry Terminal, WA [1]	30-in (0.8 m) steel pipe pile	Vibratory	5 m (15 ft)	166 dB re 1 μPa (rms) at 10 m (33 ft).
Keystone Ferry Terminal, WA [1]	30-in steel pipe pile	Vibratory	8 m (28 ft)	171 dB re 1 μPa (rms) at 10 m.
Vashon Ferry Terminal, WA [2]	30-in steel pipe pile	Vibratory	10–12 m (36–40 ft)	165 dB re 1 μPa (rms) at 10 m.

TABLE 3—UNDERWATER SOUND PRESSURE LEVELS FROM SIMILAR IN-SITU MONITORED CONSTRUCTION ACTIVITIES—Continued

Project and location	Pile size and type	Installation method	Water depth	Measured sound pressure levels
			Average	approximately 168 dB re 1 μPa (rms) at 10 m.

[1] WSDOT 2010a.
[2] WSDOT 2010b.

TABLE 4—UNDERWATER SOUND PRESSURE LEVELS FOR PILE REMOVAL FROM SIMILAR IN-SITU MONITORED CONSTRUCTION ACTIVITIES

Project and location	Pile size and type	Removal method	Water depth	Measured sound pressure levels
Unknown, CA [1]	24-in (0.6 m) steel pipe pile	Vibratory	approximately 15 m (49 ft).	165 dB re 1 μPa (rms) at 10 m (33 ft).
United Kingdom [2]	Unknown size [3]; concrete	Jackhammer	Unknown	161 dB re 1 μPa (rms) at 1 m (3.3 ft).

[1] CALTRANS 2007.
[2] Nedwell and Howell 2004.
[3] This is the only literature found for the underwater use of a jackhammer or pneumatic chipping tool. The size of the pile was not recorded. Since these tools operate to chip portions of concrete from the pile, sound output is not likely tied to the size of the pile itself as for impact and vibratory pile driving. Therefore, this data was found to be representative for this project.

Several noise reduction measures can be employed during pile driving to reduce the high source pressures associated with impact pile driving. Among these is the use of bubble curtains, cofferdams, pile caps, or the use of vibratory installation. The efficacy of bubble curtains is dependent upon a variety of site-specific factors, including environmental conditions such as water current, sediment type, and bathymetry; the type and size of the pile; and the type and energy of the hammer. For the pile replacement project, the Navy intends to employ noise reduction techniques during impact pile driving, including the use of sound attenuation systems (*e.g.,* bubble curtain). *See* "Proposed Mitigation" for more details on the impact reduction and mitigation measures proposed. The calculations of the distances to the marine mammal noise thresholds were calculated for impact installation with and without consideration for mitigation measures. Thorson and Reyff (2004) determined that a properly designed bubble curtain could provide a reduction of 5 to 20 dB. Based on information contained therein, distances calculated with consideration for mitigation assumed a 10 dB reduction in source levels from the use of sound attenuation devices, and the Navy used the mitigated distances for impact pile driving for all analysis in their application. All calculated distances to and the total area encompassed by the marine mammal noise thresholds are provided in Tables 5, 6, and 7. Calculated distance to thresholds using unmitigated impact driving is provided as reference; no unmitigated impact driving will occur. The USFWS has requested this as a measure to protect prey of the ESA-endangered marbled murrelet.

TABLE 5—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL NOISE THRESHOLDS DURING PILE INSTALLATION

Group	Threshold	No mitigation, m (ft) [1]	With mitigation, m (ft) [1]	Area, km^2 (mi^2)
Pinnipeds	Impact driving, injury (190 dB)	16 (52)	4 (13)	0.000
Cetaceans	Impact driving, injury (180 dB)	74 (243)	16 (52)	0.001 (0.000)
All	Impact driving, disturbance (160 dB)	1,585 (5,200)	342 (1,122)	0.367 (0.142)
Pinnipeds	Vibratory driving, injury	0	0	0.000
Cetaceans	Vibratory driving, injury	2 (6.6)	2	0.000
All	Vibratory driving, disturbance (120 dB)	15,849 (51,998)	[2] 15,849	[2] 789.1 (304.7)

All sound levels expressed in dB re 1 μPa rms. Practical spreading loss (15 log, or 4.5 dB per doubling of distance) used for calculations.
[1] Sound pressure levels used for calculations were: 193 dB re 1 μPa @ 10 m (33 ft) for impact and 168 dB re 1 μPa @ 10 m for vibratory.
[2] Range calculated is greater than what would be realistic. Hood Canal average width at site is 2.4 km (1.5 mi), and is fetch limited from N to S at 20.3 km (12.6 mi).

TABLE 6—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL NOISE THRESHOLDS DURING PILE REMOVAL

Group	Threshold [1]	Distance, m (ft) [2]	Area, km^2 (mi^2)
Pinnipeds	Vibratory removal, injury (190 dB)	0	0.000
Cetaceans	Vibratory removal, injury (180 dB)	1 (3.3)	0.000
All	Vibratory removal, disturbance (120 dB)	[3] 10,000 (5,200)	[3] 314.2 (121.3)
Pinnipeds	Chipping hammer, injury (190 dB)	0	0.000
Cetaceans	Chipping hammer, injury (180 dB)	0	0.000

TABLE 6—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL NOISE THRESHOLDS DURING PILE REMOVAL—Continued

Group	Threshold [1]	Distance, m (ft) [2]	Area, km [2] (mi [2])
All	Chipping hammer, disturbance (120 dB)	[3] 542 (1,778)	[3] 0.929 (0.359)

All sound levels expressed in dB re 1 μPa rms. Practical spreading loss (15 log, or 4.5 dB per doubling of distance) used for calculations.

[1] Specific criteria for pneumatic chipping hammers does not exist. These tools produce continuous sound similar to vibratory pile driving and therefore use the same criteria for the analysis of effects.

[2] Sound pressure levels used for calculations were: 165 dB re 1 μPa @ 10 m (33 ft) for vibratory and 161 dB re 1 μPa @ 1 m for chipping hammer.

[3] Range calculated is greater than what would be realistic. Hood Canal average width at site is 2.4 km (1.5 mi), and is fetch limited from N to S at 20.3 km (12.6 mi).

The calculations presented in Tables 5 and 6 assumed a field free of obstruction, which is unrealistic, because Hood Canal does not represent open water conditions (free field). Therefore, sounds would attenuate as they encounter land masses or bends in the canal. As a result, some of the distances and areas of impact calculated cannot actually be attained at the project area. The actual distances to the behavioral disturbance thresholds for impact and vibratory pile driving and pneumatic chipping may be shorter than those calculated due to the irregular contour of the waterfront, the narrowness of the canal, and the maximum fetch (furthest distance sound waves travel without obstruction [*i.e.,* line of sight]) at the project area. Table 7 shows the actual areas encompassed by the marine mammal thresholds during each stage of the EHW–1 pile replacement project. *See* Figures 6–1 through 6–4 of the Navy's application for depictions of the areas of each underwater sound threshold that are predicted to occur at the project area due to pile driving, during each stage of the project.

TABLE 7—ACTUAL AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL NOISE THRESHOLDS

Group	Threshold [1]	Area, km [2] (mi [2])
Pinnipeds	Impact driving, injury (190 dB)	0.000
Cetaceans	Impact driving, injury (180 dB)	0.001 (0.000)
All	Impact driving, disturbance (160 dB)	0.287 (0.111)
Pinnipeds	Vibratory driving, injury (190 dB)	0.000
Cetaceans	Vibratory driving, injury (180 dB)	0.000
All	Vibratory driving, disturbance (120 dB)	40.3 (15.5)
Pinnipeds	Vibratory removal, injury (190 dB)	0.000
Cetaceans	Vibratory removal, injury (180 dB)	0.000
All	Vibratory removal, disturbance (120 dB)	35.9 (13.9)
Pinnipeds	Chipping hammer, injury (190 dB)	0.000
Cetaceans	Chipping hammer, injury (180 dB)	0.000
All	Chipping hammer, disturbance (120 dB)	0.608 (0.235)

Airborne Sound Propagation Formula—Pile driving can generate airborne noise that could potentially result in disturbance to marine mammals (specifically, pinnipeds) which are hauled out or at the water's surface. As a result, the Navy analyzed the potential for pinnipeds hauled out or swimming at the surface near NBKB to be exposed to airborne sound pressure levels that could result in Level B behavioral harassment. The appropriate airborne noise threshold for behavioral disturbance for all pinnipeds, except harbor seals, is 100 dB re 20 μPa rms (unweighted). For harbor seals, the threshold is 90 dB re 20 μPa rms (unweighted). A spherical spreading loss model, assuming average atmospheric conditions, was used to estimate the distance to the 100 dB and 90 dB re 20 μPa rms (unweighted) airborne thresholds. The formula for calculating spherical spreading loss is:

$$TL = 20\log r$$

where:
TL = Transmission loss
r = Distance from source to receiver

*Spherical spreading results in a 6 dB decrease in sound pressure level per doubling of distance.

Airborne Sound from Pile Installation and Removal—As was discussed for underwater noise from pile driving, the intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to determine reasonable airborne sound pressure levels and their associated effects on marine mammals that are likely to result from pile driving at NBKB, studies with similar properties to the proposed action, as described previously, were evaluated. Table 8 details representative pile driving and removal activities that have occurred in recent years. Due to the similarity of these actions and the Navy's proposed action, they represent reasonable sound pressure levels which could be anticipated.

TABLE 8—AIRBORNE SOUND PRESSURE LEVELS FROM SIMILAR IN-SITU MONITORED CONSTRUCTION ACTIVITIES

Project and location	Pile size and type	Method	Water depth	Measured sound pressure levels
Northstar Island, AK [1]	42-in (1.1 m) steel pipe pile	Impact	Approximately 12 m (40 ft).	97 dB re 20 μPa (rms) at 160 m (525 ft).
Friday Harbor Ferry Terminal, WA [2].	24-in (0.6 m) steel pipe pile	Impact	Approximately 10 m (33 ft).	112 dB re 20 μPa (rms) at 49 m (160 ft).

TABLE 8—AIRBORNE SOUND PRESSURE LEVELS FROM SIMILAR IN-SITU MONITORED CONSTRUCTION ACTIVITIES—Continued

Project and location	Pile size and type	Method	Water depth	Measured sound pressure levels
Wahkiakum Ferry Terminal [3]	18-in (0.5 m) steel pipe pile	Vibratory removal.	Approximately 3–4 m (10–12 ft).	87.5 dB re 20 μPa (rms) at 15 m (50 ft).
Keystone Ferry Terminal, WA [3]	30-in (0.8 m) steel pipe pile	Vibratory installation.	Approximately 9 m (30 ft).	98 dB re 20 μPa (rms) at 11 m (36 ft).
Unknown [4]	Unknown [5], Concrete	Chipping Hammer.	Unknown	92 dB re 20 μPa (rms) at 10 m (33 ft).

[1] Blackwell *et al.* 2004.
[2] WSDOT 2005.
[3] WSDOT 2010c.
[4] Cheremisinoff 1996.
[5] This is the only known data for airborne noise from use of a chipping hammer. The size of the pile was not recorded. However, since these tools operate to chip portions of concrete from the pile, sound outputs are not tied to the size of the pile. Therefore, this data was found to be representative for this project.

Based on in-situ recordings from similar construction activities, the maximum airborne noise levels that would result from impact and vibratory pile driving are estimated to be 120 dB re 20 μPa (rms) at 15 m (50 ft) and 98 dB re 20 μPa (rms) at 11 m (36 ft), respectively (Blackwell *et al.* 2004; WSDOT 2005, 2010c). Values for impact driving from the Northstar Island and Friday Harbor projects were averaged. The maximum airborne noise level that would result from vibratory removal and pneumatic chipping are estimated to be 92 dB re 20 μPa (rms) at 15 m (50 ft) and 92 dB re 20 μPa (rms) at 33 ft (10 m), respectively. The values from projects using vibratory hammers (Wahkiakum Ferry and Keystone Ferry) were averaged to obtain a representative value for vibratory removal. This is because the largest steel piles to be removed at EHW–1 are 24-in diameter; a representative value was obtained by averaging data from 30-in and 18-in diameter piles. The distances to the airborne thresholds were calculated with the airborne transmission loss formula presented previously. All calculated distances to and the total area encompassed by the airborne marine mammal noise thresholds are provided in Table 9.

TABLE 9—CALCULATED DISTANCES TO AND AREA ENCOMPASSED BY THE MARINE MAMMAL NOISE THRESHOLDS IN-AIR FROM PILE DRIVING

Species	Threshold	Airborne behavioral disturbance	
		Distance in m (ft)	Area in km^2 (mi^2)
Pinnipeds (except harbor seal)	100 dB re 20 μPa rms (impact disturbance)	159 (522)	0.079 (0.031)
Harbor seal	90 dB re 20 μPa rms (impact disturbance)	501 (1,643)	0.789 (0.305)
Pinnipeds (except harbor seal)	100 dB re 20 μPa rms (vibratory disturbance; installation).	9 (30)	0.000
Harbor seal	90 dB re 20 μPa rms (vibratory disturbance; installation).	29 (95)	0.029 (0.003)
Pinnipeds (except harbor seal)	100 dB re 20 μPa rms (vibratory disturbance; removal).	7 (23)	0.000
Harbor seal	90 dB re 20 μPa rms (vibratory disturbance; removal).	20 (66)	0.001 (0.000)
Pinnipeds (except harbor seal)	100 dB re 20 μPa rms (pneumatic chipping)	4 (13)	0.000
Harbor seal	90 dB re 20 μPa rms (pneumatic chipping)	13 (43)	0.001 (0.000)

All SPLs are reported re 20 μPa rms (unweighted).

All airborne distances are less than those calculated for underwater sound thresholds, with the exception of the behavioral disturbance distances from impact pile driving for harbor seals. This disturbance zone radius is 501 m, whereas the disturbance zone radius for underwater noise from impact driving (160-dB) is only 342 m (*see* Table 5). Therefore, the monitoring buffer zone for behavioral disturbance will be expanded to encompass this distance for harbor seals. For all other activities, protective measures are in place out to the distances calculated for the underwater thresholds, and the distances for the airborne thresholds will be covered fully by mitigation and monitoring measures in place for underwater sound thresholds. Aside from the aforementioned case, all construction noise associated with the project would not extend beyond the buffer zone for underwater sound that would be established to protect seals and sea lions. No haul-outs or rookeries are located within these radii. *See* figures 6–5 through 6–10 of the Navy's application for depictions of the actual distances for each airborne sound threshold that are predicted to occur at the project area due to pile driving.

Description of Marine Mammals in the Area of the Specified Activity

There are six marine mammal species, three cetaceans and three pinnipeds, which may inhabit or transit through the waters nearby NBKB in the Hood Canal. These include the transient killer whale, harbor porpoise, Dall's porpoise, Steller sea lion, California sea lion, and the harbor seal. While the Southern Resident killer whale is resident to the inland waters of Washington and British Columbia, it has not been observed in the Hood Canal in decades, and therefore was excluded from further

analysis. The Steller sea lion is the only marine mammal that occurs within the Hood Canal which is listed under the ESA; the Eastern DPS is listed as threatened. As noted previously, and in Table 10, Steller sea lions are not present in the project area during the proposed project timeframe for pile driving (July 16–October 31). Steller sea lions will not be discussed in detail. All marine mammal species are protected under the MMPA. This section summarizes the population status and abundance of these species, followed by detailed life history information. Table 10 lists the marine mammal species that occur in the vicinity of NBKB and their estimated densities within the project area during the proposed timeframe.

TABLE 10—MARINE MAMMALS PRESENT IN THE HOOD CANAL IN THE VICINITY OF NBKB

Species	Stock abundance [1]	Relative occurrence in Hood Canal	Season of occurrence	Density in warm season [3] (individuals/km [2])
Steller sea lion				
Eastern U.S. DPS	50,464 [2]	Rare to occasional use	Fall to late spring (Nov-mid April).	N/A
California sea lion				
U.S. Stock	238,000	Common	Fall to late spring (Aug–May)	[4]0.410
Harbor seal				
WA inland waters stock	14,612 (CV = 0.15)	Common	Year-round; resident species in Hood Canal.	[5]1.31
Killer whale				
West Coast transient stock	314	Rare to occasional use	Year-round	[6]0.038
Dall's porpoise				
CA/OR/WA stock	48,376 (CV = 0.24)	Rare to occasional use	Year-round	[7]0.043
Harbor porpoise				
WA inland waters stock	10,682 (CV = 0.38)	Rare to occasional use	Year-round	[7]0.011

[1] NMFS marine mammal stock assessment reports at: *http://www.nmfs.noaa.gov/pr/sars/species.htm.*
[2] Average of a given range.
[3] Warm season refers to the period from May–Oct.
[4] DoN 2010a.
[5] Jeffries *et al.* 2003; Huber *et al.* 2001.
[6] London 2006.
[7] Agness and Tannenbaum 2009a.

California Sea Lion

Species Description—California sea lions are members of the Otariid family (eared seals). The species, *Zalophus californianus,* includes three subspecies: *Z. c. wollebaeki* (in the Galapagos Islands), *Z. c. japonicus* (in Japan, but now thought to be extinct), and *Z. c. californianus* (found from southern Mexico to southwestern Canada; referred to here as the California sea lion) (Carretta *et al.* 2007). The California sea lion is sexually dimorphic. Males may reach 1,000 lb (454 kg) and 8 ft (2.4 m) in length; females grow to 300 lb (136 kg) and 6 ft (1.8 m) in length. Their color ranges from chocolate brown in males to a lighter, golden brown in females. At around five years of age, males develop a bony bump on top of the skull called a sagittal crest. The crest is visible in the dog-like profile of male sea lion heads, and hair around the crest gets lighter with age.

Population Abundance—The U.S. stock of California sea lions may occur in the marine waters nearby NBKB. The stock is estimated at 238,000 and the minimum population size of this stock is 141,842 individuals (Carretta *et al.* 2007). These numbers are from counts during the 2001 breeding season of animals that were ashore at the four major rookeries in southern California and at haul-out sites north to the Oregon/California border. Sea lions that were at-sea or hauled-out at other locations were not counted (Carretta *et al.* 2007). An estimated 3,000 to 5,000 California sea lions migrate to waters of Washington and British Columbia during the non-breeding season from September to May (Jeffries *et al.* 2000). Peak numbers of up to 1,000 California sea lions occur in Puget Sound (including Hood Canal) during this time period (Jeffries *et al.* 2000).

Distribution—The geographic distribution of California sea lions includes a breeding range from Baja California, Mexico to southern California. During the summer, California sea lions breed on islands from the Gulf of California to the Channel Islands and seldom travel more than about 31 mi (50 km) from the islands (Bonnell *et al.* 1983). The primary rookeries are located on the California Channel Islands of San Miguel, San Nicolas, Santa Barbara, and San Clemente (Le Boeuf and Bonnell 1980; Bonnell and Dailey 1993). Their distribution shifts to the northwest in fall and to the southeast during winter and spring, probably in response to changes in prey availability (Bonnell and Ford 1987).

The non-breeding distribution extends from Baja California north to Alaska for males, and encompasses the waters of California and Baja California for females (Reeves *et al.* 2008; Maniscalco *et al.* 2004). In the non-breeding season, an estimated 3,000–5,000 adult and sub-adult males migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island from September to May (Jeffries *et al.* 2000) and return south the following spring (Mate 1975; Bonnell *et al.* 1983). Along their migration, they are occasionally sighted hundreds of miles offshore (Jefferson *et al.* 1993). Females and juveniles tend to stay closer to the rookeries (Bonnell *et al* 1983).

Peak abundance in the Puget Sound is September to May. Although there are no regular California sea lion haul-outs within the Hood Canal (Jeffries *et al.* 2000), they often haul out at several opportune areas. They are known to utilize man-made structures such as piers, jetties, offshore buoys, and oil platforms (Riedman 1990). California sea lions in the Puget Sound sometimes haul out on log booms and Navy submarines, and are often seen rafted off river mouths (Jeffries *et al.* 2000; DoN 2001). As many as forty California sea lions have been observed hauled out at

NBKB on manmade structures (*e.g.,* submarines, floating security fence, barges) (Agness and Tannenbaum 2009a; Tannenbaum *et al.* 2009a; Walters 2009). California sea lions have also been observed swimming in the Hood Canal in the vicinity of the project area on several occasions and likely forage in both nearshore marine and inland marine deeper waters (DoN 2001a).

Behavior and Ecology—California sea lions feed on a wide variety of prey, including many species of fish and squid (Everitt *et al.* 1981; Roffe and Mate 1984; Antonelis *et al.* 1990; Lowry *et al.* 1991). In the Puget Sound region, they feed primarily on fish such as Pacific hake (*Merluccius productus*), walleye pollock (*Theragra chalcogramma*), Pacific herring (*Clupea pallasii*), and spiny dogfish (*Squalus acanthias*) (Calambokidis and Baird 1994). In some locations where salmon runs exist, California sea lions also feed on returning adult and out-migrating juvenile salmonids (London 2006). Sexual maturity occurs at around four to five years of age for California sea lions (Heath 2002). California sea lions are gregarious during the breeding season and social on land during other times.

Acoustics—On land, California sea lions make incessant, raucous barking sounds; these have most of their energy at less than 2 kHz (Schusterman *et al.* 1967). Males vary both the number and rhythm of their barks depending on the social context; the barks appear to control the movements and other behavior patterns of nearby conspecifics (Schusterman 1977). Females produce barks, squeals, belches, and growls in the frequency range of 0.25–5 kHz, while pups make bleating sounds at 0.25–6 kHz. California sea lions produce two types of underwater sounds: Clicks (or short-duration sound pulses) and barks (Schusterman *et al.* 1966, 1967; Schusterman and Baillet 1969). All underwater sounds have most of their energy below 4 kHz (Schusterman *et al.* 1967).

The range of maximal hearing sensitivity underwater is between 1–28 kHz (Schusterman *et al.* 1972). Functional underwater high frequency hearing limits are between 35–40 kHz, with peak sensitivities from 15–30 kHz (Schusterman *et al.* 1972). The California sea lion shows relatively poor hearing at frequencies below 1 kHz (Kastak and Schusterman 1998). Peak hearing sensitivities in air are shifted to lower frequencies; the effective upper hearing limit is approximately 36 kHz (Schusterman 1974). The best range of sound detection is from 2–16 kHz (Schusterman 1974). Kastak and Schusterman (2002) determined that hearing sensitivity generally worsens with depth—hearing thresholds were lower in shallow water, except at the highest frequency tested (35 kHz), where this trend was reversed. Octave band noise levels of 65–70 dB above the animal's threshold produced an average temporary threshold shift (TTS; discussed later in "Potential Effects of the Specified Activity on Marine Mammals") of 4.9 dB in the California sea lion (Kastak *et al.* 1999).

Harbor Seal

Species Description—Harbor seals, which are members of the Phocid family (true seals), inhabit coastal and estuarine waters and shoreline areas from Baja California, Mexico to western Alaska. For management purposes, differences in mean pupping date (*i.e.,* birthing) (Temte 1986), movement patterns (Jeffries 1985; Brown 1988), pollutant loads (Calambokidis *et al.* 1985) and fishery interactions have led to the recognition of three separate harbor seal stocks along the west coast of the continental U.S. (Boveng 1988). The three distinct stocks are: (1) Inland waters of Washington (including Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.* 2007). The inland waters of Washington stock is the only stock that is expected to occur within the project area.

The average weight for adult seals is about 180 lb (82 kg) and males are slightly larger than females. Male harbor seals weigh up to 245 lb (111 kg) and measure approximately 5 ft (1.5 m) in length. The basic color of harbor seals' coat is gray and mottled but highly variable, from dark with light color rings or spots to light with dark markings (NMFS 2008c).

Population Abundance—Estimated population numbers for the inland waters of Washington, including the Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery, are 14,612 individuals (Carretta *et al.* 2007). The minimum population is 12,844 individuals. The harbor seal is the only species of marine mammal that is consistently abundant and considered resident in the Hood Canal (Jeffries *et al.* 2003). The population of harbor seals in Hood Canal is a closed population, meaning that they do not have much movement outside of Hood Canal (London 2006). The abundance of harbor seals in Hood canal has stabilized, and the population may have reached its carrying capacity in the mid-1990s with an approximate abundance of 1,000 harbor seals (Jeffries *et al.* 2003).

Distribution—Harbor seals are coastal species, rarely found more than 12 mi (20 km) from shore, and frequently occupy bays, estuaries, and inlets (Baird 2001). Individual seals have been observed several miles upstream in coastal rivers. Ideal harbor seal habitat includes haul-out sites, shelter during the breeding periods, and sufficient food (Bjorge 2002). Haul-out areas can include intertidal and subtidal rock outcrops, sandbars, sandy beaches, peat banks in salt marshes, and man-made structures such as log booms, docks, and recreational floats (Wilson 1978; Prescott 1982; Schneider and Payne 1983; Gilber and Guldager 1998; Jeffries *et al.* 2000). Human disturbance can affect haul-out choice (Harris *et al.* 2003).

Harbor seals occur throughout Hood Canal and are seen relatively commonly in the area. They are year-round, non-migratory residents, and pup (*i.e.,* give birth) in Hood Canal. Surveys in the Hood Canal from the mid-1970s to 2000 show a fairly stable population between 600–1,200 seals (Jeffries *et al.* 2003). Harbor seals have been observed swimming in the waters along NBKB in every month of surveys conducted from 2007–2010 (Agness and Tannenbaum 2009b; Tannenbaum *et al.* 2009b). On the NBKB waterfront, harbor seals have not been observed hauling out in the intertidal zone, but have been observed hauled-out on man-made structures such as the floating security fence, buoys, barges, marine vessels, and logs (Agness and Tannebaum 2009a; Tannenbaum *et al.* 2009a). The main haul-out locations for harbor seals in Hood Canal are located on river delta and tidal exposed areas at Quilcene, Dosewallips, Duckabush, Hamma Hamma, and Skokomish River mouths (*see* Figure 4–1 of the Navy's application), with the closest haul-out area to the project area being ten miles (16 km) southwest of NBKB at Dosewallips River mouth (London 2006).

Behavior and Ecology—Harbor seals are typically seen in small groups resting on tidal reefs, boulders, mudflats, man-made structures, and sandbars. Harbor seals are opportunistic feeders that adjust their patterns to take advantage of locally and seasonally abundant prey (Payne and Selzer 1989; Baird 2001; Bjørge 2002). The harbor seal diet consists of fish and invertebrates (Bigg 1981; Roffe and Mate 1984; Orr *et al.* 2004). Although harbor seals in the Pacific Northwest are common in inshore and estuarine waters, they primarily feed at sea (Orr

et al. 2004) during high tide. Researchers have found that they complete both shallow and deep dives during hunting depending on the availability of prey (Tollit *et al.* 1997). Their diet in Puget Sound consists of many of the prey resources that are present in the nearshore and deeper waters of NBKB, including hake, herring and adult and out-migrating juvenile salmonids. Harbor seals in Hood Canal are known to feed on returning adult salmon, including ESA-threatened summer-run chum (*Oncorhynchus keta*). Over a five-year study of harbor seal predation in the Hood Canal, the average percent escapement of summer-run chum consumed was eight percent (London 2006).

Harbor seals mate at sea and females give birth during the spring and summer, although the pupping season varies by latitude. In coastal and inland regions of Washington, pups are born from April through January. Pups are generally born earlier in the coastal areas and later in the Puget Sound/Hood Canal region (Calambokidis and Jeffries 1991; Jeffries *et al.* 2000). Suckling harbor seal pups spend as much as forty percent of their time in the water (Bowen *et al.* 1999).

Acoustics—In air, harbor seal males produce a variety of low-frequency (less than 4 kHz) vocalizations, including snorts, grunts, and growls. Male harbor seals produce communication sounds in the frequency range of 100–1,000 Hz (Richardson *et al.* 1995). Pups make individually unique calls for mother recognition that contain multiple harmonics with main energy below 0.35 kHz (Bigg 1981; Thomson and Richardson 1995). Harbor seals hear nearly as well in air as underwater and had lower thresholds than California sea lions (Kastak and Schusterman 1998). Kastak and Schusterman (1998) reported airborne low frequency (100 Hz) sound detection thresholds at 65.4 dB re 20 μPa for harbor seals. In air, they hear frequencies from 0.25–30 kHz and are most sensitive from 6–16 kHz (Richardson 1995; Terhune and Turnbull 1995; Wolski *et al.* 2003).

Adult males also produce underwater sounds during the breeding season that typically range from 0.25–4 kHz (duration range: 0.1 s to multiple seconds; Hanggi and Schusterman 1994). Hanggi and Schusteman (1994) found that there is individual variation in the dominant frequency range of sounds between different males, and Van Parijs *et al.* (2003) reported oceanic, regional, population, and site-specific variation that could be vocal dialects. In water, they hear frequencies from 1–75 kHz (Southall *et al.* 2007) and can detect sound levels as weak as 60–85 dB re 1 μPa within that band. They are most sensitive at frequencies below 50 kHz; above 60 kHz sensitivity rapidly decreases.

Killer Whale

Species Description—Killer whales are members of the Delphinid family and are the most widely distributed cetacean species in the world. Killer whales have a distinctive color pattern, with black dorsal and white ventral portions. They also have a conspicuous white patch above and behind the eye and a highly variable gray or white saddle area behind the dorsal fin. The species shows considerable sexual dimorphism. Adult males develop larger pectoral flippers, dorsal fins, tail flukes, and girths than females. Male adult killer whales can reach up to 32 ft (9.8 m) in length and weigh nearly 22,000 lb (10,000 kg); females reach 28 ft (8.5 m) in length and weigh up to 16,500 lb (7,500 kg).

Based on appearance, feeding habits, vocalizations, social structure, and distribution and movement patterns there are three types of populations of killer whales (Wiles 2004; NMFS 2005). The three distinct forms or types of killer whales recognized in the North Pacific Ocean are: (1) Resident, (2) Transient, and (3) Offshore. The resident and transient populations have been divided further into different subpopulations based mainly on genetic analyses and distribution; not enough is known about the offshore whales to divide them into subpopulations (Wiles 2004). Only transient killer whales are known from the project area.

Transient killer whales occur throughout the eastern North Pacific, and have primarily been studied in coastal waters. Their geographical range overlaps that of the resident and offshore killer whales. The dorsal fin of transient whales tends to be more erect (straighter at the tip) than those of resident and offshore whales (Ford and Ellis 1999; Ford *et al.* 2000). Saddle patch pigmentation of transient killer whales is restricted to two patterns, and never has the large areas of black pigmentation intruding into the white of the saddle patch that is seen in resident and offshore types. Transient-type whales are often found in long-term stable social units that tend to be smaller than resident social groups (*e.g.,* fewer than ten whales); these social units do not seem as permanent as matrilines are in resident type whales. Transient killer whales feed nearly exclusively on marine mammals (Ford and Ellis 1999), whereas resident whales primarily eat fish. Offshore whales are presumed to feed primarily on fish, and have been documented feeding on sharks.

Within the transient type, association data (Ford *et al.* 1994; Ford and Ellis 1999; Matkin *et al.* 1999), acoustic data (Saulitis 1993; Ford and Ellis 1999) and genetic data (Hoelzel *et al.* 1998, 2002; Barrett-Lennard 2000) confirms that three communities of transient whales exist and represent three discrete populations: (1) Gulf of Alaska, Aleutian Islands, and Bering Sea transients, (2) AT1 transients (Prince William Sound, AK; listed as depleted under the MMPA), and (3) West Coast transients. Among the genetically distinct assemblages of transient killer whales in the northeastern Pacific, only the West Coast transient stock, which occurs from southern California to southeastern Alaska, may occur in the project area.

Population Abundance—The West Coast transient stock is a trans-boundary stock, with minimum counts for the population of transient killer whales coming from various photographic datasets. Combining these counts of cataloged transient whales gives a minimum number of 314 individuals for the West Coast transient stock (Allen and Angliss 2010). However, the number in Washington waters at any one time is probably fewer than twenty individuals (Wiles 2004).

Distribution—The geographical range of transient killer whales includes the northeast Pacific, with preference for coastal waters of southern Alaska and British Columbia (Krahn *et al.* 2002). Transient killer whales in the eastern North Pacific spend most of their time along the outer coast, but visit Hood Canal and the Puget Sound in search of harbor seals, sea lions, and other prey. Transient occurrence in inland waters appears to peak during August and September (Morton 1990; Baird and Dill 1995; Ford and Ellis 1999) which is the peak time for harbor seal pupping, weaning, and post-weaning (Baird and Dill 1995). In 2003 and 2005, small groups of transient killer whales (eleven and six individuals, respectively) visited Hood Canal to feed on harbor seals and remained in the area for significant periods of time (59 and 172 days, respectively) between the months of January and July.

Behavior and Ecology—Transient killer whales show greater variability in habitat use, with some groups spending most of their time foraging in shallow waters close to shore while others hunt almost entirely in open water (Felleman *et al.* 1991; Baird and Dill 1995; Matkin and Saulitis 1997). Transient killer whales feed on marine mammals and some seabirds, but apparently no fish

(Morton 1990; Baird and Dill 1996; Ford *et al.* 1998; Ford and Ellis 1999; Ford *et al.* 2005). While present in Hood Canal in 2003 and 2005, transient killer whales preyed on harbor seals in the subtidal zone of the nearshore marine and inland marine deeper water habitats (London 2006). Other observations of foraging transient killer whales indicate they prefer to forage on pinnipeds in shallow, protected waters (Heimlich-Boran 1988; Saulitis *et al.* 2000). Transient killer whales travel in small, matrilineal groups, but they typically contain fewer than ten animals and their social organization generally is more flexible than that of resident killer whales (Morton 1990, Ford and Ellis 1999). These differences in social organization probably relate to differences in foraging (Baird and Whitehead 2000). There is no information on the reproductive behavior of killer whales in this area.

Acoustics—Killer whales produce a wide variety of clicks and whistles, but most of their sounds are pulsed, with frequencies ranging from 0.5–25 kHz (dominant frequency range: 1–6 kHz) (Thomson and Richardson 1995; Richardson *et al.* 1995). Source levels of echolocation signals range between 195–224 dB re 1 μPa-m peak-to-peak (p-p), dominant frequencies range from 20–60 kHz, with durations of about 0.1 s (Au *et al.* 2004). Source levels associated with social sounds have been calculated to range between 131–168 dB re 1 μPa-m and vary with vocalization type (Veirs 2004).

Both behavioral and auditory brainstem response technique indicate killer whales can hear in a frequency range of 1–100 kHz and are most sensitive at 20 kHz. This is one of the lowest maximum-sensitivity frequencies known among toothed whales (Szymanski *et al.* 1999).

Dall's Porpoise

Species Description—Dall's porpoises are members of the Phocoenid (porpoise) family and are common in the North Pacific Ocean. They can reach a maximum length of just under 8 ft (2.4 m) and weigh up to 480 lb (218 kg). Males are slightly larger and thicker than females, which reach lengths of just under 7 ft (2.1 m) long. The body of Dall's porpoises is a very dark gray or black in coloration with variable contrasting white thoracic panels and white 'frosting' on the dorsal fin and tail that distinguish them from other cetacean species. These markings and colorations vary with geographic region and life stage, with adults having more distinct patterns.

Based on NMFS stock assessment reports, Dall's porpoises within the Pacific U.S. Exclusive Economic Zone are divided into two discrete, noncontiguous areas: (1) Waters off California, Oregon, and Washington, and (2) Alaskan waters (Carretta *et al.* 2008). Only individuals from the CA/OR/WA stock may occur within the project area.

Population Abundance—The NMFS population estimate, recently updated in 2008 for the CA/OR/WA stock, is 48,376 (CV = 0.24) which is based on vessel line transect surveys by Barlow and Forney (2007) and Forney (2007) (Carretta *et al.* 2008). The minimum population is considered to be 39,709. Additional numbers of Dall's porpoises occur in the inland waters of Washington, but the most recent estimate was obtained in 1996 (900 animals; CV = 0.40; Calambokidis *et al.* 1997) and is not included in the overall estimate of abundance for this stock due to the need for more up-to-date information.

Distribution—The Dall's porpoise is found from northern Baja California, Mexico, north to the northern Bering Sea and south to southern Japan (Jefferson *et al.* 1993). The species is only common between 32–62°N in the eastern North Pacific (Morejohn 1979; Houck and Jefferson 1999). North-south movements in California, Oregon, and Washington have been suggested. Dall's porpoises shift their distribution southward during cooler-water periods (Forney and Barlow 1998). Norris and Prescott (1961) reported finding Dall's porpoises in southern California waters only in the winter, generally when the water temperature was less than 15 °C (59 °F). Seasonal movements have also been noted off Oregon and Washington, where higher densities of Dall's porpoises were sighted offshore in winter and spring and inshore in summer and fall (Green *et al.* 1992).

In Washington, they are most abundant in offshore waters. They are year-round residents in Washington (Green *et al.* 1992), but their distribution is highly variable between years, likely due to changes in oceanographic conditions (Forney and Barlow 1998). Dall's porpoises are observed throughout the year in the Puget Sound north of Seattle (Osborne *et al.* 1998) and are seen occasionally in southern Puget Sound. Dall's porpoises may also occasionally occur in Hood Canal (Jeffries 2006, personal communication). Nearshore habitats used by Dall's porpoises could include the marine habitats found in the inland marine waters of the Hood Canal. A Dall's porpoise was observed in the deeper water at NBKB in summer 2008 (Tannenbaum *et al.* 2009a).

Behavior and Ecology—Dall's porpoises can be opportunistic feeders but primarily consume schooling forage fish. They are known to eat squid, crustaceans, and fishes such as blackbelly eelpout (*Lycodopsis pacifica*), herring, pollock, hake, and Pacific sandlance (*Ammodytes hexapterus*) (Walker *et al.* 1998). Groups of Dall's porpoises generally include fewer than ten individuals and are fluid, probably aggregating for feeding (Jefferson 1990, 1991; Houck and Jefferson 1999). Dall's porpoises become sexually mature at three and a half to eight years of age (Houck and Jefferson 1999) and give birth to a single calf after ten to twelve months. Breeding and calving typically occurs in the spring and summer (Angell and Balcomb 1982). In the North Pacific, there is a strong summer calving peak from early June through August (Ferrero and Walker 1999), and a smaller peak in March (Jefferson 1989). Resident Dall's porpoises breed in Puget Sound from August to September.

Acoustics—Only short duration pulsed sounds have been recorded for Dall's porpoises (Houck and Jefferson 1999); this species apparently does not whistle often (Richardson *et al.* 1995). Dall's porpoises produce short duration (50–1,500 μs), high-frequency, narrow band clicks, with peak energies between 120–160 kHz (Jefferson 1988). There is no published data on the hearing abilities of this species.

Harbor Porpoise

Species Description—Harbor porpoises belong to the Phocoenid (porpoise) family and are found extensively along the Pacific U.S. coast. Harbor porpoises are small, with males reaching average lengths of approximately 5 ft (1.5 m); Females are slightly larger with an average length of 5.5 ft (1.7 m). The average adult harbor porpoise weighs between 135–170 lb (61–77 kg). Harbor porpoises have a dark grey coloration on their backs, with their belly and throats white. They have a dark grey chin patch and intermediate shades of grey along their sides.

Recent preliminary genetic analyses of samples ranging from Monterey, CA to Vancouver Island, BC indicate that there is small-scale subdivision within the U.S. portion of this range (Chivers *et al.* 2002). Although geographic structure exists along an almost continuous distribution of harbor porpoises from California to Alaska, stock boundaries are difficult to draw because any rigid line is generally arbitrary from a biological perspective.

Nevertheless, based on genetic data and density discontinuities identified from aerial surveys, NMFS identifies eight stocks in the Northeast Pacific Ocean. Pacific coast harbor porpoise stocks include: (1) Monterey Bay, (2) San Francisco-Russian River, (3) northern California/southern Oregon, (4) Oregon/Washington coastal, (5) inland Washington, (6) Southeast Alaska, (7) Gulf of Alaska, and (8) Bering Sea. Only individuals from the Washington Inland Waters stock may occur in the project area.

Population Abundance—Aerial surveys of the inland waters of Washington and southern British Columbia were conducted during August of 2002 and 2003 (J. Laake, unpubl. data). These aerial surveys included the Strait of Juan de Fuca, San Juan Islands, Gulf Islands, and Strait of Georgia, which includes waters inhabited by the Washington Inland Waters stock of harbor porpoises as well as harbor porpoises from British Columbia. An average of the 2002 and 2003 estimates of abundance in U.S. waters resulted in an uncorrected abundance of 3,123 (CV = 0.10) harbor porpoises in Washington inland waters (J. Laake, unpubl. data). When corrected for availability and perception bias, the estimated abundance for the Washington Inland Waters stock of harbor porpoise is 10,682 (CV = 0.38) animals (Carretta *et al.* 2008). The minimum population estimate is 7,841.

Distribution—Harbor porpoises are generally found in cool temperate to subarctic waters over the continental shelf in both the North Atlantic and North Pacific (Read 1999). This species is seldom found in waters warmer than 17 °C (63 °F; Read 1999) or south of Point Conception (Hubbs 1960; Barlow and Hanan 1995). Harbor porpoises can be found year-round primarily in the shallow coastal waters of harbors, bays, and river mouths (Green *et al.* 1992). Along the Pacific coast, harbor porpoises occur from Monterey Bay, California to the Aleutian Islands and west to Japan (Reeves *et al.* 2002). Harbor porpoises are known to occur in Puget Sound year round (Osmek *et al.* 1996, 1998; Carretta *et al.* 2007), and may occasionally occur in Hood Canal (Jeffries 2006, pers. comm.). Harbor porpoise observations in northern Hood Canal have increased in recent years (Calambokidis 2010, pers. comm.). A harbor porpoise was seen in deeper water at NBKB during 2010 field observations (SAIC 2010, staff obs.).

Behavior and Ecology—Harbor porpoises are non-social animals usually seen in small groups of two to five animals. Little is known about their social behavior. Harbor porpoises can be opportunistic foragers but primarily consume schooling forage fish (Osmek *et al.* 1996; Bowen and Siniff 1999; Reeves *et al.* 2002). Along the coast of Washington, harbor porpoises primarily feed on herring, market squid (*Loligo opalescens*) and eulachon (*Thaleichthys pacificus*) (Gearin *et al.* 1994). Females reach sexual maturity at three to four years of age and may give birth every year for several years in a row. Calves are born in late spring (Read 1990; Read and Hohn 1995). Dall's and harbor porpoises appear to hybridize relatively frequently in the Puget Sound area (Willis *et al.* 2004).

Acoustics—Harbor porpoise vocalizations include clicks and pulses (Ketten 1998), as well as whistle-like signals (Verboom and Kastelein 1995). The dominant frequency range is 110–150 kHz, with source levels of 135–177 dB re 1 μPa-m (Ketten 1998). Echolocation signals include one or two low-frequency components in the 1.4–2.5 kHz range (Verboom and Kastelein 1995).

A behavioral audiogram of a harbor porpoise indicated the range of best sensitivity is 8–32 kHz at levels between 45–50 dB re 1 μPa-m (Andersen 1970); however, auditory-evoked potential studies showed a much higher frequency of approximately 125–130 kHz (Bibikov 1992). The auditory-evoked potential method suggests that the harbor porpoise actually has two frequency ranges of best sensitivity. More recent psycho-acoustic studies found the range of best hearing to be 16–140 kHz, with a reduced sensitivity around 64 kHz (Kastelein *et al.* 2002). Maximum sensitivity occurs between 100–140 kHz (Kastelein *et al.* 2002).

Potential Effects of the Specified Activity on Marine Mammals

NMFS has determined that pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, harbor seals, harbor porpoises, Dall's porpoises, and killer whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Marine Mammal Hearing

The primary effect on marine mammals anticipated from the specified activities will result from exposure of animals to underwater sound. Exposure to sound can affect 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 derived using auditory evoked potential techniques, 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 (thirteen species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and nineteen species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (six species of true porpoises, four species of river dolphins, two members of the genus *Kogia,* and four dolphin species of the genus *Cephalorhynchus*): 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, two pinnipeds and three cetacean species are likely to occur in the proposed project area. Of the three cetacean species likely to occur in the project area, two are classified as high frequency cetaceans (Dall's and harbor porpoises) and one is classified as a mid-frequency cetacean (killer whales) (Southall *et al.* 2007).

Underwater Noise Effects

Potential Effects of Pile Driving Noise—The effects of sounds from pile driving might result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.* 1995; Gordon *et al.* 2004; Nowacek *et al.* 2007; Southall *et al.* 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type,

and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (*e.g.,* sand) will absorb or attenuate the sound more readily than hard substrates (*e.g.,* rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species would be expected to result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.* 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulsive sounds on marine mammals. Potential effects from impulsive sound sources can range in severity, ranging from effects such as behavioral disturbance, tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to mortality (Yelverton *et al.* 1973; O'Keefe and Young 1984; DoN 2001b).

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Marine mammals depend on acoustic cues for vital biological functions, (*e.g.,* orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction, either permanently or temporarily. However, this depends on both the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated noise exposure that leads to TTS could cause PTS. PTS, in the unlikely event that it occurred, would constitute injury, but TTS is not considered injury (Southall *et al.* 2007). It is unlikely that the project would result in any cases of temporary or especially permanent hearing impairment or any significant non-auditory physical or physiological effects for reasons discussed later in this document. Some behavioral disturbance is expected, but it is likely that this would be localized and short-term because of the short project duration.

Several aspects of the planned monitoring and mitigation measures for this project (*see* the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections later in this document) are designed to detect marine mammals occurring near the pile driving to avoid exposing them to sound pulses that might, in theory, cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area where received levels of pile driving sound are high enough that hearing impairment could potentially occur. In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment. Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. It is especially unlikely that any effects of these types would occur during the present project given the brief duration of exposure for any given individual and the planned monitoring and mitigation measures. The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. In terrestrial mammals, TTS can last from minutes or hours to days (in cases of strong TTS). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 μPa^2-s (*i.e.,* 186 dB sound exposure level [SEL] or approximately 221–226 dB pk-pk) in order to produce brief, mild TTS. Exposure to several strong pulses that each have received levels near 190 dB re 1 μPa rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy. Levels greater than or equal to 190 dB re 1 μPa rms are expected to be restricted to radii no more than 5 m (16 ft) from the pile driving. For an odontocete closer to the surface, the maximum radius with greater than or equal to 190 dB re 1 μPa rms would be smaller.

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin (*Tursiops truncatus*) and beluga whale (*Delphinapterus leucas*). There is no published TTS information for other species of cetaceans. However, preliminary evidence from a harbor porpoise exposed to pulsed sound suggests that its TTS threshold may have been lower (Lucke *et al.* 2009). To avoid the potential for injury, NMFS has determined that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 μPa rms. As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to pile driving pulses stronger than 180 dB re 1 μPa rms.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to pile driving activity might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to pile driving might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in

some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.* 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.* (2007) estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 μPa^2-s (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.* 2006; Southall *et al.* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Measured source levels from impact pile driving can be as high as 214 dB re 1 μPa at 1 m (3.3 ft). Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds (Finneran *et al.* 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.* 2002). Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002). However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity noise levels for a prolonged period of time. Based on the best scientific information available, these SPLs are far below the thresholds that could cause TTS or the onset of PTS.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.* 1995; Wartzok *et al.* 2004; Southall *et al.* 2007; Weilgart 2007). Behavioral responses to sound are highly variable and context specific. For each potential behavioral change, the magnitude of the change ultimately determines the severity of the response. A number of factors may influence an animal's response to noise, including its previous experience, its auditory sensitivity, its biological and social status (including age and sex), and its behavioral state and activity at the time of exposure.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.* 2003/04). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing noise levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.* 1995; NRC 2003; Wartzok *et al.* 2003/04).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.* 1997; Finneran *et al.* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices, but also including pile driving) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds 2002; CALTRANS 2001, 2006; *see also* Gordon *et al.* 2004; Wartzok *et al.* 2003/04; Nowacek *et al.* 2007). Responses to continuous noise, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.* 1995): changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (CALTRANS 2001, 2006). Since pile driving will likely only occur for a few hours a day, over a short period of time, it is unlikely to result in permanent displacement. Any potential impacts from pile driving activities could be experienced by individual marine mammals, but would not be likely to cause population level impacts, or affect the long-term fitness of the species.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be

biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.* 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. If the coincident (masking) sound were man-made, it could be potentially harassing if it disrupted hearing-related behavior. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because noise generated from in-water pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.* 2009) and cause increased stress levels (*e.g.,* Foote *et al.* 2004; Holt *et al.* 2009).

Masking has the potential to impact species at population, community, or even ecosystem levels, as well as at individual levels. Masking affects both senders and receivers of the signals and can potentially have long-term chronic effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient noise levels, thus intensifying masking. However, the sum of noise from the proposed activities is confined in an area of inland waters (Hood Canal) that is bounded by landmass; therefore, the noise generated is not expected to contribute to increased ocean ambient noise.

The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of California sea lions, harbor seals, transient killer whales, harbor porpoises, and Dall's porpoises. Impact pile driving activity is relatively short-term, with rapid pulses occurring for approximately fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is likely to be negligible. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately one and a half hours per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in a negligible impact from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Airborne Noise Effects

Marine mammals that occur in the project area could be exposed to airborne sounds associated with pile driving that have the potential to cause harassment, depending on their distance from pile driving activities. Airborne pile driving noise would have less impact on cetaceans than pinnipeds because noise from atmospheric sources does not transmit well underwater (Richardson *et al.* 1995); thus, airborne noise would only be an issue for hauled-out pinnipeds in the project area. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater noise. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon their habitat and move further from the source. Studies by Blackwell *et al.* (2004) and Moulton *et al.* (2005) indicate a tolerance or lack of response to unweighted airborne sounds as high as 112 dB peak and 96 dB rms.

Anticipated Effects on Habitat

The proposed activities at NBKB will not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish and salmonids. There are no rookeries or major haul-out sites within 10 km (6.2 mi), foraging hotspots, or other ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.,* fish) near NBKB and minor impacts to the immediate substrate during installation and removal of piles during the pile replacement project.

Pile Driving Effects on Potential Prey (Fish)

Construction activities will produce both pulsed (*i.e.,* impact pile driving)

and continuous (*i.e.,* vibratory pile driving) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005, 2009) identified several studies that suggest fish may relocate to avoid certain areas of noise energy. Additional studies have documented effects of pile driving (or other types of continuous sounds) on fish, although several are based on studies in support of large, multiyear bridge construction projects (Scholik and Yan 2001, 2002; Govoni *et al.* 2003; Hawkins 2005; Hastings 1990, 2007; Popper *et al.* 2006; Popper and Hastings 2009). Sound pulses at received levels of 160 dB re 1 μPa may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Chapman and Hawkins 1969; Pearson *et al.* 1992; Skalski *et al.* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality (CALTRANS 2001; Longmuir and Lively 2001). The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the pile replacement project. However, adverse impacts may occur to a few species of rockfish (bocaccio [*Sebastes paucispinis*] and yelloweye [*S. ruberrimus*] and canary [*S. pinniger*] rockfish) and salmon (chinook [*Oncorhynchus tshawytscha*] and summer run chum) which may still be present in the project area despite operating in a reduced work window in an attempt to avoid important fish spawning time periods. Impacts to these species could result from potential impacts to their eggs and larvae.

Pile Driving Effects on Potential Foraging Habitat

In addition, the area likely impacted by the pile replacement project is relatively small compared to the available habitat in the Hood Canal. Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the Hood Canal and nearby vicinity.

Given the short daily duration of noise associated with individual pile driving and removal, the short duration of the entire pile replacement project, and the relatively small areas being affected, pile driving and removal activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Therefore, pile driving and removal is not likely to have a permanent, adverse effect on marine mammal foraging habitat at the project area.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(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).

The modeling results for zones of influence (ZOIs; *see* "Estimated Take by Incidental Harassment") were used to develop mitigation measures for pile driving and removal activities at NBKB. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals. While the ZOIs vary between the different diameter piles and types of installation or removal methods, the Navy is proposing to establish mitigation zones for the maximum zone of influence for all pile driving conducted in support of the pile replacement project. In addition to the measures described later, the Navy will employ the following standard mitigation measures:

(a) Conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustical monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(b) Comply with applicable equipment noise standards of the U.S. Environmental Protection Agency and ensure that all construction equipment has noise control devices no less effective than those provided on the original equipment.

(c) For in-water heavy machinery work other than pile driving (if it exists; *e.g.,* standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 50 m (164 ft), operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

Shutdown and Buffer Zone

The following measures will apply to the Navy's mitigation through shutdown and buffer zones:

(a) The Navy will implement a minimum shutdown zone of 50 m (164 ft) radius around all pile driving and removal activity. Shutdown zones typically include all areas where the underwater SPLs are anticipated to equal or exceed the Level A (injury) harassment criteria for marine mammals (180-dB isopleth for cetaceans; 190-dB isopleth for pinnipeds). In this case, piledriving sounds are expected to attenuate below 180 dB at distances of 16 m or less, but the 50-m shutdown is intended to further avoid the risk of direct interaction between marine mammals and the equipment.

(b) The buffer zone shall include all areas where the underwater SPLs are anticipated to equal or exceed the 160-dB harassment isopleths, or where the airborne SPLs are anticipated to equal or exceed the 100-dB isopleths (for pinnipeds in general) or 90-dB isopleth (for harbor seals). The radius of this zone will be 501 m (1,644 ft) at the start of pile driving work, but may be adjusted according to empirical, site-specific data after the project begins. The buffer zone distance was set at the largest Level B behavioral disturbance zone calculated for impact pile driving, which was based on the calculations for airborne noise for harbor seals. The largest underwater disturbance threshold (160-dB) was 342 m (1,122 ft). The size of the 120-dB buffer zone for vibratory pile driving makes monitoring impracticable (*see* "Sound Thresholds"; Tables 5–6; 9).

(c) The shutdown and buffer zones will be monitored throughout the time required to drive a pile. If a marine mammal is observed entering the buffer zone, a "take" would be recorded and behaviors documented. However, that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted.

(d) All buffer and shutdown zones will initially be based on the distances

from the source that are predicted for each threshold level. However, in-situ acoustic monitoring will be utilized to determine the actual distances to these threshold zones, and the size of the shutdown and buffer zones will be adjusted accordingly based on received sound pressure levels.

Visual Monitoring

Impact Installation—Monitoring will be conducted for a minimum 50 m (164 ft) shutdown zone and a 501 m (1,644 ft) buffer zone (Level B harassment) surrounding each pile for the presence of marine mammals before, during, and after pile driving activities. The buffer zone was set at the largest Level B behavioral disturbance zone calculated for impact pile driving, based on the disturbance calculations for airborne noise for harbor seals. Monitoring will take place from thirty minutes prior to initiation through thirty minutes post-completion of pile driving activities.

Vibratory Installation—Monitoring will be conducted for a minimum 50 m (164 ft) shutdown zone. The 120-dB disturbance criterion predicts an affected area of 40.3 km^2 (16 mi^2). Due to the impracticality of effectively monitoring such a large area, the Navy intends to monitor a buffer zone equivalent to the size of the Level B disturbance zone for impact pile driving (501 m) surrounding each pile for the presence of marine mammals before, during, and after pile driving activities. Sightings occurring outside this area will still be recorded and noted as a take, but detailed observations outside this zone will not be possible, and it would be impossible for the Navy to account for all individuals occurring in such a zone with any degree of certainty. Monitoring will take place from thirty minutes prior to initiation through thirty minutes post-completion of pile driving activities.

Vibratory and Chipping Removal—Monitoring will be conducted for a minimum 50 m (164 ft) shutdown zone. As discussed previously, predicted Level A harassment zones are subsumed by the minimum shutdown zone. As with vibratory installation, the 120-dB disturbance criterion predicts affected areas that are impracticable to effectively monitor, and the Navy intends to monitor a buffer zone equivalent to the size of the Level B disturbance zone for impact pile driving (501 m) surrounding each pile for the presence of marine mammals before, during, and after pile driving activities. Monitoring protocols will be identical to those discussed for pile installation.

The following additional measures will apply to visual monitoring:

(a) Monitoring will be conducted by qualified observers. A trained observer will be placed from the best vantage point(s) practicable (*e.g.,* from a small boat, the pile driving barge, on shore, or any other suitable location) to monitor for marine mammals and implement shut-down or delay procedures when applicable by calling for the shut-down to the hammer operator.

(b) Prior to the start of pile driving activity, the shutdown and safety zones will be monitored for thirty minutes to ensure that they are clear of marine mammals. Pile driving or removal will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the buffer zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented.

(c) If a marine mammal approaches or enters the shutdown zone during the course of pile driving or removal operations, pile driving will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or thirty minutes have passed without re-detection of the animal.

Sound Attenuation Devices

Sound attenuation devices will be utilized during all impact pile driving operations. Impact pile driving is only expected to be required to proof, or drive the last 10–15 ft (3–4.6 m) of each pile, and any required proofing will be limited to five days total, no more than one pile per day, and no more than fifteen minutes per pile. Past experience has shown that proofing is rarely required at the EHW–1 location. The Navy plans to use a bubble curtain as mitigation for in-water sound during construction activities. Bubble curtains absorb sound, attenuate pressure waves, exclude marine life from work areas, and control the migration of debris, sediments and process fluids.

Acoustic Measurements

Acoustic measurements will be used to empirically verify the proposed shutdown and buffer zones. For further detail regarding the Navy's acoustic monitoring plan *see* "Proposed Monitoring and Reporting".

Timing Restrictions

The Navy has set timing restrictions for pile driving activities to avoid in-water work when ESA-listed fish populations are most likely to be present. The in-water work window for avoiding negative impacts to fish species is July 16–February 15. Further, the Navy has narrowed its work window to avoid times of year when ESA-listed Steller sea lions may be present at the project area. Therefore, all pile driving would only occur between July 16–October 31 of the approved in-water work window from July 16 through February 15 to minimize the number of fish exposed to underwater noise and other disturbance, and to avoid times when Steller sea lions are expected to be present. In consultation with the USFWS, the Navy has further limited impact pile driving to July 16–September 30.

Soft Start

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning, or providing marine mammals a chance to leave the area prior to the hammer operating at full capacity. The pile replacement project will utilize soft-start techniques (ramp-up and dry fire) recommended by NMFS for impact and vibratory pile driving. The soft-start requires contractors to initiate noise from vibratory hammers for fifteen seconds at reduced energy followed by a one-minute waiting period. This procedure will be repeated two additional times. For impact driving, contractors will be required to provide an initial set of three strikes from the impact hammer at forty percent energy, followed by a one minute waiting period, then two subsequent three strike sets. No soft-start procedures exist for pneumatic chipping hammers.

Daylight Construction

Pile driving will only be conducted between two hours post-sunrise through two hours prior to sunset (civil twilight).

Mitigation Effectiveness

It should be recognized that although marine mammals will be protected from Level A harassment by the utilization of a bubble curtain and protected species observers (PSOs) monitoring the near-field injury zones, mitigation may not be 100 percent effective at all times in locating marine mammals in the buffer zone. The efficacy of visual detection depends on several factors including the observer's ability to detect the animal, the environmental conditions (visibility and sea state), and monitoring platforms.

All observers utilized for mitigation activities will be experienced biologists with training in marine mammal detection and behavior. Due to their specialized training the Navy expects that visual mitigation will be highly effective. Trained observers have specific knowledge of marine mammal

physiology, behavior, and life history, which may improve their ability to detect individuals or help determine if observed animals are exhibiting behavioral reactions to construction activities.

The Puget Sound region, including the Hood Canal, only infrequently experiences winds with velocities in excess of 25 kt (Morris *et al.* 2008). The typically light winds afforded by the surrounding highlands coupled with the fetch-limited environment of the Hood Canal result in relatively calm wind and sea conditions throughout most of the year. The pile replacement project site has a maximum fetch of 8.4 mi (13.5 km) to the north, and 4.2 mi (6.8 km) to the south, resulting in maximum wave heights of from 2.85–5.1 ft (0.9–1.6 m) (Beaufort Sea State (BSS) between two and four), even in extreme conditions (30 kt winds) (CERC 1984). Visual detection conditions are considered optimal in BSS conditions of three or less, which align with the conditions that should be expected for the pile replacement project at NBKB.

Observers will be positioned in locations which provide the best vantage point(s) for monitoring. This will likely be an elevated position, providing a better range of viewing angles. Also, the shutdown and buffer zones have relatively small radii to monitor, which should improve detectability.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (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, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, 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 proposed action area.

Acoustic Measurements

The Navy will conduct acoustic monitoring for impact driving of steel piles in order to determine the actual distances to the 190-, 180-, and 160-dB (re 1 μPa rms) isopleths and to determine the relative effectiveness of the bubble curtain system at attenuating noise underwater. The Navy will also conduct acoustic monitoring for vibratory pile driving and removal, and for removal with a pneumatic chipping hammer, in order to determine the actual distance to the 120-dB isopleth for behavioral harassment relative to background levels. The monitoring plan addresses both underwater and airborne sounds from the pile replacement project. At a minimum, the methodology will include:

(1) A stationary hydrophone placed at mid-water depth and 10 m (33 ft) from the source pile to measure the effectiveness of the bubble curtain system; a weighted tape measure will be used to determine the depth of the water. The hydrophone will be attached to a nylon cord or steel chain if current is swift enough, to maintain a constant distance from the pile. The nylon cord or chain will be attached to a float or tied to a static line at the surface 10 m from the piles.

(2) All hydrophones will be calibrated at the start of the action and will be checked at the beginning of each day of monitoring activity.

(3) For each monitored location, a two-hydrophone setup will be used, with the first hydrophone at mid-depth and the second hydrophone at approximately 1 m (3.3 ft) from the bottom in order to evaluate site specific attenuation and propagation characteristics that may be present throughout the water column.

(4) In addition to determining the area encompassed by the 190-, 180-, 160-, and 120-db rms isopleths for marine mammals, hydrophones would also be placed at other distances as appropriate to accurately capture spreading loss occurring at the EHW–1 project area.

(5) For airborne recordings, a stationary hydrophone will be placed at 50 ft (15 m) from the source for initial reference recordings.

(6) For airborne measurements, in addition to determining the area encompassed by the 100 and 90 dB rms isopleths for pinnipeds and harbor seals, hydrophones will be placed at other distances as appropriate to accurately capture spreading loss occurring at the EHW–1 project area.

(7) Ambient conditions, both airborne and underwater, would be measured at the project site in the absence of construction activities to determine background sound levels. Ambient levels are intended to be recorded over the frequency range from 10 Hz to 20 kHz. Ambient conditions will be recorded for one minute every hour of the work day, for one week of each month of the pile replacement project.

(8) Sound levels associated with soft-start techniques will also be measured.

(9) Underwater sound pressure levels would be continuously monitored during the entire duration of each pile being driven. Sound pressure levels will be monitored in real time. Sound levels will be measured in Pascals, which are easily converted to decibel units.

(10) Airborne levels would be recorded as unweighted, as well as in dBA, and the distance to marine mammal thresholds would be measured.

(11) The effectiveness of using a bubble curtain system with a vibratory hammer will be tested during the driving of two vibratory piles. The on/off regime described in Table 11 will be utilized during the pile installation:

TABLE 11—SCHEDULE FOR TESTING EFFECTIVENESS OF SOUND ATTENUATION DEVICE

Pile driving timeframe	Sound attenuation device condition
Initial 30 s	Off.
Next minute (minimum)	On.
Middle of pile driving segment.	Off.
30 s	
Next minute (minimum)	On.
Final 30 s	Off.

(12) Environmental data will be collected, including, but not limited to: wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions and other factors

that could contribute to influencing the airborne and underwater sound levels (*e.g.,* aircraft, boats).

(13) The chief inspector will supply the acoustics specialist with the substrate composition, hammer model and size, hammer energy settings and any changes to those settings during the piles being monitored, depth of the pile being driven, and blows per foot for the piles monitored.

(14) Post-analysis of the sound level signals will include determination of absolute peak overpressure and under pressure levels recorded for each pile, rms value for each absolute peak pile strike, rise time, average duration of each pile strike, number of strikes per pile, SEL of the absolute peak pile strike, mean SEL, and cumulative SEL (accumulated SEL = single strike SEL + 10*log (number of hammer strikes) and a frequency spectrum both with and without mitigation, between 10–20,000 Hz for up to eight successive strikes with similar sound levels.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors. NMFS requires that the observers have no other construction related tasks while conducting monitoring.

Methods of Monitoring—The Navy will monitor the shutdown zone and safety (buffer) zone before, during, and after pile driving. Based on NMFS requirements, the Marine Mammal Monitoring Plan would include the following procedures for impact pile driving:

(1) MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and safety zone. This may require the use of a small boat to monitor certain areas while also monitoring from one or more land based vantage points.

(2) During all observation periods, observers would use binoculars and the naked eye to search continuously for marine mammals.

(3) To verify the required monitoring distances, the zones would be clearly marked with buoys or other suitable aquatic markers.

(4) If the shut down or safety zones are obscured by fog or poor lighting conditions, pile driving or removal would not be initiated until all zones are visible.

(5) The shut down and safety zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Pre-Activity Monitoring—The shutdown and buffer zones will be monitored for thirty minutes prior to initiating the soft start for pile driving or removal. If marine mammal(s) are present within the shut down zone prior to pile driving or removal, or during the soft start, the start of pile driving would be delayed until the animal(s) leave the shut down zone. Pile driving would resume only after the PSO has determined, through sighting or by waiting approximately thirty minutes, that the animal(s) has moved outside the shutdown zone.

During Activity Monitoring—The shutdown and buffer zones will also be monitored throughout the time required to drive or remove a pile. If a marine mammal is observed entering the buffer zone, a "take" would be recorded and behaviors documented. However, that pile segment would be completed without cessation, unless the animal enters or approaches the shutdown zone, at which point all pile driving activities will be halted. Pile driving can only resume once the animal has left the shutdown zone of its own volition or has not been re-sighted for a period of thirty minutes.

Post-Activity Monitoring—Monitoring of the shutdown and buffer zones would continue for thirty minutes following the completion of pile driving.

Data Collection

NMFS requires that the PSOs use NMFS-approved sighting forms. In addition to the following requirements, the Navy will note in their behavioral observations whether an animal remains in the project area following a Level B taking (which would not require cessation of activity). This information will ideally make it possible to determine whether individuals are taken (within the same day) by one or more types of pile driving (*i.e.,* impact and vibratory). NMFS requires that, at a minimum, the following information be collected on the sighting forms:

(1) Date and time that pile driving begins or ends;

(2) Construction activities occurring during each observation period;

(3) Weather parameters identified in the acoustic monitoring (*e.g.,* wind, humidity, temperature);

(4) Tide state and water currents;

(5) Visibility;

(6) Species, numbers, and, if possible, sex and age class of marine mammals;

(7) Marine mammal behavior patterns observed, including bearing and direction of travel, and if possible, the correlation to sound pressure levels;

(8) Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(9) Locations of all marine mammal observations; and

(10) Other human activity in the area.

Reporting

A draft report would be submitted to NMFS within 45 days of the completion of acoustic measurements and marine mammal monitoring. The results would be summarized in graphical form and include summary statistics and time histories of impact sound values for each pile. A final report would be prepared and submitted to NMFS within thirty days following receipt of comments on the draft report from NMFS. At a minimum, the report shall include:

(1) Size and type of piles;

(2) A detailed description of the SAS or bubble curtain, including design specifications;

(3) The impact or vibratory hammer force used to drive and extract the piles;

(4) A description of the monitoring equipment;

(5) The distance between hydrophone(s) and pile;

(6) The depth of the hydrophone(s);

(7) The depth of water in which the pile was driven;

(8) The depth into the substrate that the pile was driven;

(9) The physical characteristics of the bottom substrate into which the piles were driven;

(10) The ranges and means for peak, rms, and SELs for each pile;

(11) The results of the acoustic measurements, including the frequency spectrum, peak and rms SPLs, and single-strike and cumulative SEL with and without the attenuation system;

(12) The results of the airborne noise measurements including dBA and unweighted levels;

(13) A description of any observable marine mammal behavior in the immediate area and, if possible, the correlation to underwater sound levels occurring at that time;

(14) Results, including the detectability of marine mammals, species and numbers observed, sighting rates and distances, behavioral reactions within and outside of safety zones; and

(15) A refined take estimate based on the number of marine mammals observed in the safety and buffer zones. This may be reported as one or both of the following: a rate of take (number of marine mammals per hour), or take based on density (number of individuals within the area).

Estimated Take by Incidental Harassment

With respect to the activities described 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].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury or mortality is considered remote. However, as noted earlier, there is no specific information demonstrating that injurious or lethal "takes" would occur even in the absence of the planned mitigation and monitoring measures.

If a marine mammal responds to an underwater sound by changing its behavior or moving a small distance, the response may or may not rise to the level of "taking", or affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (Lusseau and Bejder 2007; Weilgart 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. This practice potentially overestimates the numbers of marine mammals taken. For example, during the past ten years, killer whales have been observed within the project area twice. While a pod of killer whales could potentially visit again during the project timeframe, and thus be "taken", it is more likely that they will not.

The proposed project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals, although harbor seals are year-round residents of Hood Canal. Therefore, behavioral disturbances that could result from anthropogenic noise associated with the proposed activities are expected to affect only a small number of marine mammals on an infrequent basis.

The Navy is requesting authorization for the potential taking of small numbers of California sea lions, harbor seals, transient killer whales, Dall's porpoises, and harbor porpoises in the Hood Canal that may result from pile driving during construction activities associated with the pile replacement project described previously in this document. The takes requested are expected to have no more than a minor effect on individual animals and no effect on the populations of these species. Any effects experienced by individual marine mammals are anticipated to be limited to short-term disturbance of normal behavior or temporary displacement of animals near the source of the noise.

Description of Take Calculation

The take calculations presented here rely on the best data currently available for marine mammal populations in the Hood Canal, as discussed in preceding sections. The formula was developed for calculating take due to impact pile driving and applied to each group-specific noise impact threshold. The formula is founded on the following assumptions:

(a) Each species population is at least as large as any previously documented highest population estimate.

(b) All pilings to be installed would have a noise disturbance distance equal to the piling that causes the greatest noise disturbance (*i.e.,* the piling furthest from shore).

(c) Pile driving could potentially occur every day of the in-water work window. However, it is estimated no more than a few hours of pile driving will occur per day. An average of two steel piles will be installed and removed per day or an average of three concrete piles will be removed per day.

(d) Some degree of mitigation (*i.e.,* sound attenuation system, *etc.*) will be utilized, as discussed previously.

(e) An individual can only be taken once per method of installation during a 24 hr period. The calculation for marine mammal takes is estimated by:

Take estimate = (n * ZOI) * days of total activity

where:

n = density estimate used for each species/season

ZOI = noise threshold zone of influence (ZOI) impact area; the area encompassed by all locations where the sound pressure levels equal or exceed the threshold being evaluated

n * ZOI produces an estimate of the abundance of animals that could be present in the area for exposure

The ZOI impact area is the estimated range of impact to the noise criteria. The distances (actual) specified in Tables 5–6 and 9 were used to calculate ZOI around each pile. All impact pile driving take calculations were based on the estimated threshold ranges using a bubble curtain with 10 dB attenuation as a mitigation measure (*see* "Underwater Noise from Piledriving"). The ZOI impact area took into consideration the possible affected area of the Hood Canal from the pile driving site furthest from shore with attenuation due to land shadowing from bends in the canal. Because of the close proximity of some of the piles to the shore, the narrowness of the canal at the project area, and the maximum fetch, the ZOIs for each threshold are not necessarily spherical and may be truncated.

While pile driving can occur any day throughout the in-water work window, only a fraction of that time is actually spent pile driving. On days when pile driving occurs, it could take place for thirty minutes, or up to several hours. The contractor estimates that steel pile installation could occur at a maximum rate of four piles per day; however, it is more likely that an average of two piles will be installed and removed per day. The contractor estimates that a maximum of five concrete piles can be removed per day, with an average of three being removed per day. For each pile installed, vibratory pile driving is expected to be no more than one hour. The impact driving portion of the project is anticipated to take approximately fifteen minutes per pile, with a maximum of one pile per day, and five piles in total allowed. All steel piles will be extracted using a vibratory hammer. Extraction is anticipated to take approximately thirty minutes per pile. Concrete piles will be removed using a pneumatic chipping hammer or other similar concrete demolition tool, and it is expected to take approximately two hours to remove each concrete pile. For steel piles, this results in a maximum of two hours of pile driving per pile or potentially four hours per day. For concrete piles, this results in a maximum of two hours of pneumatic chipping per pile, or potentially six hours per day.

Therefore, while 108 days of in-water work time is proposed, only a fraction of the total work time per day will actually be spent pile driving. An average work day (two hours post-sunrise to two hours prior to sunset) is approximately eight to nine hours, depending on the month. While it is anticipated that only four hours of pile driving would be needed per day for steel piles, or six hours of pneumatic chipping for concrete piles, to take into

account deviations from the estimated times for pile installation and removal the Navy modeled potential impacts as if the entire day could be spent pile driving.

Based on the proposed action, the total pile driving time from vibratory pile driving during installation would be approximately fourteen days (28 piles at an average of two per day). The total pile driving time from vibratory pile driving during steel pile removal would be 21 days (42 piles at an average of two per day). The total pile driving time for utilizing a pneumatic chipping hammer during concrete pile removal would be 32 days (96 piles at an average of three per day). Therefore, impacts for installation, steel pile removal, and concrete pile removal were modeled as if these actions were to occur throughout the duration of 14, 21, and 32 days, respectively. During installation, there is the potential for the contractor to need to utilize an impact hammer to proof a select number of piles, although past repairs on the EHW–1 pier have never required the use of an impact pile driver. However, if the use of an impact hammer is required, impact pile driving will occur on no more than five piles, with only one pile being impact driven per day. Therefore, impact pile driving during installation was modeled as occurring for five days.

The exposure assessment methodology is an estimate of the numbers of individuals exposed to the effects of pile driving activities exceeding NMFS-established thresholds. Of note in these exposure estimates, mitigation methods other than the use of a sound attenuation device (*i.e.,* visual monitoring and the use of shutdown zones) were not quantified within the assessment and successful implementation of this mitigation is not reflected in exposure estimates. Results from acoustic impact exposure assessments should be regarded as conservative estimates that are strongly influenced by limited biological data. While the numbers generated from the pile driving exposure calculations provide conservative overestimates of marine mammal exposures for consultation with NMFS, the short duration and limited geographic extent of the pile replacement project would further limit actual exposures.

California Sea Lion

California sea lions are present in the Hood Canal almost year-round with the exception of mid-June through August. The Navy conducted year round waterfront surveys for marine mammals at NBKB in 2008 and 2009 (DoN 2010a). During these surveys, the daily maximum number of California sea lions hauled out for the months July-October (the timeframe of the pile replacement project), were 0, 0, 12, and 47 in 2008 and 0, 1, 32, and 44 in 2009, respectively. The monthly average of the maximum number of California sea lions observed per day was seventeen individuals. Females are rarely observed north of the California-Oregon border (NMFS 2008c); therefore only adult and sub-adult males are expected in the Hood Canal. Breeding rookeries are in California; therefore pups are not expected to be present in the Hood Canal.

California sea lions are not likely to be present at the project site during the entire period of work (*i.e.,* are infrequent visitors during July-August). However, because the proportion of pile driving that could occur in a given month is dependent on several factors (*e.g.,* availability of materials, weather) the Navy assumed that pile driving operations could occur at any time in the construction window. Therefore, exposures were calculated using the monthly average of the maximum number of California sea lions observed per day (seventeen individuals), divided by the area encompassed by the maximum fetch at the project site (41.5 km^2 [16 mi^2]) and the formula given previously. Table 12 depicts the number of acoustic harassments that are estimated from vibratory and impact pile driving and removal, and pneumatic chipping, both underwater and in-air for each season. The modeling indicated that zero California sea lions were likely to be exposed to sound in the 160-dB zone. However, the Navy feels that, based on the abundance of this species in the waters along NBKB and including their presence at nearby haul-outs, it is possible that an individual could pass through this zone in transit to or from a haul-out. Therefore, the Navy is requesting a behavioral harassment take of California sea lion by impact pile driving each day of pile driving, for a total of five takes over the course of the proposed action.

Harbor Seal

Harbor seals are present in the Hood Canal year-round and would be expected at the project site. Harbor seal numbers increase from January through April and then decrease from May through August as the harbor seals move to adjacent bays on the outer coast of Washington for the pupping season. Harbor seals are the most abundant marine mammal in the Hood Canal. Jeffries *et al.* (2003) did a stock assessment of harbor seals in the Hood Canal in 1999 and counted 711 harbor seals hauled out. This abundance was adjusted using a correction factor of 1.53 to account for seals in the water and not counted to provide a population estimate of 1,088 harbor seals in the Hood Canal. The Navy conducted boat surveys of the waterfront area in 2008 from July to September (Agness and Tannenbaum 2009a). Harbor seals were sighted during every survey and were found in all marine habitats including near and hauled-out on man-made objects such as piers and buoys. During most of the year, all age and sex classes (except newborn pups) could occur in the project area throughout the period of construction activity. From April through mid-July, female harbor seals haul out on the outer coast of Washington at pupping sites to give birth. Since there are no known pupping sites in the vicinity of the project, harbor seal pups are not expected to be present during pile driving. The main haul-out locations for harbor seals in Hood Canal are located on river delta and tidal exposed areas at Quilcene, Dosewallips, Duckabush, Hamma Hamma, and Skokomish River mouths, with the closest haul-out area to the project area being 10 mi (16 km) southwest of NBKB at Dosewallips River mouth (London 2006). Please *see* Figure 4–1 of the Navy's application for a map of haul-out locations in relation to the project area.

Research by Huber *et al.* (2001) indicates that approximately 35 percent of harbor seals are in the water at any one time. Exposures were calculated using a density derived from the number of harbor seals that are present in the water at any one time (35 percent of 1,088, or approximately 381 individuals), divided by the area of the Hood Canal (291 km^2 [112 mi^2]) and the formula presented previously.

While Huber *et al.*'s (2001) data suggest that harbor seals typically spend 65 percent of their time hauled out, the Navy's waterfront surveys found that it is extremely rare for harbor seals to haul out in the vicinity of the test pile project area. Therefore, the only population of harbor seals that could potentially be exposed to airborne sounds are those that are in-water but at the surface. Based on the diving cycle of tagged harbor seals near the San Juan Islands, the Navy estimates that seals are on the surface approximately 16.4 percent of their total in-water duration (Suryan and Harvey 1998). Therefore, by multiplying the percentage of time spent at the surface (16.4 percent) by the total in-water population of harbor seals at any one time (approximately 381 individuals), the population of harbor

seals with the potential to experience airborne impacts (approximately 63 individuals) can be obtained. Airborne exposures were calculated using a density derived from the maximum number of harbor seals available at the surface (approximately 63 individuals), divided by the area of the Hood Canal (291 km²) and the formula presented previously. Table 12 depicts the number of acoustic harassments that are estimated from vibratory and impact pile driving and removal, and from pneumatic chipping, both underwater and in-air for each season. The modeling indicated that zero harbor seals were likely to be exposed to sound in the 160-dB zone. However, the Navy feels that, based on the abundance of this species in the waters along NBKB and including their presence at nearby haul-outs, it is possible that an individual could pass through this zone in transit to or from a haul-out. Therefore, the Navy is requesting a behavioral harassment take of harbor seal by impact pile driving each day of pile driving, for a total of five takes over the course of the proposed action.

Killer Whales

Transient killer whales are uncommon visitors to Hood Canal. Transients may be present in the Hood Canal anytime during the year and traverse as far as the project site. Resident killer whales have not been observed in Hood Canal, but transient pods (six to eleven individuals per event) were observed in Hood Canal for lengthy periods of time (59–172 days) in 2003 (January-March) and 2005 (February-June), feeding on harbor seals (London 2006).

These whales used the entire expanse of Hood Canal for feeding. Subsequent aerial surveys suggest that there has not been a sharp decline in the local seal population from these sustained feeding events (London 2006). Based on this data, the density for transient killer whales in the Hood Canal for January to June is 0.038/km² (0.015/mi²; eleven individuals divided by the area of the Hood Canal [291 km²]). Since this timeframe overlaps the period in which the pile replacement project will occur (July-October), this density was used for all exposure calculations. Exposures were calculated using the formula presented previously. Table 12 depicts the number of acoustic harassments that are estimated from vibratory and impact pile driving for each season. The modeling indicated that zero killer whales were likely to be exposed to sound in the 160-dB zone. However, while transient killer whales are rare in the Hood Canal, when these animals are present they occur in pods, so their density in the project area is unlikely to be uniform, as was modeled. If they are present during impact pile driving it is possible that one or more individuals within a pod could travel through the behavioral harassment zone. Therefore, the Navy is requesting nine behavioral takes of transient killer whales—based on the average size of pods seen previously in the Hood Canal—by impact pile driving over the course of the proposed action.

Dall's Porpoise

Dall's porpoises may be present in the Hood Canal year-round and could occur as far as the project site. Their use of inland Washington waters, however, is mostly limited to the Strait of Juan de Fuca. The Navy conducted boat surveys of the waterfront area in 2008 from July to September (Agness and Tannenbaum 2009a). During one of the surveys a Dall's porpoise was sighted in August in the deeper waters off Carlson Spit.

In the absence of an abundance estimate for the entire Hood Canal, a seasonal density (warm season only) was derived from the waterfront survey by the number of individuals seen divided by total number of kilometers of survey effort (six surveys with approximately 3.9 km² [1.5 mi²] of effort each), assuming strip transect surveys. In absence of any other survey data for the Hood Canal, this density is assumed to be throughout the project area. Exposures were calculated using the formula presented previously. Table 12 depicts the number of acoustic harassments that are estimated from vibratory and impact pile driving for each season. The modeling indicated that zero Dall's porpoises were likely to be exposed to sound in the 160-dB zone. Dall's porpoises are rare in the Hood Canal; only one animal, seen in deep waters offshore from the base, has been seen in the project area in the past few years. However, it is possible that additional animals exist or that this single individual could pass through the behavioral harassment zone for impulse sounds (160-dB) while transiting along the waterfront. Therefore, the Navy is requesting a single behavioral harassment take of a Dall's porpoise by impact pile driving over the course of the proposed action.

Harbor Porpoise

Harbor porpoises may be present in the Hood Canal year-round; however, their presence is rare. During waterfront surveys of NBKB over the past two years (2008–present) only one harbor porpoise has been seen in 24 surveys.

The Navy conducted boat surveys of the waterfront area from July to September over the past few years (2008–present) (Agness and Tannenbaum 2009a). During one of the surveys a single harbor porpoise was sighted in the deeper waters offshore from the waterfront. In the absence of an abundance estimate for the entire Hood Canal, a seasonal density (warm season only) was derived from the waterfront survey by the number of individuals seen divided by total number of kilometers of survey effort (24 surveys with approximately 3.9 km² [1.5 mi²] of effort each), assuming strip transect surveys. In the absence of any other survey data for the Hood Canal, this density is assumed to be throughout the project area. Exposures were calculated using the formula presented previously; Table 12 depicts the number of acoustic harassments that are estimated from vibratory and impact pile driving for each season. The modeling indicated that zero harbor porpoises were likely to be exposed to sound in the 120–dB zone. However, while harbor porpoises are rare, one has been sighted in surveys over the last few years in the deep waters offshore from the base. It is possible this offshore region is encapsulated within the disturbance zone during vibratory pile installation and removal due to the large size (40.3 [15.6] and 35.9 km² [13.9 mi²], respectively). Therefore, based on the possibility that this animal could be present in the offshore waters during every day of construction, the Navy is requesting a single behavioral take of harbor porpoise by vibratory pile driving each day of pile driving, for a total of 35 takes over the course of the proposed action (fourteen during installation and 21 during removal). The area of disturbance during pneumatic chipping is comparatively small (0.608 km² [0.23 mi²]); thus, the Navy does not feel harbor porpoises are likely to occur in this area and is not requesting take for pneumatic chipping.

Potential takes could occur if individuals of these species move through the area on foraging trips when pile driving or removal is occurring. Individuals that are taken could exhibit behavioral changes such as increased swimming speeds, increased surfacing time, or decreased foraging. Most likely, individuals may move away from the sound source and be temporarily displaced from the areas of pile driving or removal. Potential takes by disturbance would have a negligible short-term effect on individuals and would not result in population-level impacts.

TABLE 12—NUMBER OF POTENTIAL WARM SEASON (MAY–OCT) EXPOSURES OF MARINE MAMMALS WITHIN VARIOUS ACOUSTIC THRESHOLD ZONES

Species	Density	Underwater			Airborne	Total (percent of stock or population [3])
		Impact injury threshold [1]	Impact disturbance threshold (160 dB)	Vibratory disturbance threshold (120 dB)	Impact & vibratory disturbance threshold [2]	
California sea lion	0.410	0	*5	553	0	558 (0.2)
Harbor seal	1.31	0	*5	1,761	[4] 0	1,766 (12.1)
Killer whale	0.038	0	*9	49	N/A	58 (18.5)
Dall's porpoise	0.043	0	*1	70	N/A	71 (0.1)
Harbor porpoise	0.011	0	0	*35	N/A	35 (0.3)
Total		0	20	2,468	0	2,488

* *See* species descriptions for discussion of these estimates.
[1] Acoustic injury threshold for impact pile driving is 190 dB for pinnipeds and 180 dB for cetaceans.
[2] Acoustic disturbance threshold is 100 dB for California sea lions and 90 dB for harbor seals. The airborne exposure calculations assume that 100% of the in-water densities were available at the surface to be exposed to airborne sound.
[3] *See* Table 10 for stock or population numbers.
[4] Airborne densities were based on the percentage (16.4 percent) of in-water density available at the surface to be exposed (Suryan and Harvey 1998).

During the project timeframe, which occurs entirely in the May to October warm season, there is the potential for twenty Level B disturbance takes (160-dB, impulse sound) of various species from impact pile driving operations, and an additional 2,468 Level B disturbance takes (120-dB, continuous sound) of various species from vibratory pile driving, vibratory removal, and pneumatic chipping due to underwater sound. The following species and numbers of Level B disturbance takes could occur due to underwater sound as a result of impact pile driving operations: five California sea lions, five harbor seals, nine transient killer whales, and one Dall's porpoise. The following species and numbers of Level B disturbance takes could occur due to underwater sound as a result of vibratory pile driving operations: 553 California sea lions, 1,761 harbor seals, 49 transient killer whales, seventy Dall's porpoises, and 35 harbor porpoises. Due to their lack of presence within the project area during the timeframe for the pile replacement project (July 16–Oct 31), no Steller sea lions would be harassed. Lastly, no species of pinnipeds are expected to be exposed to airborne sound pressure levels that would cause harassment.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

Pile driving activities associated with the pile replacement project, as outlined previously, have the potential to disturb or displace small numbers of marine mammals. Specifically, the proposed activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from airborne or underwater sounds generated from pile driving. Level A harassment is not anticipated given the methods of installation and measures designed to minimize the possibility of injury to marine mammals. Specifically, vibratory hammers will be the primary method of installation, which are not expected to cause injury to marine mammals due to the relatively low source levels (less than 190 dB). Pile removal activities, whether vibratory removal of steel piles or pneumatic chipping of concrete piles, produce sound levels lower than those produced by vibratory installation. Also, no impact pile driving will occur without the use of a noise attenuation system (*e.g.,* bubble curtain), and pile driving will either not start or be halted if marine mammals approach the shutdown zone (described previously in this document). Furthermore, the pile driving activities analyzed are similar to other nearby construction activities within the Hood Canal, such as test piles driven in 2005 for the Hood Canal Bridge (SR–104) constructed by the Washington Department of Transportation, which have taken place with no reported injuries or mortality to marine mammals.

NMFS has preliminarily determined that the impact of the previously described pile replacement project may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. No mortality or injuries are anticipated as a result of the specified activity, and none are proposed to be authorized. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. For pinnipeds, the absence of any major rookeries and only a few isolated haul-out areas near or adjacent to the project site means that potential takes by disturbance will have an insignificant short-term effect on individuals and would not result in population-level impacts. Similarly, for cetacean species the absence of any regular occurrence adjacent to the project site means that potential takes by disturbance will have an insignificant short-term effect on individuals and would not result in population-level impacts. Due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival. While modeling indicates that the specified activities could potentially take, by harassment only, as many as 58 transient killer whales (18.5 percent of the regional stock), it is extremely unlikely that 58 individual whales would be exposed to sound associated with the project. Rather, the estimated 58 takes represents a single group of nine whales that could potentially be exposed to sound on multiple days, if present. As such, the possible repeated

exposure of a small group of individuals does not present the deleterious effect on the regional stock that is suggested by the figure of 18.5 percent. This activity is expected to result in a negligible impact on the affected species or stocks. None of the species for which take authorization is requested are either ESA-listed or considered depleted under the MMPA.

For reasons stated previously in this document, the negligible impact determination is also supported by the likelihood that, given sufficient "notice" through mitigation measures including soft start, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious, and the likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for Hood Canal, enabling the implementation of shut-downs to avoid injury, serious injury, or mortality. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures.

While the number of marine mammals potentially incidentally harassed will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small relative to regional stock or population number, and has been mitigated to the lowest level practicable through incorporation of the proposed mitigation and monitoring measures mentioned previously in this document.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the proposed pile replacement project will result in the incidental take of small numbers of marine mammal, by Level B harassment only, and that the total taking from the activity will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

No Tribal subsistence hunts are held in the vicinity of the project area; thus, temporary behavioral impacts to individual animals would not affect any subsistence activity. Further, no population or stock level impacts to marine mammals are anticipated or authorized. As a result, no impacts to the availability of the species or stock to the Pacific Northwest treaty Tribes are expected as a result of the proposed activities. Therefore, no relevant subsistence uses of marine mammals are implicated by this action.

Endangered Species Act (ESA)

There is one marine mammal species that is listed as endangered under the ESA with confirmed or possible occurrence in the study area: the Eastern DPS of the Steller sea lion. However, as described previously, the pile driving and removal activities associated with the project will occur from July 16–October 31 only, a time at which Steller sea lions are not present in the project area. The Navy conducted an informal consultation with the NWRO under Section 7 of the ESA; the NWRO concurred that there would be no presence of ESA-listed marine mammals during the project and that formal consultation was not required.

National Environmental Policy Act (NEPA)

In December 2010, the Navy prepared a draft EA, which has been posted on the NMFS Web site (*see* **ADDRESSES**) concurrently with the publication of this proposed IHA and public comments have been solicited. NMFS will review the draft EA and the public comments received and subsequently either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to the Navy's pile replacement project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: January 31, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA124

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Pacific Ocean off Costa Rica, April Through May, 2011

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from Lamont-Doherty Earth Observatory (L–DEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting a marine geophysical survey in the eastern tropical Pacific (ETP) Ocean off Costa Rica, April through May, 2011. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to L–DEO to incidentally harass, by Level B harassment only, 19 species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than March 7, 2011.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing e-mail comments is *ITP.Cody@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

A copy of the application 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.*

The National Science Foundation (NSF), which is providing funding for the proposed action, has prepared a draft Environmental Analysis which incorporates an "Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the Pacific Ocean off Costa Rica, April–May, 2011", prepared by LGL Limited, on behalf of NSF is also available at the same internet address. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS, (301) 713–2289, ext. 113.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371(a)(5)(D)) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined "negligible impact" 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' 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].

Summary of Request

NMFS received an application on November 12, 2010, from L–DEO for the taking by harassment, of marine mammals, incidental to conducting a marine geophysical survey in the eastern tropical Pacific Ocean within the Exclusive Economic Zone (EEZ) of Costa Rica. L–DEO, with research funding from the U.S. National Science Foundation (NSF), plans to conduct the proposed survey from April 7, 2011, through May 9, 2011. Upon receipt of additional information, NMFS determined the application complete and adequate on January 4, 2011.

L–DEO plans to use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*) and a seismic airgun array to image the structures along a major plate-boundary fault off in the ETP off Costa Rica using three-dimensional (3–D) seismic reflection techniques. L–DEO will use the 3–D seismic reflection data to determine the fault structure and the properties of the rocks that lie along the fault zone. In addition to the proposed operations of the seismic airgun array, L–DEO 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 L–DEO has requested an authorization to take 19 species 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 32 days). It is likely that any marine mammal would be able to avoid the vessel.

Description of the Specified Activity

L–DEO's proposed seismic survey in the ETP off Costa Rica is scheduled to commence on April 7, 2011 and continue for approximately 32 days ending on May 9, 2011. L–DEO will operate the *Langseth* to deploy a seismic airgun array and hydrophone streamers to complete the survey.

The *Langseth* will depart from Caldera, Costa Rica on April 7, 2011 and transit to the survey area offshore from Costa Rica. Some minor deviation from these dates is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard. Therefore, NMFS plans to issue an authorization that extends to June 6, 2011.

Geophysical survey activities will involve 3–D seismic methodologies to determine the fault structure and the properties of the rocks that lie along the fault zone and to assess the property changes along the fault and determine where the large stress accumulations that lead to large earthquakes occur along the fault zone.

To obtain 3–D images of the fault zone which lies two to nine kilometers (km) below the seafloor, the *Langseth* will deploy a two-string subarray of nine airguns each as an energy source. The identical subarrays will fire alternately, so that no more than 18 airguns will fire at any time during the proposed survey. The receiving system will consist of four 6-km-long hydrophone streamers. As the airgun subarrays are towed along the survey lines, the hydrophone streamers will receive the returning acoustic signals and transfer the data to the on-board processing system. L–DEO also plans to use two or three small fishing vessels around the *Langseth* to ensure that other vessels do not entangle the streamers.

The proposed study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will take place in the EEZ of Costa Rica in water depths ranging from less than 100 meters (m) (328 feet (ft)) to greater than 2,500 m (1.55 miles (mi)). The survey will require approximately 32 days (d) to complete approximately 19 transects in a racetrack configuration

that will cover an area of approximately 57 x 12 km (35.4 x 7.5 mi). In all, the proposed survey will complete approximately 2,145 km (1,333 mi) of survey lines with an additional 365 km (227 mi) of turns. Data acquisition will include approximately 672 hours (hr) of airgun operation (28 d x 24 hr).

The scientific team consists of Drs. Nathan Bangs, Kirk McIntosh (Institute for Geophysics, University of Texas) and Eli Silver (University of California at Santa Cruz).

Vessel Specifications

The *Langseth,* owned by NSF, is a seismic research vessel with a propulsion system designed to be as quiet as possible to avoid interference with the seismic signals emanating from the airgun array. The vessel, which has a length of 71.5 m (235 ft); a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834, is powered by two 3,550 horsepower (hp) Bergen BRG–6 diesel engines which drive two propellers. Each propeller has four blades and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800-hp bowthruster, which is not used during seismic acquisition. The *Langseth's* operation speed during seismic acquisition will be approximately 8.5 km per hr (km/h) (5.3 mi per hr (mph) or 4.6 knots (kts)) and the cruising speed of the vessel outside of seismic operations is 18.5 km/h (11.5 mph or 10 kts).

The vessel also has an observation tower from which protected species visual observers (PSVO) will watch for marine mammals before and during the proposed airgun operations. When stationed on the observation platform, the PSVO's eye level will be approximately 21.5 m (71 ft) above sea level providing the PSVO an unobstructed view around the entire vessel.

Acoustic Source Specifications

Seismic Airguns

The *Langseth* will deploy a 36-airgun array (two subarrays with 18 airguns each) at a tow depth of 7 meters (m) (23 feet (ft)). However, the *Langseth* will fire one subarray at a time, so that no more than 18 airguns will fire at any time. The maximum discharge volume is 3,300 cubic inches (in^3). The airguns are a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 360 in^3, with a firing pressure of 1,900 pounds per square inch. The dominant frequency components range from zero to 188 Hertz (Hz).

The subarray configuration consists of two identical linear or strings, with 10 airguns on each string; the first and last airguns will be spaced 16 m (52 ft) apart. Of the 10 airguns, nine will fire simultaneously while the tenth airgun will serve as a spare and will be turned on in case of failure of one of the other airguns. Each airgun subarray will emit a pulse at approximately 11-second (s) intervals which corresponds to a shot interval of approximately 25 m (82 ft). During firing, the airguns will emit a brief (approximately 0.1 s) pulse of sound; during the intervening periods of operations, the airguns will be silent.

L–DEO will tow each subarray approximately 140 m (459.3 ft) behind the vessel and will distribute the subarrays across an area of approximately 12 by 16 m (39.4 by 52.5 ft) behind the *Langseth,* offset by 75 m (246 ft).

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa.

SPL (in decibels (dB)) = 20 log (pressure/reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

Characteristics of the Airgun Pulses

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and the amount of sound transmitted in the near horizontal directions is reduced. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun arrays used by L–DEO on the *Langseth* are 236 to 265 dB re: 1 $\mu Pa_{(p\text{-}p)}$ and the rms value for a given airgun pulse is typically 16 dB re: 1 μPa lower than the peak-to-peak value. However, the difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors.

Accordingly, L–DEO has predicted the received sound levels in relation to distance and direction from the 18-airgun subarray and the single Bolt 1900LL 40-in^3 airgun, which will be used during power downs. A detailed description of L–DEO's modeling for marine seismic source arrays for species mitigation is provided in Appendix A of L–DEO's application. These are the nominal source levels applicable to downward propagation. The effective source levels for horizontal propagation are lower than those for downward propagation when the source consists of numerous airguns spaced apart from one another.

Appendix B of L–DEO's environmental analysis discusses the characteristics of the airgun pulses. NMFS refers the reviewers to the application and environmental analysis documents for additional information.

Predicted Sound Levels for the Airguns

Tolstoy *et al.,* (2009) reported results for propagation measurements of pulses from the *Langseth's* 36-airgun, 6,600 in^3 array in shallow-water (approximately 50 m (164 ft)) and deep-water depths (approximately 1,600 m (5,249 ft)) in the Gulf of Mexico in 2007 and 2008. L–DEO has used these reported empirical values to determine exclusion zones for the 18-airgun subarray and the single airgun; to designate mitigation zones, and to estimate take (described in greater detail in Section VII and Section IV of L–DEO's application and environmental analysis, respectively) for marine mammals.

Results of the Gulf of Mexico calibration study (Tolstoy *et al.,* 2009) showed that radii around the airguns for various received levels varied with water depth. The empirical data for deep water (greater than 1,000 m; 3,280 ft) indicated that the L–DEO model (as applied to the *Langseth's* 36-airgun array) overestimated the received sound levels at a given distance. However, to be conservative, L–DEO has applied the modeled distances for the 36-airgun

array in deep water to the 18-airgun subarray when operating in deep-water areas during the proposed study (Table 1). L–DEO set 2,000 m (1.2 mi) as the maximum relevant depth as very few, if any, mammals are expected to occur below this depth.

The empirical data for shallow water (< 100 m; 328 ft) indicated that the L–DEO model (as applied to the Langseth's 36-airgun array) underestimated actual received levels. Accordingly, L–DEO has applied correction factors to the distances reported by Tolstoy *et al.* (2009) for shallow depth water. For the 36-airgun array, the distances measured in shallow-water to the 160- to 190-dB isopleths ranged from 1.7 to 5.2 times higher than the distances in deep water (Tolstoy et al. 2009). During the proposed cruise, the same factors will be applied to derive appropriate shallow-water radii from the modeled deep-water radii for the *Langseth's* 18-airgun subarray (Table 1).

For intermediate-depths (100–1,000 m; 328–3,280 ft), L–DEO has applied a correction factor of 1.5 to the estimates provided by the model for the 18-airgun subarray operating in deep-water situations to predict safety radii for intermediate-depth sites. L–DEO applied the same correction factor to model estimates for an L–DEO cruise in the same area in 2003 and 2004.

Table 1 summarizes the predicted distances at which sound levels (160- and 180-dB) are expected to be received from the 18-airgun subarray and a single airgun operating in shallow, intermediate and deep water depths.

TABLE 1—PREDICTED DISTANCES TO WHICH SOUND LEVELS ≥ 190, 180, AND 160 DB RE: 1 μPA$_{rms}$ COULD BE RECEIVED DURING THE PROPOSED SURVEY USING A 18-AIRGUN SUBARRAY, AS WELL AS A SINGLE AIRGUN TOWED AT A DEPTH OF 7 M IN THE ETP DURING APRIL–MAY, 2011

[Distances are based on model results provided by L–DEO.]

Source and volume	Water depth	*Predicted RMS Distances (m)*	
		180 dB	160 dB
Single Bolt airgun (40 in^3)	Shallow < 100 m	296	1,050
	Intermediate 100–1,000 m	60	578
	Deep > 1,000 m	40	385
18-Airgun subarray (3,300 in^3)	Shallow < 100 m	1,030	* 19,500
	Intermediate 100–1,000 m	675	5,700
	Deep > 1,000 m	450	3,800

* This is likely an overestimate, as the measured distance for the 36-airgun array operating in shallow waters of the northern Gulf of Mexico was 17,500 m (17.5 km).

L–DEO conducted modeling for a 2008 survey off Costa Rica using site specific data on sound velocity profiles in the water column and bottom composition at a depth of 65 m (213.5 ft) in Drake Bay (at the proposed survey area) and at a depth of 340 m (1,115 ft) in an area approximately 100 km (62 mi) north of the survey area. The modeled exclusion zones were smaller than the shallow- and intermediate-depth ranges listed in Table 1, suggesting that L–DEO's estimates for the proposed survey are overestimates and thus precautionary. Also, the estimated 160-dB distance for the 18-airgun subarray in water depths less than 100 m (328 ft) (Table 1) is higher than the measured distance for the 36-airgun array (17.5 km; Tolstoy *et al.,* 2009), again suggesting that these estimates are precautionary. Refer to Appendix A of L–DEO's environmental analysis for additional information on L–DEO's calculations for the model.

Multibeam Echosounder

The *Langseth* will operate a Kongsberg EM 122 MBES concurrently during airgun operations to map characteristics of the ocean floor. The hull-mounted MBES emits brief pulses of sound (also called a ping) (10.5 to 13 kilohertz (kHz)) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is one or two degrees (°) fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μPa.

For deep-water operations, each ping consists of eight (in water greater than 1,000 m; 3,280 ft) or four (less than 1,000 m; 3,280 ft) successive, fan-shaped transmissions, from two to 15 milliseconds (ms) in duration and each ensonifying a sector that extends 1° fore-aft. The eight successive transmissions span an overall cross-track angular extent of about 150°, with 2-ms gaps between the pulses for successive sectors.

Sub-Bottom Profiler

The *Langseth* will also operate a Knudsen 320B SBP continuously throughout the cruise with the MBES to provide information about the sedimentary features and bottom topography. The dominant frequency component of the SBP is 3.5 kHz which is directed downward in a 30° cone by a hull-mounted transducer on the vessel. The maximum output is 1,000 watts (204 dB re: 1 μPa), but in practice, the output varies with water depth. The pulse interval is one second, but a common mode of operation is to broadcast five pulses at 1-s intervals followed by a 5-s pause.

NMFS expects that acoustic stimuli resulting from the proposed operation of the single airgun or the 18-airgun subarray has the potential to harass marine mammals, incidental to the conduct of the proposed seismic survey. NMFS expects these disturbances to be temporary and 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. NMFS does not expect that the movement of the *Langseth,* during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (4.6 kts; 8.5 km/h; 5.3 mph) during seismic acquisition.

Description of the Specified Geographic Region

The survey will encompass the area bounded by 8.5–9° N, 83.75–84.25° W

offshore from Costa Rica in the Pacific Ocean (*see* Figure 1 in L–DEO's application). The closest that the *Langseth* will approach the coastline is approximately 30 km.

Description of the Marine Mammals in the Area of the Proposed Specified Activity

Twenty-eight marine mammal species may occur in the proposed survey area, including 20 odontocetes (toothed cetaceans), 6 mysticetes (baleen whales) and two pinnipeds. Of these, 19 cetacean species are likely to occur in the proposed survey area in the ETP during April through May. Five 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.

The species of marine mammals expected to be most common in the survey area (all delphinids) include the short-beaked common dolphin (*Delphinus delphis*), spinner dolphin (*Stenella longirostris*), pantropical spotted dolphin (*Stenella attenuata*), striped dolphin (*Stenella coeruleoalba*), melon-headed whale (*Peponocephala electra*), and bottlenose dolphin (Tursiops truncatus).

Two pinnipeds, the California sea lion (*Zalophus californianus*) and the Galápagos sea lion (*Zalophus wollebaeki*), have the potential to transit in the vicinity of the proposed seismic survey, although any occurrence would be rare as they are vagrants to the area. Based on available data and monitoring reports from previous seismic surveys in the area, L–DEO does not expect to encounter these species within the proposed survey area and does not present analysis for these species. Accordingly, NMFS will not consider these pinniped species in greater detail and the proposed IHA will only address requested take authorizations for mysticetes and odontocetes.

Table 2 presents information on the abundance, distribution, population status, and conservation status of the marine mammals that may occur in the proposed survey area April through May, 2011.

TABLE 2—HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED SEISMIC SURVEY AREAS OFF COSTA RICA IN THE EASTERN TROPICAL PACIFIC OCEAN

[See text and Tables 2–4 in L–DEO's application and environmental analysis for further details.]

Species	Occurrence in survey area during April–May	Habitat	Abundance in the ETP [1]	ESA [2]	Density	
					Best [3]	Max [4]
Mysticetes						
Humpback whale	Very rare	Mainly nearshore waters and banks.	NE Pacific 1392 [6] SE Pacific 2900 [7]	EN	0.25	4.40
Bryde's whale	Uncommon	Pelagic and coastal	13,000 [8]	NL	0.96	2.52
Sei whale	Very rare	Mostly pelagic	N.A.	EN	0.01	0.01
Fin whale	Very rare	Slope, mostly pelagic	2636 [6]	EN	0.01	0.01
Blue whale	Rare	Pelagic and coastal	1415 [9]	EN	0.13	1.86
Common minke whale	Very rare	Coastal	N.A.	NL	< 0.01	< 0.01
Odontocetes						
Sperm whale	Uncommon	Usually deep pelagic, steep topography.	26,053 [10]	EN	4.19	9.80
Pygmy sperm whale	Very rare	Deep waters off shelf	N.A. [11]	NL	0.03	0.05
Dwarf sperm whale	Rare	Deep waters off shelf	11,200 [12]	NL	0.03	0.05
Cuvier's beaked whale	Uncommon	Slope and pelagic	20,000 [9]	NL	2.47	3.70
Mesoplodon spp.	Very rare or rare	Pelagic	25,300 [13]	NL	0.36	1.00
Rough-toothed dolphin	Common	Mainly pelagic	107,633	NL	4.19	11.19
Bottlenose dolphin	Very common	Coastal, shelf, pelagic	335,834	NL	17.06	90.91
Pantropical spotted dolphin	Very common	Coastal and pelagic	1,575,247 [14]	NL	76.96	236.66
Spinner dolphin	Common	Coastal and pelagic	1,797,716 [14]	NL	58.43	364.26
Striped dolphin	Uncommon	Off continental shelf	964,362	NL	67.75	154.21
Fraser's dolphin	Rare	Pelagic	289,300 [9]	NL	< 0.01	< 0.01
Short-beaked common dolphin.	Common	Shelf, pelagic, high relief	3,127,203	NL	110.89	763.50
Risso's dolphin	Common	Shelf, slope, seamounts	110,457	NL	12.76	12.76
Melon-headed whale	Rare	Pelagic	45,400 [9]	NL	11.06	57.70
Pygmy killer whale	Rare	Pelagic	38,900 [9]	NL	1.25	2.30
False killer whale	Uncommon	Pelagic	39,800 [9]	NL	0.01	0.01
Killer whale	Rare	Widely distributed	8500 [15]	NL	0.19	0.40
Short-finned pilot whale	Common	Mostly pelagic, high-relief	589,315 [16]	NL	11.88	28.22

N.A. Not available or not assessed.
[1] Abundance from Gerrodette *et al.* (2008) unless otherwise stated.
[2] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed.
[3] Best density (#/1000km^2) estimate as listed in Table 3 of the application. Cetecean densities are based on NMFS SWFSC ship transect surveys conducted in 1986–2006 from predictive modeling (Barlow *et al.* 2009; Read *et al.* 2009) or in 1986–1996 from Ferguson and Barlow (2003).
[4] Maximum density (#/1000km^2) estimate as listed in Table 3 of the application.
[6] U.S. west coast (Carretta *et al.,* 2010).
[7] Southeast Pacific; Félix *et al.* (2005).
[8] This estimate is mainly for *Balaenoptera edeni* but may include some *B. borealis* (Wade and Gerrodette, 1993).
[9] ETP (Wade and Gerrodette, 1993).
[10] Eastern temperate North Pacific (Whitehead, 2002).
[11] California/Oregon/Washington (Carretta *et al.,* 2010).
[12] This abundance estimate is mostly for *K. sima* but may also include some *K. breviceps* (Wade and Gerrodette, 1993).
[13] This estimate includes all species of the genus *Mesoplodon* in the ETP (Wade and Gerrodette, 1993).
[14] For all stocks in ETP.
[15] ETP (Ford, 2002).

[16] This estimate is for *G. macrorhynchus* and *G. melas* in the ETP (Gerrodette and Forcada, 2002).
[17] U.S. stock (Carretta *et al.,* 2010).
[18] Galapagos Islands (Alava and Salazar, 2006).

Refer to Section III of L–DEO'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 proposed project area. The application also presents how L–DEO calculated the estimated densities for the marine mammals in the proposed survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the proposed 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 proposed survey area. The effects of sounds from airgun operations might include one of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007).

Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the 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.

Tolerance to Sound

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) defines tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or man-made noise. In many cases, tolerance develops by the animal habituating to the stimulus (i.e., the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.,* 1995; Thorpe, 1963), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.,* 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Malme *et al.,* (1985) studied the responses of humpback whales on their summer feeding grounds in southeast Alaska to seismic pulses from a airgun with a total volume of 100-in^3. They noted that the whales did not exhibit persistent avoidance when exposed to the airgun and concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 dB: re 1 μPa.

Weir (2008) observed marine mammal responses to seismic pulses from a 24-airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. She recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hr) for humpback and sperm whales according to the airgun array's operational status (*i.e.,* active versus silent).

Masking of Natural Sounds

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.,* 2009). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.,* 1995).

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (*e.g.,* Simard *et al.,* 2005; Clark and Gagnon, 2006) which could mask calls. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls can usually be heard between the seismic pulses (*e.g.,* Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies found that they continued calling in the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; and Jochens *et al.,* 2008). Dolphins and porpoises commonly are heard calling while airguns are operating (e.g., Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a, b; and Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking.

In general, NMFS expects the masking effects of seismic pulses to be minor, given the normally intermittent nature of seismic pulses. Refer to Appendix B (4) of L–DEO's environmental analysis for a more detailed discussion of masking effects on marine mammals.

Behavioral Disturbance

Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a

particular distance of industrial activities and/or exposed to a particular level of industrial sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based primarily on behavioral observations of a few species. Scientists have conducted detailed studies on humpback, gray, bowhead (*Balaena mysticetus*), and sperm whales. Less detailed data are available for some other species of baleen whales, small toothed whales, and sea otters (*Enhydra lutris*), but for many species there are no data on responses to marine seismic surveys.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson, *et al.,* 1995). Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix B (5) of L–DEO's environmental analysis, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the cases of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson, *et al.,* 1995). They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re: 1 μPa seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Malme *et al.,* 1986, 1988; Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from four to 15 km from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in Appendix B (5) of L–DEO's environmental analysis have shown that some species of baleen whales, notably bowhead and humpback whales, at times, show strong avoidance at received levels lower than 160–170 dB re: 1 μPa.

McCauley *et al.* (1998, 2000) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16-airgun array (2,678-in^3) and to a single airgun (20-in^3) with source level of 227 dB re: 1 μPa$_{(p-p)}$. In the 1998 study, they documented that avoidance reactions began at five to eight km from the array, and that those reactions kept most pods approximately three to four km from the operating seismic boat. In the 2000 study, they noted localized displacement during migration of four to five km by traveling pods and seven to 12 km by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re: 1 μPa for humpback pods containing females, and at the mean closest point of approach distance the received level was 143 dB re: 1 μPa. The initial avoidance response generally occurred at distances of five to eight km from the airgun array and two km from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re: 1 μPa.

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100-in^3) airgun (Malme *et al.,* 1985). Some humpbacks *see*med "startled" at received levels of 150 to 169 dB re: 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 dB re: 1 μPa.

Studies have suggested that south Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). The evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was no observable direct correlation between strandings and seismic surveys (IWC, 2007:236).

There are no data on reactions of right whales to seismic surveys, but results from the closely-related bowhead whale show that their responsiveness can be quite variable depending on their activity (migrating versus feeding). Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20 to 30 km from a medium-sized airgun source at received sound levels of around 120 to 130 dB re: 1 μPa (Miller *et al.,* 1999; Richardson *et al.,* 1999; *see* Appendix B (5) of L–DEO's environmental analysis). However, more recent research on bowhead whales (Miller *et al.,* 2005; Harris *et al.,* 2007) corroborates earlier evidence that, during the summer feeding season, bowheads are not as sensitive to seismic sources. Nonetheless, subtle but statistically significant changes in surfacing–respiration–dive cycles were evident upon statistical analysis (Richardson *et al.,* 1986). In the summer, bowheads typically begin to show avoidance reactions at received levels of about 152 to 178 dB re: 1 μPa (Richardson *et al.,* 1986, 1995; Ljungblad *et al.,* 1988; Miller *et al.,* 2005).

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100-in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re: 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re: 1 μPa. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.,* 2007a, b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of *Balaenoptera* (blue, sei, fin, and minke whales) have occasionally been seen in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and calls from blue and fin whales have been localized in areas with airgun operations (e.g., McDonald *et al.,* 1995; Dunn and

Hernandez, 2009). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). In a study off of Nova Scotia, Moulton and Miller (2005) found little difference in sighting rates (after accounting for water depth) and initial sighting distances of balaenopterid whales when airguns were operating vs. silent. However, there were indications that these whales were more likely to be moving away when *see*n during airgun operations. Similarly, ship-based monitoring studies of blue, fin, sei and minke whales offshore of Newfoundland (Orphan Basin and Laurentian Sub-basin) found no more than small differences in sighting rates and swim directions during seismic versus non-seismic periods (Moulton *et al.,* 2005, 2006a,b).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A *in* Malme *et al.,* 1984; Richardson *et al.,* 1995; Allen and Angliss, 2010). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Angliss and Allen, 2009).

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above and (in more detail) in Appendix B of L–DEO's environmental analysis have been reported for toothed whales. However, there are recent systematic studies on sperm whales (*e.g.,* Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009).

Seismic operators and marine mammal observers on seismic vessels regularly *see* dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; *see* also Barkaszi *et al.,* 2009). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (*e.g.,* Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (*e.g.,* Stone and Tasker, 2006; Weir, 2008). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km less, and some individuals show no apparent avoidance. The beluga whale (*Delphinapterus leucas*) is a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys conducted in the southeastern Beaufort Sea during summer found that sighting rates of beluga whales were significantly lower at distances 10 to 20 km compared with 20 to 30 km from an operating airgun array, and observers on seismic boats in that area rarely *see* belugas (Miller *et al.,* 2005; Harris *et al.,* 2007).

Captive bottlenose dolphins (*Tursiops truncatus*) and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results for porpoises depend on species. The limited available data suggest that harbor porpoises (*Phocoena phocoena*) show stronger avoidance of seismic operations than do Dall's porpoises (*Phocoenoides dalli*) (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.,* 1995; Southall *et al.,* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the sperm whale shows considerable tolerance of airgun pulses (*e.g.,* Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call (*see* Appendix B of L–DEO's environmental analysis for review). However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales (*Hyperoodon ampullatus*) remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (e.g., Wursig *et al.,* 1998). They may also dive for an extended period when approached by a vessel (e.g., Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly.

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are ongoing nearby (*e.g.,* Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and

USN, 2001; Jepson *et al.,* 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; *see* also the Stranding and Mortality section in this notice). These strandings are apparently a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonar in operation during the above-cited incidents.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, *see*m to be confined to a smaller radius than has been observed for the more responsive of the mysticetes, belugas, and harbor porpoises (Appendix B of L–DEO's environmental analysis).

Hearing Impairment and Other Physical Effects

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, Carder, Schlundt, and Ridgway, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (i.e., the threshold returns to the pre-exposure value), it is called temporary threshold shift (TTS) (Southall *et al.,* 2007).

Researchers have studied TTS in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of TTS let alone permanent hearing damage, *i.e.,* permanent threshold shift (PTS), in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007). Table 1 presents the distances from the *Langseth's* airguns at which the received energy level (per pulse, flat-weighted) that would be expected to be greater than or equal to 180 dB re: 1 μPa.

To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa. NMFS believes that to avoid the potential for permanent physiological damage (Level A harassment), cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa. The 180-dB level is a shutdown criterion applicable to cetaceans, as specified by NMFS (2000); these levels were used to establish the EZs. NMFS also assumes that cetaceans exposed to levels exceeding 160 dB re: 1 μPa (rms) may experience Level B harassment.

Researchers have derived TTS information for odontocetes from studies on the bottlenose dolphin and beluga. For the one harbor porpoise tested, the received level of airgun sound that elicited onset of TTS was lower (Lucke *et al.,* 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of TTS occurs at similar received levels in all odontocetes (*cf.* Southall *et al.,* 2007). Some cetaceans apparently can incur TTS at considerably lower sound exposures than are necessary to elicit TTS in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales (Southall *et al.,* 2007). For this proposed study, L—DEO expects no cases of TTS given: (1) The low abundance of baleen whales in the planned study area at the time of the survey; and (2) the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for TTS to occur. *Permanent Threshold Shift*—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (e.g., Richardson *et al.,* 1995, p. 372*ff;* Gedamke *et al.,* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time–*see* Appendix B (6) of L–DEO's environmental analysis. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis, and probably greater than six dB (Southall *et al.,* 2007).

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals.

Stranding and Mortality—Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.,* 1993; Ketten, 1995). However, explosives are no longer used for marine waters for commercial seismic surveys or (with rare exceptions) for seismic research; they have been replaced entirely by airguns or related non-explosive pulse generators. Airgun pulses are less energetic and have slower rise times,

and there is no specific evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of strandings of beaked whales with naval exercises involving mid-frequency active sonar and, in one case, an L–DEO seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong "pulsed" sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding (e.g., Hildebrand, 2005; Southall *et al.,* 2007). Appendix B (6) of L–DEO's environmental analysis provides additional details.

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) a change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) a physiological change such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) tissue damage directly from sound exposure, such as through acoustically-mediated bubble formation and growth or acoustic resonance of tissues. Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are increasing indications that gas-bubble disease (analogous to the bends), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. However, the evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below one kHz. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of two to 10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (*e.g.,* Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005; Hildebrand 2005; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity "pulsed" sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) were not well founded (IAGC, 2004; IWC, 2007). In September 2002, there was a stranding of two Cuvier's beaked whales (*Ziphius cavirostris*) in the Gulf of California, Mexico, when the L DEO vessel R/V *Maurice Ewing* was operating a 20-airgun (8,490 in^3) in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). No injuries of beaked whales are anticipated during the proposed study because of:

(1) The high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels,

(2) differences between the sound sources operated by L–DEO and those involved in the naval exercises associated with strandings.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007), or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales and some odontocetes, are especially unlikely to incur non-auditory physical effects.

Potential Effects of Other Acoustic Devices

MBES

L–DEO will operate the Kongsberg EM 122 MBES from the source vessel during the planned study. Sounds from the MBES are very short pulses, occurring for two to 15 ms once every five to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this MBES is at frequencies near 12 kHz, and the maximum source level is 242 dB re: 1 μPa. The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m deep) or four (less than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the nine segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2-to-15 ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an MBES emits

a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the MBES. The area of possible influence of the MBES is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During L–DEO's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by. Possible effects of an MBES on marine mammals are outlined below.

Masking—Marine mammal communications will not be masked appreciably by the MBES signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the MBES signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (*Globicephala melas*) (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz "whale-finding" sonar with a source level of 215 dB re: 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (Frankel, 2005). When a 38-kHz echosounder and a 150-kHz acoustic Doppler current profiler were transmitting during studies in the Eastern Tropical Pacific, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1-s tonal signals at frequencies similar to those that will be emitted by the MBES used by L DEO, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from an MBES.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (*see* above). However, the MBES proposed for use by L DEO is quite different than sonar used for navy operations. Pulse duration of the MBES is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the beam of the MBES for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the MBES rather drastically relative to that from naval sonar.

NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the MBES is not likely to result in the harassment of marine mammals.

SBP

L–DEO will also operate a SBP from the source vessel during the proposed survey. Sounds from the SBP are very short pulses, occurring for one to four ms once every second. Most of the energy in the sound pulses emitted by the SBP is at 3.5 kHz, and the beam is directed downward. The sub-bottom profiler on the Langseth has a maximum source level of 204 dB re: 1 μPa.

Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for an SBP more powerful than that on the *Langseth*—if the animal was in the area, it would have to pass the transducer at close range and in order to be subjected to sound levels that could cause TTS.

Masking—Marine mammal communications will not be masked appreciably by the SBP signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the SBP signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the SBP are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the SBP are considerably weaker than those from the MBES. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—It is unlikely that the SBP produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The SBP is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the SBP.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (*see* the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections) which, as noted are designed to effect the least practicable adverse impact on affected marine mammal species and stocks.

Anticipated Effects on Marine Mammal Habitat

The proposed 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 it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice.

Anticipated Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike

explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish populations is limited (*see* Appendix D of L–DEO's environmental analysis). There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (*e.g.,* startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (*i.e.,* mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (*see* Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are then noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question (*see* Appendix D L–DEO's environmental analysis). For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as we know, there are only two papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) that exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns [less than 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)] likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m in the former case and less than two m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the "cutoff frequency") at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a 'worst-case scenario' mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus (*see* Appendix D of L–DEO's environmental analysis).

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (*e.g.,* Chapman and Hawkins, 1969; Pearson *et al.,* 1992;

Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

There is general concern about potential adverse effects of seismic operations on fisheries, namely a potential reduction in the "catchability" of fish involved in fisheries. Although reduced catch rates have been observed in some marine fisheries during seismic testing, in a number of cases the findings are confounded by other sources of disturbance (Dalen and Raknes, 1985; Dalen and Knutsen, 1986; Lokkeborg, 1991; Skalski *et al.,* 1992; Engas *et al.,* 1996). In other airgun experiments, there was no change in catch per unit effort (CPUE) of fish when airgun pulses were emitted, particularly in the immediate vicinity of the seismic survey (Pickett *et al.,* 1994; La Bella *et al.,* 1996). For some species, reductions in catch may have resulted from a change in behavior of the fish, *e.g.,* a change in vertical or horizontal distribution, as reported in Slotte *et al.* (2004).

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001; *see* also Appendix E of L–DEO's environmental analysis).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is provided in Appendix E of L–DEO's environmental analysis.

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (i.e., changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (*e.g.,* squid in McCauley *et al.,* 2000a,b). In other cases, no behavioral impacts were noted (*e.g.,* crustaceans in Christian *et al.,* 2003, 2004; DFO 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating

grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

L–DEO has based the mitigation measures described herein, to be implemented for the proposed seismic survey, on the following:

(1) Protocols used during previous L–DEO seismic research cruises as approved by NMFS;

(2) previous IHA applications and IHAs approved and authorized by NMFS; and

(3) recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L–DEO and/or its designees has proposed to implement the following mitigation measures for marine mammals:

(1) Proposed exclusion zones;

(2) power-down procedures;

(3) shutdown procedures; and

(4) ramp-up procedures.

Proposed Exclusion Zones–L–DEO uses safety radii to designate exclusion zones and to estimate take (described in greater detail in Section IV and Appendix A of L–DEO's environmental analysis) for marine mammals. Table 1 shows the distances at which two sound levels (160– and 180–dB) are expected to be received from the 18-airgun subarray and a single airgun. The 180–dB level shut-down criterion is applicable to cetaceans, as specified by NMFS (2000); and L–DEO used these levels to establish the EZs. If the protected species visual observer (PSVO) detects marine mammal(s) within or about to enter the appropriate EZ, the *Langseth* crew will immediately power down the airgun subarrays, or perform a shut down if necessary (*see* Shut-down Procedures).

Power-down Procedures–A power-down involves decreasing the number of airguns in use such that the radius of the 180–dB zone is decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power down of the airgun subarray can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, L–DEO will operate one airgun. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when the *Langseth* suspends all airgun activity.

If the PSVO detects a marine mammal outside the EZ, but it is likely to enter the EZ, L–DEO will power down the airguns before the animal is within the EZ. Likewise, if a mammal is already within the EZ, when first detected L–DEO will power down the airguns immediately. During a power down of the airgun array, L–DEO will also operate the 40-in^3 airgun. If a marine mammal is detected within or near the smaller EZ around that single airgun (Table 1), L–DEO will shut down the airgun (*see* next section).

Following a power-down, L–DEO will not resume airgun activity until the marine mammal has cleared the safety zone. L–DEO will consider the animal to have cleared the EZ if

- a PSVO has visually observed the animal leave the EZ, or
- a PSVO has not sighted the animal within the EZ for 15 min for small odontocetes, or 30 min for mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

During airgun operations following a power-down (or shut-down) whose duration has exceeded the time limits specified previously, L–DEO will ramp-up the airgun array gradually (*see* Shut-down Procedures).

Shut-down Procedures—L–DEO will shut down the operating airgun(s) if a marine mammal is seen within or approaching the EZ for the single airgun. L–DEO will implement a shut-down:

(1) if an animal enters the EZ of the single airgun after L–DEO has initiated a power down, or

(2) if an animal is initially seen within the EZ of the single airgun when more than one airgun (typically the full airgun array) is operating.

L–DEO will not resume airgun activity until the marine mammal has cleared the EZ, or until the PSVO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as described in the preceding section.

Ramp-up Procedures—L–DEO will follow a ramp-up procedure when the airgun subarrays begin operating after a specified period without airgun operations or when a power down has exceeded that period. L–DEO proposes that, for the present cruise, this period would be approximately eight min. This period is based on the 180–dB radius for the 18-airgun subarray towed at a depth of seven m (23 ft) in relation to the minimum planned speed of the Langseth while shooting (8.5 km/h; 5.3 mph; 4.6 kts). L–DEO has used similar periods (8–10 min) during previous L–DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40-in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding six dB per five-minute period over a total duration of approximately 30 min. During ramp-up, the PSVOs will monitor the EZ, and if marine mammals are sighted, L–DEO will implement a power down or shut down as though the full airgun array were operational.

If the complete EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, L–DEO will not commence the ramp-up unless at least one airgun (40-in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped up from a complete shut down at night or in thick fog, because the outer part of the safety zone for that array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. L–DEO will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable EZs during the day or close to the vessel at night.

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse 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: (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 our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Monitoring

L–DEO proposes to sponsor marine mammal monitoring during the present project, in order to implement the proposed mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA. L–DEO's proposed Monitoring Plan is described below this section. L–DEO understands that this monitoring plan will be subject to review by NMFS, and that refinements may be required. 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. L–DEO is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-based Visual Monitoring

PSVOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. PSVOs will also watch for marine mammals near the seismic vessel for at least 30 min prior to the start of airgun operations after an extended shut down.

PSVOs will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSVO observations, the airguns will be powered down or 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 off Costa Rica, at least three PSVOs will be based aboard the *Langseth.* L–DEO will appoint the PSVOs with NMFS' concurrence. During all daytime periods, two PSVOs will be on duty from the observation tower to monitor and PSVOs will be on duty in shifts of duration no longer than four hours.

During mealtimes it is sometimes difficult to have two PSVOs on effort, but at least one PSVO will be on watch during bathroom breaks and mealtimes. Use of two simultaneous observers increases the effectiveness of detecting animals near the source vessel. However, during meal times, only one PSVO may be on duty.

Two PSVOs will also be on visual watch during all nighttime start-ups of the seismic airguns. A third PSVO will monitor the PAM equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two PSVOs on duty from the observation tower, and a third PSVO on PAM.

L–DEO will also instruct other crew to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, L–DEO will give the crew additional instruction regarding how to accomplish this task.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the observer will have a good view around the entire vessel. During daytime, the PSVOs will scan the area around the vessel systematically with reticle binoculars (e.g., 7 × 50 Fujinon), Big-eye binoculars (25 × 150), and with the naked eye. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars.

Passive Acoustic Monitoring

Passive Acoustic Monitoring (PAM) will complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range.

Besides the three PSVOs, an additional acoustic Protected Species Observer (PSO) with primary responsibility for PAM will also be aboard the vessel. L–DEO can use acoustical monitoring in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It will be monitored in real time so that the visual observers can be advised when cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (i.e., hydrophones) and software. The "wet end" of the system consists of a towed hydrophone array that is connected to the vessel by a cable. The lead in from the hydrophone array is approximately 400 m (1,312 ft) long, the active section of the array is approximately 56 m (184 ft) long, and the hydrophone array is typically towed at depths of less than 20 m (66 ft).

The deck cable is connected from the array to a computer in the laboratory where signal conditioning and processing takes place. The digitized signal is then sent to the main laboratory, where the acoustic PSO monitors the system.

Ideally, the acoustic PSO will monitor the towed hydrophones 24 h per day during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, PAM may not be possible if damage occurs to both the primary and back-up hydrophone the arrays during operations. The primary PAM streamer on the Langseth is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone. Every effort would be made to have a working PAM system during the cruise. In the unlikely event that all three of these systems were to fail, L–DEO would continue science acquisition with the visual-based observer program. The PAM system is a supplementary enhancement to the visual monitoring program. If weather conditions were to prevent the use of PAM then conditions would also likely prevent the use of the airgun array.

One acoustic PSO will monitor the acoustic detection system at any one

time, by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. Acoustic PSOs monitoring the acoustical data will be on shift for one to six hours at a time. Besides the PSVO, an additional acoustic PSO with primary responsibility for PAM will also be aboard the source vessel. All PSVOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected while visual observations are in progress, the acoustic PSO will contact the visual PSVO immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), and to allow a power down or shut down to be initiated, if required. The information regarding the call will be entered into a database. Data entry will include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

PSVO Data and Documentation

PSVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shut down of the airguns when a marine mammal is within or near the EZ.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations and power downs or shut downs will be recorded in a standardized format. Data will be entered into an electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shut down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

L–DEO will submit a report to NMFS and NSF within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals and turtles near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that could result in "takes" of marine mammals by harassment or in other ways.

L–DEO will report all injured or dead marine mammals (regardless of cause) to NMFS as soon as practicable. The report should include the species or description of the animal, the condition of the animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

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 proposed marine geophysical survey off Costa Rica. 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 decibels (dB) or cause temporary, short-term changes in behavior. There is no evidence that the planned activities could result in injury, serious injury or mortality within the specified geographic area for which L–DEO seeks the IHA. The required mitigation and monitoring measures will minimize any potential risk for injury or mortality.

The following sections describe L–DEO's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the proposed geophysical survey. The estimates are based on a consideration of the number of marine mammals that could be disturbed appreciably by operations with the 18-airgun subarray to be used during approximately 2,145 km (1,333 mi) of survey lines with an additional 365 km (227 mi) of turns.

L–DEO assumes that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES and SBP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the MBES and SBP given their characteristics (e.g., narrow downward-directed beam) and other considerations described previously. Such reactions are not considered to constitute "taking" (NMFS, 2001). Therefore, L–DEO provides no additional allowance for animals that could be affected by sound sources other than airguns.

Density data on the marine mammal species in the proposed survey area are available from extensive ship-based surveys for marine mammals in the ETP conducted by NMFS' Southwest Fisheries Science Center (SWFSC). L–DEO used densities from two sources: (1) The SWFSC's habitat models that predict density for 15 cetacean species in the ETP; and (2) densities from the surveys conducted during summer and fall 1986–1996, as summarized by Ferguson and Barlow (2001, 2003) for species sighted in SWFSC surveys whose sample sizes were too small to model density.

For the predictive models, the SWFSC developed habitat modeling as a method to estimate cetacean densities on a finer spatial scale compared to 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). The SWFSC incorporated the models into a web-based Geographic Information System (GIS) developed by Duke University's Department of Defense Strategic Environmental Research and Development Program (SERDP) team and L–DEO used the GIS to obtain mean and maximum densities for 11 cetacean species in the model in the proposed survey area.

For the second source, L–DEO used the densities calculated from Ferguson and Barlow (2003) for 5° × 5° blocks that include the proposed survey area (Block 138) and blocks adjacent to 138 that include coastal waters: Blocks 119, 137, 138, 139, 158, and 159. Those blocks included 18,385 km (11,423 mi) of survey effort in Beaufort sea states 0–5, and 3,899 square kilometers (km^2) (1,505 square miles (mi^2)) of survey effort in Beaufort sea states 0–2. L–DEO also obtained densities for an additional seven species that were sighted in one or more of those blocks.

For two endangered species for which there are only unconfirmed sightings in the region, the sei and fin whales, L–DEO assigned low density values (equal to the density of the species with the lowest calculated density). The false killer whale has been sighted near the survey area but not in the seven blocks of Ferguson and Barlow (2003), so it was also assigned the same low density value.

Oceanographic conditions, including occasional El Niño and La Niña events, influence the distribution and numbers of marine mammals present in the ETP, resulting in considerable year-to-year variation in the distribution and abundance of many marine mammal species (*e.g.,* Escorza-Treviño, 2009). Thus, for some species the densities derived from recent surveys may not be representative of the densities that will be encountered during the proposed seismic survey. Table 2 includes L–DEO's estimates of the "best" and "maximum" densities of marine mammals in the ETP near the proposed survey area. For the modeled species, best estimates and maximum estimates of density in the survey area are the mean and maximum densities given in Read *et al.* (2009). For the other species, best estimates of density are the effort-weighted mean densities in the seven 5° × 5° blocks from Ferguson and Barlow (2001, 2003), and maximum estimates of density are the highest densities in any of the blocks.

L–DEO's estimates of exposures to various sound levels assume that the proposed surveys will be completed. 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. L–DEO has included an additional 25% of line transects to account for mission uncertainty and follow a precautionary approach. Furthermore, any marine mammal sightings within or near the designated exclusion zones will result in the power down or 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 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.

L–DEO estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re: 1 μPa on one or more occasions by considering the total marine area that would be within the 160-dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160-dB radius around the operating airguns, including areas of overlap. In the proposed survey, the seismic lines are parallel and in close proximity; thus individuals could be exposed on two or more occasions. The area including overlap is 31.9 times the area excluding overlap. Thus a marine mammal that stayed in the survey area during the entire survey could be exposed 32 times (14 times), on average. Given the pattern of the seismic lines, the interval between exposures of a stationary animal would be approximately 18 hr. Moreover, it is unlikely that a particular animal would stay in the area during the entire survey. The number of different individuals potentially exposed to received levels greater than or equal to 160 re: 1 μPa was calculated by multiplying:

(1) The expected species density, either "mean" (*i.e.,* best estimate) or "maximum", times

(2) the anticipated area to be ensonified to that level during airgun operations excluding overlap, which is approximately 3,225 km^2 (2,003 mi^2).

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo GIS, using the GIS to identify the relevant areas by "drawing" the applicable 160-dB buffer (*see* Table 1) around each seismic line, and then calculating the total area within the buffers. Areas of overlap were included only once when estimating the number of individuals exposed. Applying this approach, approximately 3,225 km^2 (1,245 mi^2) would be within the 160-dB isopleth on one or more occasions during the survey. Because this approach does not allow for turnover in the mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. However, the approach assumes that no cetaceans will move away from or toward the trackline as the *Langseth* approaches in response to increasing sound levels prior to the time the levels reach 160 dB, which will result in overestimates for those species known to avoid seismic vessels.

Table 3 shows the best and maximum estimates of the number individual cetaceans that potentially could be exposed to greater than or equal to 160 dB re: 1 μPa during the seismic survey if no animals moved away from the survey vessel. The requested take authorization, given in the far right column of Table 3, is based on the maximum estimates rather than the best estimates of the numbers of individuals exposed, because of uncertainties associated with applying density data from one area to another.

The total 'maximum estimate' of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re: 1 μPa during the proposed survey is 7,078 (*see* Table 3 below this section). That total includes 38 baleen whales, four of which are endangered: 18 humpback whales or 1.2

percent of the regional population; one sei whale, one fin whale (less than 0.01 percent); and eight blue whales (0.6 percent). In addition, 40 sperm whales (also listed as endangered under the ESA) or 0.15 percent of the regional population could be exposed during the survey, and 19 beaked whales. Most (97 percent) of the cetaceans that could be potentially exposed are delphinids (*e.g.,* short-beaked common, striped, pantropical spotted, striped and spinner dolphins) with maximum estimates ranging from two to 3,077 exposed to levels greater than or equal to 160 dB re: 1 μPa.

TABLE 3—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO DIFFERENT SOUND LEVELS DURING L–DEO'S PROPOSED SEISMIC SURVEY IN THE ETP DURING APRIL–MAY, 2011.

Species	Estimated number of individuals exposed to sound levels ≥ 160 dB re: 1 μPa (Best [1])	Estimated number of individuals exposed to sound levels ≥ 160 dB re: 1 μPa (Maximum [1])	Requested take authorization	Approximate percent of regional population [2] (Max)
Humpback whale	1	18	18	1.29
Bryde's whale	4	10	10	0.08
Sei whale	0	0	[3] 1	NA
Fin whale	0	0	[3] 1	0.04
Blue whale	1	8	8	0.57
Sperm whale	17	40	40	0.15
Pygmy/Dwarf sperm whale	0	0	0	0.00
Cuvier's beaked whale	10	15	15	0.08
Mesoplodon spp.	1	4	4	0.01
Rough-toothed dolphin	17	45	45	0.04
Bottlenose dolphin	69	366	366	0.11
Pantropical spotted dolphin	310	954	954	0.06
Spinner dolphin	236	1,468	1468	0.08
Striped dolphin	273	622	622	0.06
Short-beaked common dolphin	447	3,077	3077	0.10
Risso's dolphin	51	91	91	0.08
Melon-headed whale	45	233	[3] 258	0.57
Pygmy killer whale	5	9	[3] 30	0.08
False killer whale	0	0	0	0.00
Killer whale	1	2	[3] 5	0.06
Short-finned pilot whale	48	114	114	0.02

[1] Best and maximum estimates are based on densities from Table 3 and ensonified areas (including 25% contingency) of 4030.63 for 160 dB and 1605.71 km^2 for 170 dB (identified in parentheses). Takes are not anticipated for the minke whale and Fraser's dolphin.
[2] Regional population size estimates are from Table 2; NA means not available.
[3] Requested Take Authorization increased to mean group size in the ETP for baleen whales (Jackson et al. 2008) and delphinids (Ferguson et al. 2006).

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:

(1) The number of anticipated mortalities;

(2) the number and nature of anticipated injuries;

(3) the number, nature, and intensity, and duration of Level B harassment; and

(4) the context in which the takes occur.

As mentioned previously, NMFS estimates that 19 species of marine mammals could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, less than two percent) relative to the population size.

No injuries, serious injuries or mortalities are anticipated to occur as a result of the L–DEO's planned marine geophysical survey, and none are authorized. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the survey activities. No mortality or injury is expected to occur, and due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a marine geophysical survey in the ETP off Costa Rica, April through May, 2011, 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.

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 preliminary 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 preliminarily finds that L–DEO's planned research activities, will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine geophysical survey will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, five are listed as endangered under the ESA, including the humpback, sei, fin, blue, and sperm whales. Under Section 7 of the ESA, NSF has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this proposed seismic survey. NMFS' Office of Protected Resources, Permits, Conservation and Education Division, has initiated formal consultation under section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, if appropriate, authorizing incidental take. NMFS will conclude formal section 7 consultation prior to making a determination on whether or not to issue the IHA. If the IHA is issued, L–DEO, in addition to the mitigation and monitoring requirements included in the IHA, will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion issued to both NSF and NMFS' Office of Protected Resources.

National Environmental Policy Act (NEPA)

To meet NMFS' National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements for the issuance of an IHA to L–DEO, NMFS will prepare an Environmental Assessment (EA) titled "Issuance of an Incidental Harassment Authorization to the Lamont-Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the Pacific Ocean off Costa Rica, April–May, 2011." This EA will incorporate the NSF's Environmental Analysis Pursuant To Executive Order 12114 (NSF, 2010) and an associated report (Report) prepared by LGL Limited Environmental Research Associates (LGL) for NSF, titled, "Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the Pacific Ocean off Costa Rica (LGL, 2010) (draft)," by reference pursuant to 40 CFR 1502.21 and NOAA Administrative Order (NAO) 216–6 § 5.09(d). Prior to making a final decision on the IHA application, NMFS will make a decision of whether or not to issue a Finding of No Significant Impact (FONSI).

Preliminary Determinations

NMFS has preliminarily determined that the impact of conducting the specific seismic survey activities described in this notice and the IHA request in the specific geographic region within the ETP off Costa Rica may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, NMFS has preliminarily determined that this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this proposed action.

For reasons stated previously in this document, the specified activities associated with the proposed survey are not likely to cause TTS, PTS or other non-auditory injury, serious injury, or death to affected marine mammals 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 fact that cetaceans would have to be closer than 450 m (1,476 ft) in deep water when the 18-airgun subarray is in use at a 7 m (23 ft) tow depth from the vessel to be exposed to levels of sound believed to have even a minimal chance of causing PTS;

(3) The fact that marine mammals would have to be closer than 3,800 m (2.4 mi) in deep water when the full array is in use at a 7 m (23 ft) tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance at causing TTS; and

(4) The likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel.

As a result, no take by injury, serious injury, or death is presently anticipated nor would it be authorized were NMFS to issue a final IHA, and the potential for temporary or permanent hearing impairment is very low and would likely be avoided through the incorporation of the proposed monitoring and mitigation measures.

While the number of marine mammals potentially incidentally harassed would depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential Level B incidental harassment takings (*see* Table 3 above this section) should a final IHA be issued is estimated to be small, less than two percent of any of the estimated population sizes based on the data disclosed in Table 2 of this notice. NMFS has preliminarily determined that impacts to affected species or stocks of marine mammals have been mitigated to the lowest level practicable through incorporation of the monitoring and mitigation measures mentioned previously in this document.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to L–DEO for conducting a marine geophysical survey in the ETP off Costa Rica, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS' preliminary determination of issuing an IHA (*see* **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register,** NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 31, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–2538 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA178

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Test Flight Activities From Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and

implementing regulations, notification is hereby given that a letter of authorization (LOA) has been issued to the 30th Space Wing, U.S. Air Force (USAF), to take four species of seals and sea lions incidental to rocket and missile launches on Vandenberg Air Force Base (VAFB), California, a military readiness activity.

DATES: Effective February 7, 2011, through February 6, 2012.

ADDRESSES: The LOA and supporting documentation are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910, by telephoning one of the contacts listed here (**FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289 ext. 156, or Monica DeAngelis, NMFS, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS 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 regulations are issued. The National Defense Authorization Act (Pub. L. 108–136) removed the "small numbers" and "specified geographical region" limitations for a "military readiness activity." Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of Pacific harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), and northern fur seals (*Callorhinus ursinus*), by harassment, incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at VAFB, were issued on February 6, 2009 (74 FR 6236), and remain in effect until February 6, 2014. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during missile and rocket launches at VAFB.

This LOA is effective from February 7, 2011, through February 6, 2012, and authorizes the incidental take, by Level B harassment only, of the four marine mammal species listed here that may result from the launching of up to 30 space and missile vehicles and up to 20 rockets annually from VAFB, as well as from aircraft and helicopter operations. Harbor seals haul-out on several sites on VAFB, and harbor seals, California sea lions, elephant seals, and northern fur seals are found on various haul-out sites and rookeries on San Miguel Island (SMI). Currently, six space launch vehicle programs use VAFB to launch satellites into polar orbit: Delta II; Taurus; Atlas V; Delta IV; Falcon; and Minotaur. Also a variety of small missiles, several types of interceptor and target vehicles, and fixed-wing aircrafts are launched from VAFB.

The activities under these regulations create two types of noise: continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles, and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from VAFB. The operation of launch vehicle engines produces significant sound levels. The noise generated by VAFB activities will result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from space launch vehicle and missile launches and aircraft and helicopter operations may cause the animals to move towards or enter the water. Take of pinnipeds will be minimized through implementation of the following mitigation measures: (1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries; (2) missile and rocket launches must, whenever possible, not be conducted during the harbor seal pupping season of March through June; (3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during the primary pinniped pupping seasons of March through June; and (4) monitoring methods will be reviewed by NMFS if post-launch surveys determine that an injurious or lethal take of a marine mammal occurred. VAFB will also use monitoring surveys, audio-recording equipment, and time-lapse video to monitor the animals before, during, and after rocket launches, and to measure sound levels generated by the launches. Reports will be submitted to NMFS after each LOA expires, and a final comprehensive report, which will summarize all previous reports and assess cumulative impacts, will be submitted before the rule expires.

Summary of Request

On December 15, 2010, NMFS received a request for a LOA renewal pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals, by harassment, incidental to space vehicle and test flight activities at VAFB.

Summary of Activity and Monitoring Under the 2010 LOA

In compliance with the 2010 LOA, VAFB submitted an annual report on the activities at VAFB, covering the period of December 1, 2009, through November 30, 2010. In addition to launches that occurred between February 7 and November 30, 2010, the report also contained information on a December 14, 2009, launch that was covered under the 2009 LOA, as it was not described in any previous reports. A summary of the 2010 report (MMCG and SAIC, 2010) follows.

During the reporting period covered by the 2010 report, there were a total of 10 launches from VAFB: Five space vehicle launches and five missile launches. The dates, locations, and monitoring required for the launches are summarized in Tables 1 and 2 next.

TABLE 1—SUMMARY OF SPACE VEHICLE LAUNCHES FROM VAFB AND MONITORING CONDUCTED IN 2010

Vehicle	Date	Launch site	Monitoring conducted
Delta II	14–Dec–09	SLC–2W	No.
Minotaur IV HTV–2A	22–Apr–10	SLC–8	VAFB.
Atlas V NRO L–41	17–Sept–10	SLC–3E	No.
Minotaur IV	25–Sept–10	SLC–8	No.
Delta II	5–Nov–10	SLC–2W	No.

TABLE 2—SUMMARY OF ALL OTHER LAUNCHES FROM VAFB AND MONITORING CONDUCTED IN 2010

Launch vehicle	Date (2010)	Launch site	Monitored
Minuteman III	22–Jan	LF–23	No.
MDA	6–Jun	LF–24	Yes.
Minuteman III	16–Jun	LF–10	Yes.
Minuteman III	30–Jun	LF–04	Yes.
Minuteman III	17–Sept	LF–09	No.

All of the space vehicle launches, except for the April 22, 2010, launch of the Minotaur IV occurred outside of the harbor seal pupping season. Therefore, monitoring on VAFB was only required for that one space vehicle launch. Additionally, acoustic modeling indicated that no sonic boom of greater than 1 lb/ft^2 (psf) would occur at SMI as a result of the launch; therefore, no biological or acoustical monitoring was required or conducted at SMI. The fourth launch was not modeled or monitored because the vehicle's westerly trajectory would carry it north of the northern Channel Islands.

None of the five missile launches required monitoring at SMI because the westerly trajectory of these launches. Similarly, the January 22 and September 10, 2010, Minuteman III launches occurred outside of the VAFB harbor seal pupping season; therefore, no biological or acoustical monitoring was required or performed on VAFB for these two launches.

During the reporting period, 977 fixed-wing aircraft and helicopter operations were conducted from the VAFB airfield. Most of these consisted of training exercises involving "touch and goes" (West, 2010). Helicopter operations were greatly reduced from previous years because the helicopter squadron at VAFB was relocated in 2007 to other Air Force bases in the U.S. About two helicopter flights a week are now flown over VAFB. Three helicopter search and rescue operations were flown during the reporting period. There were no observed impacts to pinnipeds from these activities.

Minotaur IV Launch (April 22, 2010)

Because this launch occurred during the harbor seal pupping season on VAFB, biological monitoring at VAFB was required. However, no sonic boom greater than 1 psf was predicted over SMI, so no monitoring was required at SMI. Counts of northern harbor seals done between April 17 and 21, 2010, recorded from 20 to 160 adult seals, with the daily maximum ranging between 111 and 160 animals. Pup counts ranged from 12 to 48 seals, with the daily maximum ranging between 31 and 48 pups. Post-launch counts fell within the pre-launch range. Counts of harbor seals done within 48 hours post-launch recorded between 115 to 167 seals, with the daily maximum ranging between 165 and 167. Post-launch pup counts ranged between 17 and 39, with daily maximums of 38 to 39 pups. In addition to the harbor seals, two northern elephant seals were observed at separate locations (one of which appeared emaciated), and three California sea lions (either juveniles or adult females) were observed.

Time-lapse video monitoring was conducted of this launch. Immediately prior to the launch, the video showed the presence of 15 adult harbor seals and three pups at the First Ledge haul-out site on south VAFB. Within 18 seconds of the launch, all but two adults had flushed into the water. The two remaining adult seals moved to within 3 m (10 ft) of the water but remained on the ledge. Within 10 minutes after the launch, one adult had hauled back out on the ledge followed by a few more a little later. About an hour and a half post-launch, the entire ledge was submerged by waves, and all the animals had returned to the water (ManTech SRS, 2010).

Six dead harbor seal pups were recorded during the pre-launch counts. One of them was observed to be "torn open." This was an unusually high number of pup mortalities, as previous counts revealed a high of four dead pups in 2004. One dead pup was noted after the launch. It had a deep, 5-cm (2-in) gash on its side. The USAF monitors were unable to determine if this was one of the six pups observed prior to the launch or a previously uncounted animal. None of the dead pups were recovered for two reasons. First, attempting to recover the carcasses would have disturbed other animals, possibly resulting in the abandonment of pups. Second, the haul-out site is along a stretch of coast that lies beneath steep, unstable bluffs subject to sudden collapses.

On follow-up counts made 2 weeks post-launch, between 67 and 161 harbor seals were counted along with 22 to 34 pups. One adult was observed to have a deep wound, possibly inflicted by a shark. In summary, based on post-launch analysis, there was no evidence of injury, mortality, or abnormal behavior in any of the monitored pinnipeds on VAFB as a result of this launch.

MDA Launch (June 6, 2010)

Because this launch occurred during the harbor seal pupping season on VAFB, biological monitoring at VAFB was required. However, its westerly trajectory did not require any sonic boom modeling or monitoring at SMI. Pre-launch surveys conducted from June 3–5, 2010, recorded between 0 and 13 harbor seals. Post-launch surveys conducted within 48 hours after the launch recorded between 0 and 11 harbor seals. During counts 2 weeks post-launch, between zero and four harbor seals were seen. No pups were observed, which was not unexpected, as only one pup was observed on April 21, 2010. No pups were reported in surveys performed after the June launches during the period from July through November (MMCG and SAIC, 2010).

Time-lapse video monitoring was conducted of this launch. Some harbor seals and sea otters were observed on the rocks between 1.5 and 4 hours prior to the launch. However, nearly 30 minutes before the launch, the video did not reveal the presence of any marine mammals because the incoming tide and surf was washing over the rocks. None were present at the time of the launch. Nearly 1.5 hours post-launch, the rocks were still abandoned.

No northern elephant seals were observed. On two occasions, individual California sea lions hauled out on the rocks and nearby beach. On another occasion, one was noted swimming immediately offshore. In summary, there was no evidence of injury, mortality, or abnormal behavior in any of the monitored pinnipeds at VAFB as a result of the MDA launch.

Minuteman III Launch (June 16, 2010)

Because this launch occurred during the harbor seal pupping season on VAFB, biological monitoring at VAFB was required. However, its westerly trajectory did not require any sonic boom modeling or monitoring at SMI. Pre-launch monitoring was conducted from Jun 13–15, 2010. Zero to five harbor seals were hauled out at Lion's Head during these counts. Zero to one seal was hauled out the day of the launch, and the following day, up to three harbor seals were hauled out. No harbor seal pups were seen. Only one sea lion was noted swimming a short distance offshore. No northern elephant seals were sighted. Since this launch occurred during darkness, no time-lapse video monitoring was conducted. In summary, there was no evidence of injury, mortality, or abnormal behavior of the monitored pinnipeds on VAFB as a result of this launch.

Minuteman III Launch (June 30, 2010)

Because this launch occurred during the harbor seal pupping season on VAFB, biological monitoring at VAFB was required. However, its westerly trajectory did not require any sonic boom modeling or monitoring at SMI. Pre-launch monitoring was conducted from June 27–29, 2010. Zero to four harbor seals were counted during pre-launch surveys. On the day of the launch, the count was zero to three animals, as it was during the post-launch monitoring. No harbor seals were sighted during the two-week follow-up count because the rocks were awash. No harbor seal pups were seen during any of these surveys. No California sea lions or elephant seals were seen during these surveys. Since this launch occurred during darkness, no time-lapse video monitoring was conducted. In summary, there was no evidence of injury, mortality, or abnormal behavior in any monitored harbor seals on VAFB resulting from this launch.

Authorization

The USAF complied with the requirements of the 2010 LOA, and NMFS has determined that the marine mammal take resulting from the 2010 launches is within that analyzed in and anticipated by the associated regulations. Accordingly, NMFS has issued a LOA to the 30th Space Wing, USAF, authorizing the take by harassment of marine mammals incidental to space vehicle and test flight activities at VAFB. Issuance of this LOA is based on findings described in the preamble to the final rule (74 FR 6236, February 6, 2009) and supported by information contained in VAFB's 2010 annual report that the activities described under this LOA will have a negligible impact on marine mammal stocks. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this action.

Dated: January 31, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–2534 Filed 2–3–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be provided by the nonprofit agency employing persons who are blind or have other severe disabilities and to delete services previously provided by such agencies.

Comments Must be Received on or Before: 3/7/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from nonprofit agency employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the service to the Government.

2. If approved, the action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to the Procurement List for production by the nonprofit agency listed:

Service

Service Type/Location: Custodial Service, Donald J. Pease Federal Building, 143 West Liberty Street, Medina, OH.

NPA: VGS, Inc., Cleveland, OH.

Contracting Activity: GSA, Public Buildings Service, Property Management Division, Independence, OH.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting,

recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Locations: Janitorial/Custodial, Federal Service Center, 5600 Rickenbacker Road, Bell, CA.
NPA: Braswell Rehabilitation Institute for Development of Growth & Educational Services, Inc., Pomona, CA.
Contracting Activity: GSA, Public Buildings Service, Office of Property Management, San Francisco, CA.

Service Type/Location: Janitorial/Custodial, Social Security Administration Building, 230–244 Breed Street, Los Angeles, CA.
NPA: Braswell Rehabilitation Institute for Development of Growth & Educational Services, Inc., Pomona, CA.
Contracting Activity: General Services Administration, Washington, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–2465 Filed 2–3–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services from the Procurement List previously provided by such agencies.

DATES: *Effective Date*: 3/7/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 9/24/2010 (75 FR 58367); 10/22/2010 (75 FR 65305); and 12/10/2010 (75 FR 76961–76962), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products:

Strap Webbing

NSN: 5340–01–043–5409.
NSN: 5340–01–043–8475.
NPA: Mississippi Industries for the Blind, Jackson, MS.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.
COVERAGE: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Wind Jacket—Layer IV, ECWCS Gen III, Universal Camouflage

NSN: 8415–01–546–8657—size X–Small-Short.
NSN: 8415–01–546–8667—size X–Small-Regular.
NSN: 8415–01–546–8745—size Small-Short.
NSN: 8415–01–538–6057—size Small-Regular.
NSN: 8415–01–546–8758—size Small-Long.
NSN: 8415–01–538–6067—size Medium-Regular.
NSN: 8415–01–546–8809—size Medium-Long.
NSN: 8415–01–538–6074—size Large-Regular.
NSN: 8415–01–538–6080—size Large-Long.
NSN: 8415–01–538–6681—size X–Large-Regular.
NSN: 8415–01–538–6683—size X–Large-Long.
NSN: 8415–01–546–8820—size X–Large-XLong.
NSN: 8415–01–546–8828—size XX–Large-Regular.
NSN: 8415–01–546–8829—size XX–Large-Long.
NSN: 8415–01–546–8834—size XX–Large-XLong.
NPA: Blind Industries & Services of Maryland, Baltimore, MD.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.
COVERAGE: C-List for 50% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Services:

Service Type/Locations: Parts Machining DLA-wide; 2601 South Plum St., Seattle, WA; 5316 West State Street, Milwaukee, WI; 515 N. 51st Ave., #130, Phoenix, AZ.
NPAs: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA; Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, WI; Arizona Industries for the Blind, Phoenix, AZ.
Contracting Activity: Defense Logistics Agency, Philadelphia, PA.

Service Type/Location: Grounds Maintenance Service, Redstone Arsenal, 5298 Redstone Arsenal, Huntsville, AL.
NPAs: Employment Source, Inc., Fayetteville, NC; Huntsville Rehabilitation Foundation, Huntsville, AL.
Contracting Activity: Dept of the Army, XR W6BB ACA Redstone Arsenal, Redstone Arsenal, AL.

Deletions

On 12/10/2010 (75 FR 76961–76962), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services:

Service Type/Location: Audio/Visual Duplication Service, Federal Emergency Management Agency: National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD.
NPA: ForSight Vision, York, PA.
Contracting Activity: Federal Emergency Management Agency, NETC Acquisition Section, Washington, DC.

Service Type/Location: Custodial Service, Mauna Loa Observatory: Hilo Office, 1437 Kilauea Ave., #102, Hilo, HI.
NPA: The ARC of Hilo, Hilo, HI.
Contracting Activity: Department of Commerce, Washington, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–2466 Filed 2–3–11; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, February 9, 2011; 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: February 1, 2011.

Todd A Stevenson,

Secretary.

[FR Doc. 2011–2586 Filed 2–2–11; 11:15 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 11–C0003]

Raynor Marketing, Ltd., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Raynor Marketing, Ltd., containing a civil penalty of $390,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 19, 2011.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11–C0003, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Kelly M. Moore, Trial Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7447.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 31, 2011.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Raynor Marketing, Ltd. and the staff ("Staff") of the United States Consumer Product Safety Commission ("Commission") hereby enter into this Settlement Agreement ("Agreement") under the Consumer Product Safety Act ("CPSA"). The Agreement and the incorporated attached Order resolve the Staff's allegations set forth below.

The Parties

2. The Staff is the staff of the Consumer Product Safety Commission, an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the CPSA, 15 U.S.C. 2051–2089.

3. Raynor Marketing, Ltd. ("Raynor") is a corporation organized and existing under the laws of the State of New York, with its principal corporate office located in West Hempstead, New York.

Staff Allegations

4. Between May 2006 and March 2009, Raynor imported and distributed approximately one hundred fifty thousand (150,000) of the subject office chairs (the "Chairs") marketed under the brand names "Quantum Realspace PRO™ 9000 Series Mid-Back Multifunction Mesh Chair" and "Multifunction Mesh Chair with Headrest," which were sold through Office Depot locations nationwide and on the Internet at *http://www.OfficeDepot.com* for between $300.00 and $350.00.

5. The Chairs are "consumer products" and, at all times relevant hereto, Raynor was a "manufacturer" of these consumer products, which were "distributed in commerce," as those terms are defined or used in sections 3(a)(5), (8) and (11) of the CPSA, 15 U.S.C. § 2052(a)(5), (8) and (11).

6. The Chairs are defective because the bolts attaching the seatback to the base can loosen and detach, posing a fall and injury hazard to consumers.

7. Raynor received its first report of an incident involving a broken Chair in December of 2007.

8. By August of 2008, Raynor knew of approximately sixteen (16) reports of incidents involving bolts in the Chairs loosening and/or detaching, causing the seatback to come apart from the base. In at least four (4) of those incidents, the broken Chairs caused injury to consumers.

9. Despite being aware of the information set forth in Paragraphs six through eight, Raynor did not report to the Commission until April of 2009. By that time, Raynor was aware of at least twenty-eight (28) reports of incidents involving Chairs with bolt failures, which caused substantial physical injuries to at least eight (8) consumers. The Chairs were recalled in October of 2009.

10. Although Raynor had obtained sufficient information to reasonably support the conclusion that the Chairs contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, Raynor failed to immediately inform the Commission of such defect or risk as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). In failing to do so, Raynor knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4) as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

11. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Raynor is subject to civil penalties for its failure to report as required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Response of Raynor Marketing, Ltd.

12. Raynor denies the allegations of the Staff that the Chairs contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death, and denies that it violated the reporting requirements of Section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Agreement of the Parties

13. Under the CPSA, the Commission has jurisdiction over this matter and over Raynor.

14. In settlement of the Staff's allegations, Raynor shall pay a civil penalty in the amount of three hundred ninety thousand dollars ($390,000.00) within twenty (20) calendar days of receiving service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury.

15. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Raynor or a determination by the Commission that Raynor violated the CPSA's reporting requirements.

16. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

17. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Raynor knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission as to whether Raynor failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

18. The Commission may publicize the terms of the Agreement and the Order.

19. The Agreement and the Order shall apply to and be binding upon Raynor and each of its successors and/or assigns.

20. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject Raynor and each of its successors and assigns to appropriate legal action.

21. The Agreement may be used in interpreting the Order. Understandings, agreements, representations or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification or alteration is sought to be enforced.

22. If any provision of the Agreement and the Order is held to be illegal, invalid or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Raynor agree that severing the provision materially affects the purpose of the Agreement and Order.

Raynor Marketing, Ltd.

Dated: December 16, 2010

By: _____

Norman A. Lampert,
Chief Executive Officer,
Raynor Marketing, Ltd.,
525 Hempstead Turnpike,
West Hempstead, NY 11552.

Dated: December 20, 2010

By: _____

James E. Magee, Esq.,
The Magee Law Firm, PLLC,
6845 Elm Street, Suite 205,
McLean, VA 22101.

Counsel for Raynor Marketing, Ltd.

U.S. Consumer Product Safety Commission Staff,
Cheryl A. Falvey,
General Counsel.

Dated: 1/28/2011

By: _____

Kelly M. Moore,
Trial Attorney,
Division of Compliance,
Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between Raynor Marketing, Ltd. ("Raynor"), and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Raynor, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered that the Settlement agreement be, and hereby is, accepted; and it is

Further Ordered that Raynor shall pay a civil penalty in the amount of three hundred ninety thousand dollars ($390,000.00) within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made by check payable to the order of the U.S. Treasury. Upon the failure of Raynor to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Raynor at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 28th day of January, 2011.

By order of the Commission:

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–2511 Filed 2–3–11; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program

helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning AmeriCorps Application Instructions: State Commissions; State and National Competitive; Professional Corps; Indian Tribes; States and Territories without Commissions; and State and National Planning. Applicants will respond to the questions included in this ICR in order to apply for funding through these grant competitions.

Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 5, 2011.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service; Attention Amy Borgstrom, Associate Director for Policy, Room 9515; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) Electronically through the Corporation's e-mail address system: *aborgstrom@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930, or by e-mail at *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Background

These application instructions will be used by applicants for funding through AmeriCorps State and National grant competitions.

Current Action: The Corporation seeks to renew and revise the current AmeriCorps State and National Application Instructions. The Application Instructions are being revised for increased clarity and to align with provisions of the Serve America Act. The Application Instructions will be used in the same manner as the existing Application Instructions. The Corporation also seeks to continue using the current Application Instructions until the revised Application Instructions are approved by OMB. The current ICRs are due to expire on May 31, 2012.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application Instructions: State Commissions; State and National Competitive; Professional Corps; Indian Tribes; States and Territories without Commissions; and State and National Planning.

OMB Number: 3045–0047.

Agency Number: None.

Affected Public: Nonprofit organizations, State, Local and Tribal.

Total Respondents: 654.

Frequency: Annually.

Average Time Per Response: 24 hours.

Estimated Total Burden Hours: 15,696 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 28, 2011.

Lois Nembhard,

Deputy Director, AmeriCorps State and National.

[FR Doc. 2011–2439 Filed 2–3–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Programmatic Environmental Impact Statement (PEIS) for the Growth, Realignment, and Stationing of Army Aviation Assets

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the Final PEIS for the proposed growth, realignment, and stationing of new and existing Army aviation assets. The proposed action includes the consolidation and reorganization of existing aviation units, and the potential establishment of one or more Combat Aviation Brigades (CABs). The proposed action will increase the availability of helicopter assets to meet current and future national security requirements, and will allow the Army better to organize existing aviation assets to promote more effective training and force management. The Final PEIS evaluates the environmental impacts associated with the proposed action, which includes the stationing of aviation units, the construction and renovation of garrison facilities, and additional training activities needed to support the readiness of aviation units. In addition, the Final PEIS addresses comments received on the Draft PEIS. Land acquisition is not being considered as part of this action.

The Final PEIS considers the following alternatives: Alternative 1—Realign and Station Existing Aviation Elements of Up to a Full CAB or Activate and Station a New CAB at Fort Carson Colorado (CO). Under this alternative, the Army will consolidate existing aviation units not currently assigned to a CAB into a standard CAB structure at Fort Carson or activate a new CAB at Fort Carson. As part of this alternative, aviation units will conduct training on existing land at Pinon Canyon Maneuver Site (PCMS), CO, in order to maintain training proficiency and support integrated training with ground units. Land acquisition is not being considered as part of this action. Alternative 2—Realign and Station Existing Aviation Elements of Up to a Full CAB or Grow, Station, and Activate

a CAB at Joint Base Lewis-McChord (JBLM) Washington (WA). Under this alternative, the Army either will consolidate existing aviation units not currently assigned to a CAB into a standard CAB structure at JBLM or activate a new CAB at JBLM. As part of this alternative, aviation units will conduct training on existing training land at Yakima Training Center (YTC), WA, in order to maintain training proficiency and support integrated training with ground units. Land acquisition is not being considered as part of this action. Alternative 3 (Preferred)—Implement Alternatives 1 and 2. Under this alternative, the consolidated units forming a CAB would be stationed at one installation, and the new CAB would be activated and stationed at the other installation. Fort Carson and JBLM would each gain up to one CAB. As part of this alternative, aviation units would conduct training on existing training land at the installations' training maneuver areas (PCMS for Fort Carson and YTC for JBLM) in order to maintain training proficiency and support integrated training with ground units. Land acquisition is not being considered as part of this action. Alternative 4—No Action Alternative. Under this alternative, the Army would retain its aviation force structure at its current levels, configurations, and locations.

Aviation units continue to be one of the Army's most stressed forces currently on 12-month deployments after every one year at home. The Army's goal is to give active-duty Soldiers two years at home for every year they're deployed. The completion of these stationing actions will provide sufficient aviation assets to allow Soldiers more time at home between deployments. Fort Carson and JBLM are the only stationing alternatives that meet all of the Army's stationing requirements for new CAB stationing. These locations have existing runways and airfields, provide adequate maneuver and airspace for CAB operations, and are equipped with existing training ranges that can support CAB training. Most importantly, Fort Carson and JBLM are the only major installations that have three or more Brigade Combat Teams but no CAB dedicated to provide aviation support for training. The proposed action would allow the Army to maximize integrated air-ground training. Land acquisition is not being considered as part of this action.

DATES: The waiting period for the Final PEIS will end 30 days after publication of a Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain a copy of the Final PEIS contact: Public Affairs Office, U.S. Army Environmental Command, *Attn:* IMPA–AE, 1835 Army Boulevard (BSMT), Fort Sam Houston, TX 78234–2686.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office at (210) 221–0882; fax (410) 436–1693; or e-mail at *APGR-USAECNEPA@conus.army.mil.*

SUPPLEMENTARY INFORMATION: A CAB consists of approximately 120 helicopters, 600 wheeled vehicles, and 2,700 Soldiers. The CAB is organized into five battalions and a headquarters unit. CAB units include combat, reconnaissance, and logistics support aircraft.

The Final PEIS assesses, considers, and compares the direct, indirect, and cumulative environmental effects of proposed CAB growth and realignment for each alternative. The primary environmental issues evaluated include impacts to air quality, soil, airspace, cultural resources, natural resources, and noise. In addition, the Army addresses comments received from the public and other organizations in response to the November 5, 2010 publication of the Draft PEIS.

As part of the Army's preferred alternative, the Army is considering the realignment and consolidation of aviation elements from active component forces not currently in a modular configuration into a CAB at JBLM, WA. In addition, the Army would establish a new CAB under this alternative at Fort Carson, CO. As part of this alternative, Fort Carson would gain one new CAB consisting of up to 2,700 new Soldiers and 120 helicopters. JBLM would receive most of the realigned units required to complete a CAB to complement aviation units already stationed there. The Army is considering a reduction in the number of Soldiers to be stationed at JBLM from a full CAB equivalent of Soldiers and equipment to approximately 1,400 new Soldiers and 44 helicopters. Units comprised of these Soldiers and equipment would provide a CAB training capability and complement Active Army aviation units already stationed at JBLM. A final decision on stationing will be included in the Record of Decision (ROD) for this proposal.

Environmental impacts associated with the implementation of the proposed action include significant impacts to: Transportation on the Interstate 5 corridor near JBLM, fish and water quality in Puget Sound, and noise impacts to sensitive receptors. There are potentially significant impacts to biological resources at YTC from increased potential for wildfire and habitat degradation associated with aviation training. Impacts will also include significant but mitigable impacts to soils at Fort Carson, PCMS, and YTC as well as significant but mitigable impacts to water resources at YTC. At PCMS, cumulative impacts to soils are predicted to be manageable with current dust control mitigation techniques. Impacts to cultural resources, air quality, noise impacts, public land use, and socioeconomic impacts were all determined to be less than significant.

An electronic version of the Final PEIS is available for download at the following Web site: *http://aec.army.mil/usaec/nepa/topics00.html.*

Dated: January 26, 2011.

Hershell E. Wolfe,

Acting Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).

[FR Doc. 2011–2449 Filed 2–3–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License for a U.S. Government-Owned Invention

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e), and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive, revocable license, to U.S. Patent No. 6,254,873, issued July 3, 2001, entitled "Inactivated Dengue Virus Vaccine," for the field of use involving any prophylactic and/or therapeutic purified inactivated vaccine against Dengue virus for human use. The intended licensee is GlaxoSmithKline Bio, with its principal place of business at 89 Rue de l'Institut, 1330 Rixensart, Belgium.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (*see* **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–2487 Filed 2–3–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 5, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 31, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Extension.

Title of Collection: College Access Challenge Grant (CACG) Program Application for Formula Grants.

OMB Control Number: 1840–0800.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 2,280.

Abstract: This collection instrument is necessary because State agencies, designated by the governor of each state, must submit an application each year funding is available under the College Access Challenge Grant Program. Applicants are required by statute to include information in the application, such as a description of the applicant's capacity to administer the grant, a plan for using grant funds, and proposed matching contributions. States must submit a viable plan to increase college access and completion for low-income students and a comprehensive outline of proposed expenditures.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4496. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–2455 Filed 2–3–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–134–001]

Hill-Lake Gas Storage, LLC; Notice of Baseline Filings

January 31, 2011.

Take notice that on January 28, 2011, Hill-Lake submitted a revised baseline filing of their Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday, February 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2486 Filed 2–3–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Competing License Applications, Filing of Pre-Application Documents (PADs), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PADs and Scoping Document, and Identification of Issues and Associated Study Requests

January 28, 2011.

FirstEnergy Generation Corporation.	P–2280–013
Seneca Nation of Indians	P–13889–000

a. *Type of Filing:* Notices of Intent to File Competing License Applications for a New License and Commencing Pre-Filing Process.

b. *Project Nos.:* 2280–013 & 13889–000.

c. *Dated Filed:* November 30, 2010.

d. *Submitted By:* Existing licensee—FirstEnergy Generation Corporation (FirstEnergy); and Competitor—Seneca Nation of Indians (Seneca Nation).

e. *Name of Project:* Existing Project—Kinzua Pumped Storage Project; Competing Project—Seneca Pumped Storage Project.

f. *Location:* On the United States Army Corps of Engineers Kinzua Dam, and the United States Forest Service Allegheny National Forest, adjacent to the Allegheny River and the Allegheny Reservoir near the City of Warren, in Warren County, Pennsylvania. The project occupies 221.59 acres of Federal lands.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations

h. *Potential Applicants' Contacts:*

For Project No. 2280–013: Morgan Parke, Federal Regulatory Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, Ohio 44308.

For Project No. 13889–000: Wendy Huff, Executive Director Kinzua Dam Relicensing Commission, Seneca Nation of Indians, P.O. Box 231, 90 Ohi:yo' Way, Salamanca, NY 14779.

i. *FERC Contact:* Gaylord Hoisington at (202) 502–6032 or e-mail at *gaylord.hoisington@ferc.gov*.

j. *Cooperating agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating FirstEnergy and the Seneca Nation as the Commission's non-Federal representatives for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. FirstEnergy and the Seneca Nation filed Pre-Application Documents (PADs; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. Copies of both PADs are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the documents. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Copies are also available for inspection and reproduction at the addresses in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PADs, the Commission staff's scoping document (SD) issued January 28, 2011, as well as study requests. All comments on the PADs, SD, and study requests should be sent to the addresses above in paragraph h. In addition, all comments on the PADs, SD, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential applications must be filed with the Commission. Documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's Web site (*http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings with the Commission must include, on the first page, the project name (Kinzua Pumped Storage Project) and number (P–2280–013), for FirstEnergy and/or (Seneca Pumped Storage Project) and number (P–13889–000), for the Seneca Nation, and bear the heading: "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PADs or SD, and any agency requesting cooperating status must do so by March 30, 2011.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold three scoping meetings in the vicinity of the project at the time and place noted below. The morning and afternoon meetings will focus on resource agency,

Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or all three of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Morning Scoping Meeting

Date: Wednesday, February 23, 2011.
Time: 9 a.m. to 12 p.m.
Location: Holiday Inn, 210 Ludlow Street, Warren, Pa. 16365.
Phone: (814) 726–3000.

Evening Scoping Meeting

Date: Wednesday, February 23, 2011.
Time: 7 p.m. to 9 p.m.
Location: Holiday Inn, 210 Ludlow Street, Warren, Pa 16365.

Afternoon Scoping Meeting

Date: Thursday, February 24, 2011.
Time: 3 p.m. to 6 p.m.
Location: Salamanca City Central School District, 50 Iroquois Drive, Salamanca, NY 14779.
Phone: (716) 945–1790 ext. 3184.

The SD, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing lists and the distribution lists for FirstEnergy's and the Seneca Nation's PADs. Copies of the SD will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov*, using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Revised Scoping Document (RSD) may be issued. A RSD may include any revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Site Visit

The potential applicants and Commission staff will conduct a site visit of the project facilities on Wednesday afternoon, February 23, 2011, starting at 1:30 p.m. All participants should meet at the Kinzua Project powerhouse. All participants will be responsible for providing their own method of transportation. The time and location of the site visit is as follows:

Date: Wednesday, February 23, 2011.
Time: 1:30 p.m. to 4 p.m.
Location: Kinzua Project Powerhouse, Warren, PA 16365.
Name: Laura Cowan.
Phone: (717) 983–4056.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PADs in preparation for the scoping meetings. Instructions on how to obtain copies of the PADs and SD are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011–2484 Filed 2–3–11; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13954–000]

Mahoning Hydropower, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 31, 2011.

On December 30, 2010, Mahoning Hydropower, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Berlin Lake Hydroelectric Project (Berlin Lake Project or project) to be located on the Mahoning River, in the town of Berlin Center, in Portage and Mahoning counties, Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission. The project would use Federal lands owned and managed by the United States Army Corps of Engineers' Pittsburg District.

The proposed project would consist of the following: (1) A 40-foot-long, 30-foot-wide concrete powerhouse located below the existing Berlin Lake Dam containing one tubular S-Type propeller turbine-generator unit with a capacity of 1.1 megawatts placed inside the existing 5-foot-wide, 7-foot-tall, 80-foot-long sluice intake conduit through the existing eastern pier; (2) a new 12.5-kilovolt, 300-foot-long transmission line connecting the powerhouse to an existing sub-transmission system to the east; and (3) appurtenant facilities. The estimated annual generation of the Berlin Lake Project would be 6,200 megawatt-hours at a head range of 40–70 feet.

Applicant Contact: Mr. Anthony J. Marra III, General Manager, 11365 Normandy Lane, Chagrin Falls, Ohio 44023; phone: (440) 804–6627.

FERC Contact: Sergiu Serban; phone: (202) 502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary"

link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13954–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2483 Filed 2–3–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0082; FRL–9261–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements Under EPA's Natural Gas STAR Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on 7/31/2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 5, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0082 by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0082. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail 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.*

FOR FURTHER INFORMATION CONTACT: Jerome Blackman, Office of Atmospheric Programs, Climate Change Division, (6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9630; fax number: 202–343–2342; e-mail address: *Blackman.Jerome@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0082, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No. EPA–HQ–OAR–2004–0082.

Affected entities: Entities potentially affected by this action are those which produce, process, transport, and distribute natural gas and that join the Natural Gas STAR Program.

Title: Reporting and Recordkeeping Requirements Under EPA's Natural Gas STAR Program.

ICR numbers: EPA ICR No. 1736.06, OMB Control No. 2060–0328.

ICR status: This ICR is currently scheduled to expire on 7/31/2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Natural Gas STAR is an EPA-sponsored, voluntary program that encourages oil and natural gas companies to adopt cost-effective technologies and practices for reducing methane emissions. By joining, Natural Gas STAR partners agree to implement cost-effective technologies and practices to reduce methane emissions, which will save money, improve operational efficiency, increase natural gas supply, and improve environmental quality. EPA needs to collect information to monitor Program participation and to obtain general information on new Natural Gas STAR partners. EPA also uses the information collected to evaluate a partner's progress and performance, assess overall Program accomplishments, and develop additional technical guidance documents to benefit the industry. Information collection is accomplished through the use of an annual reporting process that allows partner companies to report their accomplishments in either a traditional hard-copy format or electronically. Natural Gas STAR partners may designate information submitted under this ICR as Confidential Business Information (CBI). EPA will treat all such information as CBI and will not make the company or agency-specific information collected under this ICR available to the general public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 35 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 149.

Frequency of response: 149.

Estimated total average number of responses for each respondent: varies.

Estimated total annual burden hours: 5,201.

Estimated total annual costs: $477,657.

Are there changes in the estimates from the last approval?

The overall reporting burden for respondents has decreased from the previous ICR. Burden hours decreased from 5,610 to 5,201 hours per year and costs decreased from $550,677 to $477,657. This change is largely a result of a decrease in the number of new program partners enrolling each year.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: January 28, 2011.

Dina Kruger,

Director, Climate Change Division.

[FR Doc. 2011–2503 Filed 2–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8995–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed 01/24/2011 through 01/28/2011 pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20110026, Final EIS, USFWS, CA, San Diego County Water Authority Natural Community Conservation Plan/Habitat Conservation Plan, Issuing of an Incidental Take Permit, San Diego and Riverside Counties, CA, Review Period Ends: 03/07/2011, Contact: Karen Goebel, 760–431–9440.

EIS No. 20110027, Final EIS, FAA, FL, Palm Beach International Airport Project, Construction and Operation of Proposed Airfield Improvements, Funding, Palm Beach County, FL,

Review Period Ends: 03/07/2011, Contact: Bart Vernace, 407–812–6331.

EIS No. 20110028, Draft EIS, USFS, OR, Howard Elliot Johnson Fuel and Vegetation Management Project, Proposed Fuels and Vegetation Treatments Reduce the Risk of Stand Loss Due to Overly Dense Stand Condition, Crook County, OR, Comment Period Ends: 03/21/2011, Contact: Marcy Anderson, 541–416–6463.

EIS No. 20110029, Revised Final EIS, USACE, FL, C–111 Spreader Canal Western Project, To Restore Ecosystem Function in Taylor Slough and Florida Bay Areas, Central and Southern Florida Project, Comprehensive Everglades Restoration Plan (CERP), Everglades National Park, Miami-Dade County, FL, Review Period Ends: 03/07/2011, Contact: Brad Tarr, 904–232–3582.

EIS No. 20110030, Draft EIS, USFS, CA, Keddie Ridge Hazardous Fuels Reduction Project, Implementation, Plumas National Forest, Mt. Hough District, Plumas County, CA, Comment Period Ends: 03/21/2011, Contact: Katherine Carpenter, 530–283–7619.

EIS No. 20110031, Final EIS, USA, 00, PROGRAMMATIC—Growth, Realignment, and Stationing of Army Aviation Assets, Evaluates Environmental Impacts of Stationing Army Combat Aviation Brigade at Fort Carson, CO and Joint Base Lewis-McChord, WA, Review Period Ends: 03/07/2011, Contact: Mike Ackerman, 210–295–2273.

Amended Notices

EIS No. 20100045, Draft Supplement, BIA, CA, WITHDRAWN—Campo Regional Landfill Project, Construction and Operation, Permit Lease and Sublease Use of Reservation Land, Campo Indian Reservation, San Diego County, CA, Comment Period Ends: 05/12/2010, Contact: John Rydzik, 916–978–6051. Revision to FR Notice 02/26/2010: This EIS is Withdrawn by the Bureau of Indian Affairs.

EIS No. 20100480, Draft Supplement, USFS, VT, Deerfield Wind Project, Updated Information, Application for a Land Use Authorization to Construct and Operate a Wind Energy Facility, Special Use Authorization Permit, Towns of Searsburg and Readsboro, Manchester Ranger District, Green Mountain National Forest, Bennington County, VT, Comment Period Ends: 03/04/2011, Contact: Bob Bayer, 802–362–2307 Ext. 218. Revision to FR Notice Published 12/23/2010: Extending Comment Period from 02/18/2011 to 03/04/2011.

Dated: February 1, 2011.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–2510 Filed 2–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0306; FRL–8861–5]

Notice of Intent To Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), announces notices of intent to suspend issued by EPA pursuant to section 3(c)(2)(B) of FIFRA. The Notices of Intent to Suspend were issued following the Agency's issuance of a Data Call-In notice (DCI), which required the registrants of the affected pesticide products containing a certain pesticide active ingredient to take appropriate steps to secure certain data, and following the registrant's failure to submit these data or to take other appropriate steps to secure the required data. The subject data were determined to be required to maintain in effect the existing registrations of the affected products. Failure to comply with the data requirements of a DCI is a basis for suspension of the affected registrations under section 3(c)(2)(B) of FIFRA.

DATES: The Notice of Intent to Suspend included in this **Federal Register** notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the mailed Notice of Intent to Suspend or 30 days after the date of publication of this notice in the **Federal Register** (if the mailed notice of intent to suspend is returned to the Administrator as undeliverable, if delivery is refused, or if the Administrator otherwise is unable to accomplish delivery to the registrant after making reasonable efforts to do so), unless during that time a timely and adequate request for a hearing is made by a person adversely affected by the Notice of Intent to Suspend or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the Notice of Intent to Suspend. Unit IV explains what must be done to avoid suspension under this notice (i.e., how to request a hearing or how to comply fully with the requirements that served as a basis for the Notice of Intent to Suspend).

FOR FURTHER INFORMATION CONTACT: Terria Northern, Pesticide Re-evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7093; e-mail address: *northern.terria@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, farm worker 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–2010–0306. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Registrants Issued Notices of Intent To Suspend, Active Ingredients, Products Affected, and Dates Issued

The Notice of Intent to Suspend was sent via the U.S. Postal Service (USPS) return receipt requested to the registrants for the products listed in Table 1 of this unit.

TABLE 1—LIST OF PRODUCTS

Registrant affected	Active ingredient	EPA registration No.	Product name	Date EPA issued notice of intent to suspend
The Fountainhead Group, Inc	Resmethrin	53853–1	Burgess Insect Fog	12/22/10
AMREP, Inc	Resmethrin	10807–74	Misty Delete 3% Multipurpose Spray	12/22/10
		10807–101	Repco-Tox Space Spray Insecticide	12/22/10
		10807–107	Fog Kill Oil Base Insecticide	12/22/10
		10807–110	Aqua-Kill Insecticide	12/22/10

III. Basis for Issuance of Notice of Intent to Suspend; Requirement List

The registrants failed to submit the required data or information or to take other appropriate steps to secure the required data for their pesticide products listed in Table 2 of this unit.

TABLE 2—LIST OF REQUIREMENTS

EPA registration No.	Guideline No. as listed in applicable DCI	Requirement name	Date EPA issued DCI	Date registrant received DCI	Final data due date	Reason for notice of intent to suspend *
53853–1, 10807–74, 10807–101, 10807–107, 10807–110.	830.1550	Product identity and composition.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.1600	Description of materials used to produce the product.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.1620	Description of production process.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.1650	Description of formulation process.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.1670	Discussion of formation of impurities.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.1700	Preliminary analysis	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.1750	Certified limits	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.1800	Enforcement analytical method.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.6302	Color	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.6303	Physical state	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.6304	Odor	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.6313	Stability to normal and elevated temperatures, metals, and metal ions.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.6314	Oxidizing or reducing action.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.6315	Flammability	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.6316	Explodability	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.6317	Storage stability	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.6319	Miscibility	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.6320	Corrosion characteristics.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.6321	Dielectric breakdown voltage.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.7000	pH	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.7050	UV/Visible absorption	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.7100	Viscosity	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.7200	Melting point/melting range.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.7220	Boiling point/Boiling range.	June 26, 2009	June 29, 2009	March 1, 2010	
	830.7300	Density/relative density.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.7370	Dissociation constants in water.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.
	830.7550	Partition coefficient (n-octanol/water) shake flask method.	June 26, 2009	June 29, 2009	March 1, 2010	No data received.

TABLE 2—LIST OF REQUIREMENTS—Continued

EPA registration No.	Guideline No. as listed in applicable DCI	Requirement name	Date EPA issued DCI	Date registrant received DCI	Final data due date	Reason for notice of intent to suspend *
	830.7570	Partition coefficient (n-octanol/water), estimation by liquid chromatography.	June 26, 2009 ..	June 29, 2009 ..	March 1, 2010 ..	No data received.
	830.7840	Water solubility: Column elution method, shake flask method.	June 26, 2009 ..	June 29, 2009 ..	March 1, 2010 ..	No data received.
	830.7860	Water solubility, generator column method.	June 26, 2009 ..	June 29, 2009 ..	March 1, 2010 ..	No data received.
	830.7950	Vapor pressure	June 26, 2009 ..	June 29, 2009 ..	March 1, 2010 ..	No data received.
	870.1100	Acute oral toxicity	June 26, 2009 ..	June 29, 2009 ..	March 1, 2010 ..	No data received.
	870.1200	Acute dermal toxicity	June 26, 2009 ..	June 29, 2009 ..	March 1, 2010 ..	No data received.
	870.1300	Acute inhalation toxicity.	June 26, 2009 ..	June 29, 2009 ..	March 1, 2010 ..	No data received.
	870.2400	Acute eye irritation ...	June 26, 2009 ..	June 29, 2009 ..	March 1, 2010 ..	No data received.
	870.2500	Acute dermal irritation.	June 26, 2009 ..	June 29, 2009 ..	March 1, 2010 ..	No data received.
	870.2600	Skin sensitization	June 26, 2009 ..	June 29, 2009 ..	March 1, 2010 ..	No data received.

IV. How to avoid suspension under this notice?

1. You may avoid suspension under this notice if you or another person adversely affected by this notice properly request a hearing within 30 days of your receipt of the Notice of Intent to Suspend by mail or, if you did not receive the notice that was sent to you via USPS first class mail return receipt requested, then within 30 days from the date of publication of this **Federal Register** notice (*see* **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B) of FIFRA, however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products. A request for a hearing pursuant to this notice must:

- Include specific objections which pertain to the allowable issues which may be heard at the hearing.
- Identify the registrations for which a hearing is requested.
- Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Three copies of the request must be submitted to: Hearing Clerk, 1900, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. An additional copy should be sent to the person who signed this notice. The request must be received by the Hearing Clerk by the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registrations by operation of law and, under such circumstances, the suspension of the registration for your affected products will be final and effective at the close of business on the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., and will not be subject to further administrative review. The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of

any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30-day deadline period as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., the Agency determines that you have taken appropriate steps to comply with the FIFRA section 3(c)(2)(B) Data Call-In notice. In order to avoid suspension under this option, you must satisfactorily comply with Table 2.—List of Requirements in Unit II., for each product by submitting all required supporting data/information described in Table 2. of Unit. II. and in the Explanatory Appendix (in the docket for this **Federal Register** notice) to the following address (preferably by certified mail):

Office of Pesticide Programs, Pesticide Re-Evaluation Division, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001. For you to avoid automatic suspension under this notice, the Agency must also determine within the applicable 30-day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your products. The suspension of the registrations of your company's products pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Table 2 of Unit II.

V. Status of Products That Become Suspended

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrants subject to this notice, including all supplemental registrants of products listed in Table 1 of Unit II., may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Persons other than the registrants subject to this notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Nothing in this notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. in any manner which would have been unlawful prior to the suspension.

If the registrations for your products listed in Table 1 of Unit II. are currently suspended as a result of failure to comply with another FIFRA section 3(c)(2)(B) Data Call-In notice or Section 4 Data Requirements notice, this notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) Data Call-In notice, should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

VI. What is the agency's Authority for taking this action?

The Agency's authority for taking this action is contained in sections 3(c)(2)(B) and 6(f)(2) of FIFRA, 7 U.S.C. 136 *et seq.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 26, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–2406 Filed 2–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0012; FRL–8858–7]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before March 7, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

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

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. 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 e-mail comment directly to EPA without going through regulations.gov, your e-mail 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: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at their Division: Biopesticides and Pollution Prevention Division (7511P) or Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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 at the end of the pesticide petition summary of interest.

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 e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance

1. *PP* 0E7787. (EPA–HQ–OPP–2010–0916). Interregional Research Project, No. 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide hexythiazox (*trans*-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety, in or on tomato at 0.50 parts per million (ppm). A practical analytical method, high pressure liquid chromatography (HPLC) with an

ultraviolet (UV) detector, which detects and measures residues of hexythiazox and its metabolites as a common moiety, is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the level set in this tolerance. *Contact:* Sidney Jackson, (703) 305–7610, Registration Division (7505P), *e-mail address: jackson.sidney@epa.gov.*

2. *PP* 0E7793. (EPA–HQ–OPP–2010–0957). BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide imazapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-]H-imidazol-2-yl]-3-pyridinecarboxylic acid], in or on soybean at 4.0 ppm; and in or on the processed commodity soybean meal at 4.5 ppm. The proposed analytical method for detecting residues of imazapyr in soybean seed and processed fractions is a liquid chromatography-tandem mass spectrometry (LC–MS/MS) method. This validated method has a level of quantitation (LOQ) of 0.01 milligrams/kilogram. *Contact:* Hope Johnson, (703) 305–5410, Registration Division (7505P), *e-mail address: johnson.hope@epa.gov.*

3. *PP* 0E7806. (EPA–HQ–OPP–2010–1026). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528, proposes to establish import tolerances in 40 CFR part 180 for residues of the herbicide saflufenacil, including its metabolites and degradates, in or on banana, whole fruit at 0.03 ppm; coffee, green bean at 0.03 ppm; and mango, fruit at 0.03 ppm. Compliance with the tolerance levels is to be determined by measuring only the sum of saflufenacil, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2H)-pyrimidinyl]-4-fluoro-N-[[methyl(1-methylethyl)amino]sulfonyl]benzamide, and its metabolites N-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2H)-pyrimidinyl)-4-fluorobenzoyl]-N'-isopropylsulfamide and N-[4-chloro-2-fluoro-5-({[(isopropylamino)sulfonyl]amino□carbonyl)phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil, in or on the commodities. Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry (LCMS/MS) methods D0603/02 (plants) and L0073/01 (livestock)) is available to enforce the tolerance expression. *Contact:* Susan Stanton, (703) 305–5218, Registration Division (7505P), *e-mail address: stanton.susan@epa.gov.*

4. *PP* 0F7741. (EPA–HQ–OPP–2010–0938). Monsanto Company, 1300 I St., NW., Suite 450 East, Washington, DC 20052, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide glyphosate, N-(phosphonomethyl) glycine, in or on corn, field, forage at 13 ppm to support the use of glyphosate in RHS seed corn production. Adequate enforcement methods are available for analysis of residues of glyphosate and its metabolite AMPA in or on plant and livestock commodities. These methods include gas liquid chromatography (GLC), Method I in Pesticides Analytical Manual (PAM) II (0.05 ppm limit of detection (LOD)), and HPLC with fluorometric detection (0.0005 ppm (LOD)). The HPLC procedure has undergone successful Agency validation and was recommended for inclusion in PAM II. A gas chromatography/mass spectrometry (GC/MS) method for glyphosate in crops has also been validated by EPA's 2 Analytical Chemistry Laboratory (ACL). *Contact:* Hope Johnson, (703) 305–5410, Registration Division (7505P), *e-mail address: johnson.hope@epa.gov.*

5. *PP* 0F7785. (EPA–HQ–OPP–2010–0959). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy) phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H–1,2,4-triazole, in or on oats, grain at 0.1 ppm; and in or on rye, grain at 0.1 ppm. A practical analytical method (AG–5758) for detecting and measuring levels of difenoconazole in or on food with an LOQ that allows monitoring of food with residues at or above the levels set in the proposed tolerances. Method REM 147.08 is also available for enforcement method for the determination of residues of difenoconazole in crops. Residues are qualified by LC–MS/MS. A practical analytical method (AG–544A) for detecting and measuring levels of difenoconazole in or on cattle tissues and milk, and poultry tissues and eggs with an LOQ that allows monitoring of food with residues at or above the levels set in the proposed tolerances. *Contact:* Rose Mary Kearns, (703) 305–5611, Registration Division (7505P), *e-mail address:kearns.rosemary@epa.gov.*

6. *PP* 0F7796. (EPA–HQ–OPP–2010–0905). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide 2,4–D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid, in or on teff, bran at 4.0 ppm; teff, forage at 25.0 ppm; teff, grain at 2.0 ppm; and teff, straw at 50.0 ppm. An adequate gas/electron chromatography detection (GC/ECD) enforcement method for plants (designated as EN–CAS Method No. ENC–2/93) is available and has been independently validated. Adequate radiovalidation data have been submitted and evaluated for the enforcement method using samples from the wheat metabolism study. *Contact:* Laura E. Nollen, (703) 305–7390, Registration Division (7505P), *e-mail address: nollen.laura@epa.gov.*

New Tolerance Exemption

1. *PP* 0E7784. (EPA–HQ–OPP–2010–0878). Rhodia, Inc., c/o SciReg, Inc., 12733 Director's Loop, Woodbridge VA 22192, proposes to establish an exemption from the requirement of a tolerance for residues of carboxymethyl guar gum sodium salt (CAS No. 39346–76–4) with a minimum number average molecular weight (in amu) of 100,000 under 40 CFR 180.920 when used as a thickener/drift reduction agent in pesticide formulations. Based upon the structural similarities between carboxymethyl guar, guar gum, hydroxypropyl guar, and carboxymethyl-hydroxypropyl guar, the tolerance exemption petition for carboxymethyl guar gum sodium salt summarizes and relies upon available data on all four substances. Rhodia, Inc. is requesting that carboxymethyl guar be exempt from the requirement of a tolerance under 40 CFR 180.920. Therefore, Rhodia, Inc. believes that an analytical method to determine residues in treated crops is not relevant. *Contact:* Alganesh Debesai, (703) 308–8353, Registration Division (7505P), *e-mail address: debesai.alganesh@epa.gov.*

2. *PP* 0E7803. (EPA–HQ–OPP–2010–1019). Rhodia, Inc., c/o SciReg, Inc., 12733 Director's Loop, Woodbridge VA 22192, proposes to establish an exemption from the requirement of a tolerance for residues of carboxymethyl-hydroxypropyl guar (CAS No. 68130–15–4) with a minimum number average molecular weight (in amu) of 100,000 under 40 CFR 180.920 when used as a thickener/drift reduction agent in pesticide formulations. Based upon the structural similarities between carboxymethyl-hydroxypropyl guar, guar gum, hydroxypropyl guar, and carboxymethyl guar, the tolerance exemption petition for carboxymethyl-hydroxypropyl guar summarizes and relies upon available data on all four substances. Rhodia, Inc. is requesting that carboxymethyl-hydroxypropyl guar be exempt from the requirement of a tolerance under 40 CFR 180.920. Therefore, Rhodia, Inc. believes that an

analytical method to determine residues in treated crops is not relevant. *Contact:* Alganesh Debesai, (703) 308–8353, Registration Division (7505P), *e-mail address: debesai.alganesh@epa.gov.*

3. *PP* 0F7745. (EPA–HQ–OPP–2010–0805). Pasteuria Bioscience, Inc., 12085 Research Drive, Suite 185, Alachua, FL 32615, proposes to establish an exemption from the requirement of a tolerance for residues of the microbial pesticide *Pasteuria reniformis*—Pr3 [SD–5834], in or on all raw agricultural crops. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is being sought. *Contact:* Jeannine Kausch, (703) 347–8920, Biopesticides and Pollution Prevention Division (7511P), *e-mail address: kausch.jeannine@epa.gov.*

4. *PP* 0F7749. (EPA–HQ–OPP–2010–0807). Pasteuria Bioscience, Inc., 12085 Research Drive, Suite 185, Alachua, FL 32615, proposes to establish an exemption from the requirement of a tolerance for residues of the microbial pesticide *Pasteuria nishizawae*—Pn1 [SD–5833], in or on all raw agricultural crops. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is being sought. Contact: Jeannine Kausch, (703) 347–8920, Biopesticides and Pollution Prevention Division (7511P), *e-mail address: kausch.jeannine@epa.gov.*

5. *PP* 0F7760. (EPA–HQ–OPP–2010–0944). Certis USA LLC, 9145 Guilford Road, Suite 175, Columbia, MD 21046, proposes to establish an exemption from the requirement of a tolerance for residues of the microbial pesticide *Bacillus subtilis* var. *amyloliquefaciens* strain D747 in or on all agricultural commodities when applied/used in accordance with label directions. No analytical method is needed because this petition requests an exemption from the requirement of a tolerance. *Contact:* Susanne Cerrelli, (703) 308–8077, Biopesticides and Pollution Prevention Division (7511P), *e-mail address: cerrelli.susanne@epa.gov.*

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 21, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–2509 Filed 2–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0038; FRL–8862–4]

Versar, Tetrahedron, Inc. and Info Impact; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Versar and its subcontractors, Tetrahedron, Inc. and Info Impact, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Versar and its subcontractors, Tetrahedron, Inc. and Info Impact, have been awarded a contract to perform work for OPP, and access to this information will enable Versar and its subcontractors, Tetrahedron, Inc. and Info Impact, to fulfill the obligations of the contract.

DATES: Versar and its subcontractors, Tetrahedron, Inc. and Info Impact, will be given access to this information on or before January 18, 2011.

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–8338; *e-mail address: steadman.mario@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, 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–2011–0038. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Contractor Requirements

Under Contract No. EP–W–11–007, Versar and its subcontractors, Tetrahedron, Inc. and Info Impact, will perform technical reviews of studies containing pesticide exposure and related data in support of registration, re-registration, and special review activities of HED. The contractor shall provide technical support in developing or revising occupational and residential exposure and risk assessments for registration (new chemicals, new uses, etc) and registration review (REDs, TREDs, Low Risk Chemicals) actions, as directed by the EPA COR. The contractor shall provide technical support in developing or revising Standard Operational Procedures (SOPs), such as SOPs for Residential Exposure Assessments, as directed by the EPA COR.

OPP has determined that access by Versar and its subcontractors, Tetrahedron, Inc. and Info Impact, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Versar and its subcontractors, Tetrahedron, Inc. and Info Impact, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual.* In addition, Versar and its subcontractors, Tetrahedron, Inc. and Info Impact, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Versar and its subcontractors, Tetrahedron, Inc. and Info Impact, until the requirements in this document have been fully satisfied.

Records of information provided to Versar and its subcontractors, Tetrahedron, Inc. and Info Impact, will be maintained by EPA Project Officers for this contract. All information supplied to Versar and its subcontractors, Tetrahedron, Inc. and Info Impact, by EPA for use in connection with this contract will be returned to EPA when Versar and its subcontractors, Tetrahedron, Inc. and Info Impact, have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: January 26, 2011.

Oscar Morales,

Acting Director, Office of Pesticide Programs.

[FR Doc. 2011–2401 Filed 2–3–11; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Extension Without Change: Employer Information Report (EEO–1).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension of the Employer Information Report (EEO–1).

DATES: Written comments on this notice must be submitted on or before April 5, 2011.

ADDRESSES: Comments should be sent to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile ("FAX") machine. This limitation is necessary to assure access to the equipment. The telephone number of the fax receiver is (202) 663–4114. (This is not a toll-free number). Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll-free telephone numbers.) Instead of sending written comments to EEOC, you may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. All comments received through this portal will be posted without change, including any personal information you provide. Copies of comments submitted by the public to EEOC directly or through the Federal eRulemaking Portal will be available for review, by advance appointment only, at the Commission's library between the hours of 9 a.m. and 5 p.m. or can be reviewed at *http://www.regulations.gov.* To schedule an appointment to inspect the comments at EEOC's library, contact the library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 and OMB regulations 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

Collection Title: Employer Information Report (EEO–1).

OMB Number: 3046–0007.

Frequency of Report: Annual.

Type of Respondent: Private employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.

Description of Affected Public: Private employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.

Reporting Hours: 599,000.

Respondent Cost: $11.4 million.

Federal Cost: $2.1 million.

Number of Forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the EEO–1 reporting requirement. Employers in the private sector with 100 or more employees and some federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential. EEO–1 data is used by EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women. The data is shared with the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, and several other Federal agencies. Pursuant to § 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data is also shared with state and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 survey is 45,000 private employers. The estimated number of establishment-based responses per reporting company is between three and four EEO–1 reports annually. The annual number of responses is approximately 170,000. The form is estimated to impose 599,000 burden hours annually. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: January 31, 2011.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2011–2472 Filed 2–3–11; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Extension Without Change: Elementary-Secondary Staff Information Report (EEO–5).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension of the Elementary-Secondary Staff Information Report (EEO–5).

DATES: Written comments on this notice must be submitted on or before April 5, 2011.

ADDRESSES: Comments should be sent to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile ("FAX") machine. This limitation is necessary to assure access to the equipment. The telephone number of the fax receiver is (202) 663–4114. (This is not a toll-free number). Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll-free telephone numbers.) Instead of sending written comments to EEOC, you may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. All comments received through this portal will be posted without change, including any personal information you provide. Copies of comments submitted by the public to EEOC directly or through the Federal eRulemaking Portal will be available for review, by advance appointment only, at the Commission's library between the hours of 9 a.m. and 5 p.m. or can be reviewed at *http://www.regulations.gov.* To schedule an appointment to inspect the comments at EEOC's library, contact the library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 and OMB regulations 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection

Collection Title: Elementary-Secondary Staff Information Report (EEO–5).

OMB–Number: 3046–0003.

Frequency of Report: Biennial.

Type of Respondent: Certain public elementary and secondary school districts.

Description of Affected Public: Certain public elementary and secondary school districts.

Number of Responses: 7,155.

Reporting Hours: 10,000.

Cost to the Respondents: $266,000.

Federal Cost: $160,000.

Number of Forms: 1.

Form Number: EEOC Form 168A.

Abstract: Section 709 (c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the reporting requirements for elementary and secondary public school districts. The EEOC uses EEO–5 data to investigate charges of employment discrimination against elementary and secondary public school districts. The data also are used for research. The data are shared with the Department of Education (Office for Civil Rights) and the Department of Justice. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–5 data also are shared with state and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the biennial EEO–5 survey is 7,155 public elementary and secondary school districts. The form is estimated to impose 10,000 burden hours biennially.

Dated: January 31, 2011.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2011–2479 Filed 2–3–11; 8:45 am]

BILLING CODE 6750–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Request For An Extension Without Change: State and Local Government Information Report (EEO–4).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension of the State and Local Government Information Report (EEO–4).

DATES: Written comments on this notice must be submitted on or before April 5, 2011.

ADDRESSES: Comments should be sent to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile ("FAX") machine. This limitation is necessary to assure access to the equipment. The telephone number of the fax receiver is (202) 663–4114. (This is not a toll-free number). Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll-free telephone numbers.) Instead of sending written comments to

EEOC, you may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. All comments received through this portal will be posted without change, icluding any personal information you provide. Copies of comments submitted by the public to EEOC directly or through the Federal eRulemaking Portal will be available for review, by advance appointment only, at the Commission's library between the hours of 9 a.m. and 5 p.m. or can be reviewed at *http://www.regulations.gov.* To schedule an appointment to inspect the comments at EEOC's library, contact the library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 and OMB regulations 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection

Collection Title: State and Local Government Information Report (EEO–4).

OMB Number: 3046–0008.

Frequency of Report: Biennial.

Type of Respondent: State and local government jurisdictions with 100 or more Employees.

Description of Affected Public: State and local governments excluding elementary and secondary public school districts.

Number of Responses: 13,456.

Reporting Hours: 44,719.

Cost to Respondents: $1,045,000.

Number of Forms: 1.

Form Number: EEOC Form 164.

Federal Cost: $187,500.

ABSTRACT: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the reporting requirements for state and local governments. State and local governments with 100 or more employees have been required to submit EEO–4 reports since 1974 (biennially in odd-numbered years since 1993). The individual reports are confidential.

EEO–4 data are used by the EEOC to investigate charges of discrimination against state and local governments and to provide information on the employment status of minorities and women. The data are shared with several other federal agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, U.S.C. 2000e-8(d), as amended, EEO–4 data is shared with state and local Fair Employment Practices Agencies (FEPAs). Aggregated data are also used by researchers and the general public.

Burden Statement: The estimated number of respondents included in the EEO–4 survey is 9,000 state and local governments. These 9,000 jurisdictions file about 13,456 reports due to the requirement for some to file separate reports by function. The form is estimated to impose 44,719 burden hours biennially.

Dated: January 31, 2011.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2011–2477 Filed 2–3–11; 8:45 am]

BILLING CODE 6750–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Extension Without Change: Local Union Report (EEO–3).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension of the Local Union Report (EEO–3).

DATES: Written comments on this notice must be submitted on or before April 5, 2011.

ADDRESSES: Comments should be sent to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile ("FAX") machine. This limitation is necessary to assure access to the equipment. The telephone number of the fax receiver is (202) 663–4114. (This is not a toll-free number). Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll-free telephone numbers.) Instead of sending written comments to EEOC, you may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. All comments received through this portal will be posted without change, including any personal information you provide. Copies of comments submitted by the public to EEOC directly or through the Federal eRulemaking Portal will be available for review, by advance appointment only, at the Commission's library between the hours of 9 a.m. and 5 p.m. or can be reviewed at *http://www.regulations.gov.* To schedule an appointment to inspect the comments at EEOC's library, contact the library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 and OMB regulations 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

Collection Title: Local Union Report (EEO–3).

OMB Number: 3046–0006.

Frequency of Report: Biennial.

Type of Respondent: Referral local unions with 100 or more members.

Description of Affected Public: Referral local unions and independent or unaffiliated referral unions and similar labor organizations.

Responses: 1,399.

Reporting Hours: 4,500 (including recordkeeping).

Cost to Respondents: $85,000.

Federal Cost: $60,000.

Number of Forms: 1.

Form Number: EEOC Form 274.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires labor organizations to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to produce reports from the data. The EEOC issued regulations requiring referral local unions with 100 or more members to submit EEO–3 reports. The individual reports are confidential. The EEOC uses EEO–3 data to investigate charges of discrimination and for research.

Burden Statement: The estimated number of respondents included in the biennial EEO–3 survey is 1,399 referral unions. The form is estimated to impose 4,500 burden hours biennially. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: January 31, 2011.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2011–2474 Filed 2–3–11; 8:45 am]

BILLING CODE 6570–01–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2011–0010]

Agency Information Collection Activities: Comment Request

Correction

In notice document 2011–2037 beginning on page 5373 in the issue of Monday, January 31, 2011 make the following correction:

On page 5374, in the first column, in the **DATES** section, in the second and third lines, "(insert 30 days after publication)" should read "March 2, 2011."

[FR Doc. C1–2011–2037 Filed 2–3–11; 8:45 am]

BILLING CODE 1505–01–D

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2011–0008]

Agency Information Collection Activities: Comment Request

Correction

In notice document 2011–2039 appearing on page 5374 in the issue of Monday, January 31, 2011 make the following correction:

On page 5374, in the third column, in the **DATES** section, in the second and third lines, "(insert 30 days after publication)" should read "March 2, 2011."

[FR Doc. C1–2011–2039 Filed 2–3–11; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

January 31, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 7, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information or copies of the information collection(s), contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0056.

Title: Part 68, Connection of Terminal Equipment to the Telephone Network.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 58,310 respondents; 68,077 responses.

Estimated Time per Response: .05 hours to 24 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151–154, 201–205 and 303(r).

Total Annual Burden: 21,369 hours.

Total Annual Cost: $935,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The information respondents are requested to provide is not proprietary, trade secret or other confidential information. Applicants are advised not to submit proprietary signal processing or control circuitry not directly involved with Part 68 requirements.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this comment period so that we may obtain the three year clearance from them. There is a 10,658 hour adjustment reduction and a $225,000 reduction in annual costs. There are no changes to the reporting, recordkeeping and/or third party disclosure requirements.

The purpose of 47 CFR part 68 is to protect the network from certain types of harm and prevent interference to subscribers. To demonstrate that terminal equipment comply with criteria for protecting the network; and to ensure that consumers, providers of telecommunications, the Commission and others are able to trace products to the party responsible for placing terminal equipment on the market, it is essential to require manufacturers or other responsible parties to provide the information required by part 68. In addition, incumbent local exchange carriers must provide the information in part 68 to warn their subscribers of impending disconnection of service when subscriber terminal equipment is causing telephone network harm.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–2489 Filed 2–3–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act; FCC To Hold Open Commission Meeting Tuesday, February 8, 2011

February 1, 2011.

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Tuesday, February 8, 2011, which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

The meeting will also include a presentation on the status of the comprehensive reform efforts to improve the agency's fact-based, data-driven decision making.

Item No.	Bureau	Subject
1	Wireline Competition And Wireless Tele-Communications.	*Title:* Connect America Fund (WC Docket No. 10–90); A National Broadband Plan for Our Future (GN Docket No. 09–51); Establishing Just and Reasonable Rates for Local Exchange Carriers (WC Docket No. 07–135); High-Cost Universal Service Support (WC Docket No. 05–337); Developing a Unified Intercarrier Compensation Regime (CC Docket No. 01–92); Federal-State Joint Board on Universal Service (CC Docket No. 96–45); Lifeline and Linkup (WC Docket No. 03–109) and Mobility Fund (WT Docket No. 10–208). *Summary:* The Commission will consider an item to get broadband to all of rural America and spur infrastructure investment and job creation, by modernizing the Universal Service Fund and intercarrier compensation (ICC) system while cutting waste and inefficiency.
2	Wireline Competition	*Title:* Reform of the FCC Form 477 Data Program (WC Docket No. 11–10); Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership (WC Docket No. 07–38); Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering (WC Docket No. 08–190) and Review of Wireline Competition Bureau Data Practices (WC Docket No. 10–132). *Summary:* The Commission will consider a Notice of Proposed Rulemaking, initiated as part of the Commission's Data Innovation Initiative, to streamline and modernize the collection of data via Form 477, in order to ensure that the data the Commission collects enables informed policy-making while minimizing burdens on voice and broadband service providers.
3	Wireline Competition	*Title:* Review of Wireline Competition Bureau Data Practices (WC Docket No. 10–132) and Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements. *Summary:* The Commission will consider a Notice of Proposed Rulemaking initiated as part of the Commission's Data Innovation Initiative, to eliminate the legacy narrowband comparably efficient interconnection (CEI) and open network architecture (ONA) reporting requirements that currently apply to the Bell Operating Companies (BOCs), due to a lack of continuing relevance and utility.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be

broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live*.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu*.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc., (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com*.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

[FR Doc. 2011–2635 Filed 2–2–11; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, 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 the renewal of an existing information collection, as required by the PRA. On November 15, 2010 (75 FR 69664), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Real Estate Lending Standards (OMB No. 3064–0112). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before March 7, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

Title: Real Estate Lending Standards.

OMB Number: 3064–0112.

Frequency of Response: On occasion.

Affected Public: Insured financial institutions supervised by the FDIC.

Estimated Number of Respondents: 4,800.

Estimated Time per Response: 20 hours.

Total Annual Burden: 96,000 hours.

General Description of Collection: Institutions use real estate lending policies to guide their lending operations in a manner that is consistent with safe and sound banking practices and appropriate to their size, nature, and scope of operations. These policies should address certain lending considerations, including loan-to-value limits, loan administration policies, portfolio diversification standards, and documentation, approval and reporting requirements.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, January 31, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–2446 Filed 2–3–11; 8:45 am]

BILLING CODE 6741–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012117.

Title: Maersk Line/HLAG West Med Slot Exchange Agreement.

Parties: A.P. Moller-Maersk A/S and Hapag-Lloyd AG.

Filing Parties: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes the parties to exchange slots on their respective vessels in the trade between U.S. Atlantic and Gulf Coasts ports and ports in the Western Mediterranean. The parties have requested expedited review.

By Order of the Federal Maritime Commission.

Dated: February 1, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–2481 Filed 2–3–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–223]

Emergency Responder Health Monitoring and Surveillance

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of draft publication available for public comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the availability of the following draft publication for public comment. The document is entitled, "Emergency Responder Health Monitoring and Surveillance."

The draft document and instructions for submitting comments can be found at: *http://www.cdc.gov/niosh/docket/review/docket223/.*

The document proposes a new framework for ensuring responder safety and health by monitoring and conducting surveillance of their health and safety during the entire cycle of emergency response, including the pre-deployment, deployment, and post-deployment phases of a response. The proposed system is referred to as the "Emergency Responder Health Monitoring and Surveillance (ERHMS)" system, which includes a guidance section describing the principles of ensuring optimal responder safety and health, as well as a tools section to help facilitate the execution of these principles during an actual response.

The goals of this proposed system are to ensure that only properly trained and fit responders are deployed to a response, that the health and safety of all responders are appropriately monitored during a response, and that a systematic and comprehensive evaluation be conducted to determine the potential need for long term surveillance of responders' health after their deployment has been completed. This system will help to ensure that hazardous occupational exposures and signs and symptoms observed during an emergency response are utilized to mitigate adverse physical and psychological outcomes and determine whether protective measures are sufficient to prevent or reduce harmful exposures to workers. Data collected during the pre-, during-, and post-deployment phases will also help to identify which responders would benefit from medical referral and possible enrollment in a long-term health surveillance program.

The document, entitled "Emergency Responder Health Monitoring and Surveillance," can be viewed at: *http://www.cdc.gov/niosh/docket/review/docket223/.*

This guidance does not have the force and effect of the law.

Public Comment Period: Comments must be received by April 5, 2011.

ADDRESSES: Written comments may be submitted to the NIOSH Docket Office, identified by Docket Number NIOSH–223, by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.
- *Facsimile:* (513) 533–8285.
- *E-mail: nioshdocket@cdc.gov.*

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Room 111, Cincinnati, Ohio 45226.

A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket,* and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided. All electronic comments should be formatted as Microsoft Word. Please make reference to Docket Number NIOSH–223.

FOR FURTHER INFORMATION CONTACT: Renée Funk, D.V.M., telephone (404) 498–1376, e-mail *rjf8@cdc.gov,* NIOSH, MS–E20, 1600 Clifton Road NE., Atlanta, GA 30333.

Dated: January 28, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–2527 Filed 2–3–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0603]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Animal Drug User Fees and Fee Waivers and Reductions

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.

DATES: Fax written comments on the collection of information by March 7, 2011.

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 e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0540. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Johnny Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, e-mail: *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.

Animal Drug User Fees and Fee Waivers and Reductions—(OMB Control Number 0910–0540)—Extension

Enacted on November 18, 2003, the Animal Drug User Fee Act (ADUFA) (Pub. L. 108–130) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and requires FDA to assess and collect user fees for certain applications, products, establishments, and sponsors. It also requires the Agency to grant a waiver from or a reduction of those fees in certain circumstances. Thus, to implement this statutory provision of ADUFA, FDA developed a guidance entitled

"Guidance for Industry: Animal Drug User Fees and Fee Waivers and Reductions." This document provides guidance on the types of fees FDA is authorized to collect under ADUFA, and how to request waivers and reductions from FDA's animal drug user fees. The guidance also describes the types of fees and fee waivers and reductions, the information FDA recommends respondents submit in support of a request for a fee waiver or reduction, how respondents may submit such a request, and FDA's process for reviewing requests.

Respondents to this collection of information are new animal drug sponsors. Requests for waivers or reductions may be submitted by a person paying any of the animal drug user fees assessed—application fees, product fees, establishment fees, or sponsor fees.

In the **Federal Register** of December 2, 2010 (75 FR 75175), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C Act section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
740(d)(1)(A) Significant barrier to innovation	22	1	22	2	44
740(d)(1)(B) Fees exceed cost	0	1	0	2	0
740(d)(1)(C) Free choice feeds	2	1	2	2	4
740(d)(1)(D) Minor use or minor species	52	1	52	2	104
740(d)(1)(E) Small business	0	1	0	0	0
Request for reconsideration of a decision	5	1	5	2	10
Request for review—(user fee appeal officer)	2	1	2	2	4
Total					166

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA's database system, there are an estimated 250 sponsors of products subject to ADUFA. However, not all sponsors will have any submissions in a given year and some may have multiple submissions. The total number of waiver requests is based on the number of submission types received by FDA in fiscal year 2008.

Dated: January 31, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–2441 Filed 2–3–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0053]

Town Hall Discussion With the Director of the Center for Devices and Radiological Health and Other Senior Center Management

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting entitled "Town Hall Discussion with the Director of the Center for Devices and Radiological Health and Other Senior Center Management." The purpose of this public meeting in the Dallas-Fort Worth, TX area is to engage in a dialogue about issues of importance to FDA's Center for Devices and Radiological Health (CDRH) and to members of the public, including the medical device industry, healthcare professionals, patients, and consumers.

Dates and Time: The public meeting will be held on March 10, 2011, from 8 a.m. to 12 noon CST.

Location: The public meeting will be held at the Irving Convention Center at Las Colinas, 500 West Las Colinas Blvd., Irving, TX 75039. The meeting will not be videotaped or webcast.

Contact: Heather Howell, Food and Drug Administration; Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, rm. 4320, Silver Spring, MD 20993, 301–796–5718, *e-mail: heather.howell@fda.hhs.gov.*

Registration and Requests for Oral Presentations: If you wish to attend the public meeting, you must register online at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm239730.htm.* Persons without Internet access may call Heather Howell at 301–796–5718 to register for the meeting.

Provide complete contact information for each attendee, including name, title, company or organization, address, e-mail, telephone and fax number. Registration requests must be received by 5 p.m. EST on Friday, February 25, 2011.

If you wish to make an oral presentation during any of the sessions at the meeting (*see* section II of this document, Public Meeting), you must indicate this at the time of registration. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin.

Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration the day of the public meeting will be provided on a space-available basis beginning at 7 a.m. CST.

If you need special accommodations due to a disability, please contact Susan Monahan at 301–796–5661, or by e-mail at *susan.monahan@fda.hhs.gov* at least 7 days in advance of the meeting.

Comments: FDA is holding this public meeting to share information and discuss issues of importance to the public, including the medical device industry, healthcare professionals, patients, and consumers.

Regardless of attendance at the public meeting, interested persons may submit either electronic or written comments. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets

Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

In 2010, CDRH held three Town Hall meetings in Minneapolis, MN; Boston, MA; and Los Angeles, CA to provide the public with a new venue to discuss issues of interest with the Center. Any member of the public was invited to provide comments to or ask questions of CDRH participants. Due to the positive feedback we received for holding these meetings we plan to continue this activity in 2011 in three different locations.

II. Public Meeting

The objective of this public meeting is to engage in a dialogue about issues that are of importance to the public.

The public meeting will open with an introduction of CDRH Senior Staff in attendance. Following introductions, Dr. Jeffrey Shuren, the Director of CDRH, will describe CDRH's Strategic Priorities for 2011. Members of the public will then be given the opportunity to present comments to CDRH Senior Staff followed by a Question and Answer session during which any member of the public may ask questions of the CDRH Senior Staff on any topic of interest.

In advance of the meeting, additional information, including a meeting agenda with a speakers' schedule, will be made available on the Internet. This information will be placed on file in the public docket (docket number found in brackets in the heading of this document), which is available at *http://www.regulations.gov.* This information will also be available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list).

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: February 1, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–2490 Filed 2–3–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Industry Exchange Workshop on Food and Drug Administration Drug and Device Requirements; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Southwest Regional Office, in co-sponsorship with the Association of Food and Drug Officials (AFDO), the Mid-Continental Association of Food and Drug Officials (MCAFDO), and the FDA Medical Device Industry Coalition, is announcing a public workshop entitled "The Future of Medical Products Regulation: Ensuring Safety and Integrity in a Global Market". This 2-day public workshop is intended to provide information about FDA drug and device regulation to the regulated industry.

Date and Time: The public workshop will be held on June 20 and 21, 2011, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Marriott Dallas/Plano at Legacy Town Center, Plano, Texas, 7120 Dallas Pkwy., Plano, Texas 75024, 972–473–6444, or toll-free 888–236–2427.

Attendees are responsible for their own accommodations. To make reservations at the Marriott Dallas/Plano at Legacy Town Center, at the reduced conference rate, contact the Marriott Dallas/Plano at Legacy Town Center before May 20, 2011, citing meeting code "AFDO Conference".

Contact: David Arvelo, Food and Drug Administration, 4040 North Central Expressway, suite 900, Dallas, Texas 75204, 214–253–4952, FAX: 214–253–4970, e-mail: *David.Arvelo@fda.hhs.gov.*

Registration: You are encouraged to register by May 24, 2011. The AFDO registration fees cover the cost of facilities, materials, and breaks. Seats are limited; therefore, please submit your registration as soon as possible. Course space will be filled in order of receipt of registration. Those accepted into the course will receive confirmation. Registration will close after the course is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 7:30 a.m. The cost of registration follows:

COST OF REGISTRATION

Government (AFDO/Mid-Continental AFDO Member)	$425.00
Government (Non-Member):	525.00
Non-Government (AFDO/MCAFDO Member)	425.00
Non-Government (Non-Member)	525.00
To be added to registration fee for public workshop registration postmarked after May 24, 2011	100.00

If you need special accommodations due to a disability, please contact David Arvelo (*see Contact*) at least 21 days in advance of the workshop.

Registration instructions: To register, please complete and submit an AFDO Conference Registration Form, along with a check or money order payable to "AFDO". Please mail your completed registration form and payment to: AFDO, 2550 Kingston Rd., suite 311, York, PA 17402. To register online, please visit *http://www.afdo.org.* (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register.**)

The registrar will also accept payment through Visa and MasterCard credit cards. For more information on the public workshop, or for questions about registration, please contact AFDO at

717–757–2888, FAX: 717–650–3650, or e-mail: *afdo@afdo.org.*

SUPPLEMENTARY INFORMATION: The public workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The workshop will provide FDA-regulated drug and device entities with information on a number of topics concerning FDA requirements related to the production and marketing of drugs and/or devices. Topics for discussion include the following:

- Globalization, Imports, and Supplier Controls,
- Medical Product Theft and Criminal Investigations,
- Proposed Changes to the 510(K) Review Process,
- Health Fraud,
- Streamlining the FDA Enforcement Process,
- The Future of Medical Products Regulation,
- Medical Devices in Canada,
- The Freedom of Information Act,
- Medical Product Complaint Investigations,
- Writing Corrective and Preventive Actions Procedures and Documents to Reflect Compliance Initiatives, and
- Top Ten FDA–483 Objectionable Observations.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The workshop helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393) which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as outreach activities by government agencies to small businesses.

Dated: February 1, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–2458 Filed 2–3–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Revision to Proposed Collection; Comment Request; The National Children's Study (NCS), Vanguard (Pilot) Study

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 15, 2010, pages 69680–69681, and allowed 60 days for public comment. One comment was received. The comment questioned the value and utility of the proposed data collection, stating that this type of research is not needed. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Pilot Study for the National Children's Study *Type of Information Collection Request:* Revision. *Affected entities:* Households and individuals. *Types of respondents:* People potentially affected by this action are pregnant women, women age 18–49 years of age, their husbands or partners, and their children who live in selected areas within National Children's Study sites. Health care professionals, community leaders, and child care personnel are also potentially affected.

Frequency of Response: On occasion. See burden table for estimated number of annual responses for each respondent.

Need and use of information collection: The purpose of the proposed methodological study is to continue the Vanguard phase of the National Children's Study (NCS) to evaluate the feasibility, acceptability, and cost of recruitment strategies and study design elements for a prospective, national longitudinal study of child health and development. In combination, the sub-studies encompassed by the Vanguard Phase will be used to inform the design of the Main Study of the National Children's Study.

We propose to continue data collection among the 37 Vanguard Study locations up to and including the visit planned to take place when the sample children have reached 24 months of age. This would align study visits approved for the initial 7 Vanguard Study locations (which extend past the birth visit to include a 3-, 6-, 9-, 12-, 18- and 24-month visit) with the study visits approved for the 30 additional Vanguard Study locations (which were initially proposed and approved up to and including the birth visit). Extending the data collection of the 30 additional Vanguard Study locations to 24 months of age would support rigorous, empirical evaluation of participant retention as it may relate to recruitment strategy. A strong understanding of how to encourage retention of study participants, particularly during the infancy and early childhood years, will be essential to planning the Main Study. Additionally, continuing data collection post-birth among the alternate recruitment strategy study locations allows us to generate additional data to inform the development of study visit procedures, both for future Vanguard Study efforts and the Main Study.

We also propose reintroduction of a limited set of study visit measures to all 37 of the Vanguard Study locations engaged in data collection. Recall that extensive measures, including biospecimens, were previously approved for use in the initial 7 Vanguard Study locations. When the additional 30 locations were added, we streamlined data collection to allow focus on improving recruitment rates. Now that we have the training for those new locations (and retraining for the initial locations) completed, it is an opportune time to reintroduce selected measures that have the benefit of field experience. That field experience has been used to improve their scientific robustness, burden, and cost. These improved measures now require field testing to best inform their suitability for the Main Study. Specifically, we would like to reincorporate a father interview; maternal blood and urine collection; infant cord blood collection; home tap water and dust collection; a pregnancy health care log; and an infant and child health care log. In addition to supporting further testing of refined items, including these measures in the Recruitment Substudy would result in a data collection scope more closely mirroring the anticipated scope of the Main Study, thereby allowing better gauge of data collection scope and

resources and the relationship with retention and study logistics over time.

We will evaluate the feasibility (technical performance), acceptability (respondent tolerance and impact on study infrastructure), and cost (operations, time, and effort) of each recruitment and retention strategy using pre-determined measures. We will compare these findings and use them as a basis to inform the strategies, or combinations of strategies, that might be used in the Main Study of the NCS. Further details pertaining to the NCS background and planning can be found at: *http://www.nationalchildrensstudy.gov.*

Burden statement: The additional public burden for this study will vary depending on the method of recruitment. The table below provides the annualized average burden per person over the two-year data collection period for all three alternate recruitment strategies.

The additional annualized cost to respondents over the two-year data collection period for the 30 locations engaged in the alternate recruitment strategies to extend data collection from birth to age 2 is estimated at $82,000 (based on $10 per hour) and the differential time estimates in Table A.2.e, below. To reintroduce the proposed measures into the 30 locations engaged in the alternate recruitment strategies, the annualized cost to respondents over the same period is estimated at an additional $79,000 (based on $10 per hour) and the differential time estimates in Table A.2.e, below. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

BILLING CODE 4140–01–P

Table A.2.a Estimated Additional Hour Burden and Cost for the Recruitment Substudy Respondents, Postnatal to Age 2, PROVIDER-BASED

Strategy	Activity	Type of Respondent	Number of Respondents	Responses per Respondent	Hours per Response	Annual Hour Burden	Annual Respondent Cost
Provider-Based	**Screening Activities**						
	Address Lookup Tool	Age-Eligible Women	7,500	1	0.10	750	$7,500
	Pregnancy Screener (Provider Based)	Age-Eligible Women	1,500	1	0.40	600	$6,000
	Healthcare Provider Questionnaire	Healthcare Providers	600	1	0.16	96	$960
	Preconception Activities						
	Non-pregnant Women's Informed Consent	Age-Eligible Women	205	1	0.50	103	$1,025
	Pre-Pregnancy Interview	Age-Eligible Women	123	1	0.75	92	$923
	Pre-Pregnancy Blood and Urine Collection	Age-Eligible Women	111	1	0.25	28	$277
	Pregnancy Probability Group Script	Age-Eligible Women	123	6	0.10	74	$738
	Validation Script	Age-Eligible Women	225	1	0.08	19	$188
	Pregnancy Activities						
	Pregnant Women's Informed Consent Form	Pregnant Women	1,295	1	0.50	648	$6,475
	Pregnancy Visit 1 Interview	Pregnant Women	572	1	1.00	572	$5,720
	Pregnancy Visit 1 Blood and Urine Collection	Pregnant Women	415	1	0.25	104	$1,038
	Pregnancy Visit 2 Interview	Pregnant Women	572	1	0.75	429	$4,290
	Pregnancy Visit 2 Blood and Urine Collection	Pregnant Women	515	1	0.25	129	$1,287
	Pregnancy Health Care Log	Pregnant Women	458	1	0.33	153	$1,525
	Father Informed Consent Form	Alternate Caregiver	458	1	0.50	229	$2,288
	Father Interview	Alternate Caregiver	275	1	0.25	69	$686
	Birth-Related Activities						
	Birth Visit Interview	Mother/Baby	299	1	0.40	120	$1,196
	Total, Prenatal and Birth Activities		***15,244***			***4,212***	***$42,115***
	Postnatal Activities						
	Infant/Child Health Care Log	Mother/Baby	290	1	0.33	96	$957
	3-Month Phone Call	Mother/Baby	290	1	0.33	96	$957
	6-Month Visit Interview	Mother/Baby	281	1	0.50	141	$1,407
	9-Month Phone Call	Mother/Baby	273	1	0.17	46	$464
	12-Month Visit Interview	Mother/Baby	265	1	0.50	132	$1,324
	18-Month Maternal Phone Call	Mother/Baby	251	1	0.50	126	$1,257
	24-Month Maternal Phone Call	Mother/Baby	239	1	0.50	119	$1,194
	Total, Postnatal to 24-Month		***1,889***			***756***	***$7,560***
	Total, Provider-Based		**17,134**			**4,968**	**$49,675**

Table A.2.b Estimated Additional Hour Burden and Cost for the Recruitment Substudy Respondents, Postnatal to Age 2, ENHANCED HOUSEHOLD

Strategy	Activity	Type of Respondent	Number of Respondents	Responses per Respondent	Hours per Response	Annual Hour Burden	Annual Respondent Cost
Enhanced Household	**Screening Activities**						
	Household Enumeration Instrument	HH Reporters	120,000	1	0.33	39,600	$396,000
	Pregnancy Screener (Enhanced Household)	Age-Eligible Women	51,198	1	0.42	21,503	$215,032
	Preconception Activities						
	Non-pregnant Women's Informed Consent	Age-Eligible Women	352	1	0.50	176	$1,758
	Pre-Pregnancy Interview	Age-Eligible Women	211	1	0.75	158	$1,583
	Pre-Pregnancy Blood and Urine Collection	Age-Eligible Women	190	1	0.25	47	$475
	Pregnancy Probability Group Script	Age-Eligible Women	211	6	0.10	127	$1,266
	Validation Script	Age-Eligible Women	388	1	0.08	31	$311
	Pregnancy Activities						
	Pregnant Women's Informed Consent Form	Pregnant Women	2,236	1	0.50	1,118	$11,180
	Pregnancy Visit 1 Interview	Pregnant Women	986	1	1.00	986	$9,860
	Pregnancy Visit 1 Blood and Urine Collection	Pregnant Women	716	1	0.25	179	$1,791
	Pregnancy Visit 2 Interview	Pregnant Women	986	1	0.75	740	$7,395
	Pregnancy Visit 2 Blood and Urine Collection	Pregnant Women	887	1	0.25	222	$2,219
	Pregnancy Health Care Log	Pregnant Women	789	1	0.33	263	$2,629
	Father Informed Consent Form	Alternate Caregiver	789	1	0.50	394	$3,944
	Father Interview	Alternate Caregiver	473	1	0.25	118	$1,183
	Birth-Related Activities						
	Birth Visit Interview	Mother/Baby	516	1	0.40	206	$2,064
	Total, Prenatal and Birth Activities		***180,928***			***65,869***	***$658,689***
	Postnatal Activities						
	Infant/Child Health Care Log	Mother/Baby	501	1	0.33	165	$1,652
	3-Month Phone Call	Mother/Baby	501	1	0.33	165	$1,652
	6-Month Visit Interview	Mother/Baby	486	1	0.50	243	$2,428
	9-Month Phone Call	Mother/Baby	471	1	0.17	80	$801
	12-Month Visit Interview	Mother/Baby	457	1	0.50	228	$2,284
	18-Month Maternal Phone Call	Mother/Baby	434	1	0.50	217	$2,170
	24-Month Maternal Phone Call	Mother/Baby	412	1	0.50	206	$2,061
	Total, Postnatal to 24-Month		***3,261***			***1,305***	***$13,047***
	Total, Enhanced Household		**184,189**			**67,174**	**$671,736**

Table A.2.c Estimated Additional Hour Burden and Cost for the Recruitment Substudy Respondents, Postnatal to Age 2, TWO TIER HIGH INTENSITY

Strategy	Activity	Type of Respondent	Number of Respondents	Responses per Respondent	Hours per Response	Annual Hour Burden	Annual Respondent Cost
Two-Tier (High)	**Screening Activities**						
	Invitation from Low- to High-intensity Script	Age-Eligible Women	15,840	1	0.25	3,960	$39,600
	Pregnancy Screener	Age-Eligible Women	15,840	1	0.42	6,653	$66,528
	Preconception Activities						
	Non-pregnant Women's Informed Consent	Age-Eligible Women	1,268	1	0.50	634	$6,342
	Pre-Pregnancy Interview	Age-Eligible Women	761	1	0.75	571	$5,708
	Pre-Pregnancy Blood and Urine Collection	Age-Eligible Women	685	1	0.25	171	$1,712
	Pregnancy Probability Group Script	Age-Eligible Women	761	6	0.10	457	$4,566
	Validation Script	Age-Eligible Women	1,426	1	0.08	114	$1,141
	Pregnancy Activities						
	Pregnant Women's Informed Consent Form	Pregnant Women	8,236	1	0.50	4,118	$41,180
	Pregnancy Visit 1 Interview	Pregnant Women	3,552	1	1.00	3,552	$35,520
	Pregnancy Visit 1 Blood and Urine Collection	Pregnant Women	2,580	1	0.25	645	$6,451
	Pregnancy Visit 2 Interview	Pregnant Women	3,552	1	0.75	2,664	$26,640
	Pregnancy Visit 2 Blood and Urine Collection	Pregnant Women	3,197	1	0.25	799	$7,992
	Pregnancy Health Care Log	Pregnant Women	2,842	1	0.33	947	$9,472
	Father Informed Consent Form	Alternate Caregiver	2,842	1	0.50	1,421	$14,208
	Father Interview	Alternate Caregiver	1,705	1	0.25	426	$4,262
	Birth-Related Activities						
	Birth Visit Interview	Mother/Baby	1,857	1	0.40	743	$7,428
	Total, Prenatal and Birth Activities		2,842	1	0.50	1,421	$14,208
	Postnatal Activities						
	Infant/Child Health Care Log	Mother/Baby	1,801	1	0.33	594	$5,944
	3-Month Phone Call	Mother/Baby	1,801	1	0.33	594	$5,944
	6-Month Visit Interview	Mother/Baby	1,747	1	0.50	874	$8,736
	9-Month Phone Call	Mother/Baby	1,695	1	0.17	288	$2,881
	12-Month Visit Interview	Mother/Baby	1,644	1	0.50	822	$8,220
	18-Month Maternal Phone Call	Mother/Baby	1,562	1	0.50	781	$7,809
	24-Month Maternal Phone Call	Mother/Baby	1,484	1	0.50	742	$7,418
	Total, Postnatal to 24-Month Activities		***11,734***			***4,695***	***$46,949***
	Total, Two-Tier (High)		**14,007**			**5,832**	**$58,316**

Table A.2.d Estimated Additional Hour Burden and Cost for the Recruitment Substudy Respondents, Postnatal to Age 2, TWO TIER LOW INTENSITY

Strategy	Activity	Type of Respondent	Number of Respondents	Responses per Respondent	Hours per Response	Annual Hour Burden	Annual Respondent Cost
Two-Tier (Low)	**Screening Activities**						
	Pregnancy Screener (TT-LI, TT-HI)	Age-Eligible Women	48,000	1	0.35	16,800	$168,000
	Low-Intensity Consent Script	Age-Eligible Women	28,800	1	0.33	9,504	$95,040
	Preconception and Pregnancy Activities						
	Low-intensity Questionnaire (Non-Pregnant)	Age-Eligible Women	10,057	1	0.50	5,029	$50,285
	Pregnancy Probability Group Script	Age-Eligible Women	10,057	6	0.10	6,034	$60,342
	Low-intensity Questionnaire (Pregnant)	Pregnant Women	518	1	0.50	259	$2,590
	Father Low Intensity Informed Consent Form	Alternate Caregiver	1,451	1	0.33	484	$4,837
	Father Low Intensity Interview	Alternate Caregiver	871	1	0.17	145	$1,451
	Validation Script	Age-Eligible Women	1,586	1	0.08	127	$1,269
	Birth-Related Activities						
	Low-intensity Questionnaire (Birth-focus)	Mother/Baby	1,296	1	0.50	648	$6,480
	Total, Prenatal and Birth Activities		***102,636***			***39,029***	***$390,295***
	Postnatal Activities						
	Low-intensity Questionnaire (Child-focus)	Mother/Baby	1,147	4	0.50	2,295	$22,947
	Total, Postnatal to 24-Month Activities		***1,147***			***2,295***	***$22,947***
	Total, Two-Tier (Low)		**103,784**			**41,324**	**$413,241**

Table A.2.e Estimated Additional Hour Burden and Cost for the Recruitment Substudy Respondents, Postnatal to Age 2, COMBINED TOTAL

Activity	Number of Respondents	Annual Hour Burden	Annual Respondent Cost
Total, Prenatal and Birth, Recruitment Substudy	301,082	110,247	**$1,10247**
Total, Postnatal to 24-Months, Recruitment Substudy*	15,440	8,195	**$81,954**
Total, Reintroduction of Selected Measures, Prenatal and Postnatal	24,839	7,828	**$78,277**

* Infant health care log hours are represented in the tally of hours for the reintroduction of selected measures.

BILLING CODE 4140–01–C

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: 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: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Jamelle E. Banks, M.P.H., National Institute of Child Health and Human Development, 31 Center Drive, Room 2A18, Bethesda, Maryland 20892, or call non-toll free number (301) 443–7210, or e-mail your request, including your address to *banksj@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: January 28, 2011.

Jamelle E. Banks,

NICHD Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–2539 Filed 2–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Pretesting of NIAID's Biomedical HIV Prevention Research Communication Messages

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Allergy and Infectious Diseases (NIAID), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 17, 2010 (Volume 75, Number 221), page 70270–70271 and allowed 60-days for public comment. In response, NIAID received two requests for copies of the clearance package, which were provided. No additional requests, comments or suggestions were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Pretesting of NIAID's Biomedical HIV Prevention Research Communication Messages. *Type of Information Collection Request:* Revision of a previously approved collection. *Need and Use of Information Collection:* This is a request for clearance to pretest messages, materials and program activities about biomedical HIV prevention research. The primary objectives of the pretests are to (1) assess audience knowledge, attitudes, behaviors and other characteristics for the planning/development of health messages, education products, communication strategies, and public information programs; and (2) pretest these health messages, products, strategies, and program components while they are in developmental form to assess audience comprehension, reactions, and perceptions. The information obtained from audience research and pretesting results in more effective messages, materials, and programmatic strategies. By maximizing the effectiveness of these messages and strategies for reaching targeted audiences, the frequency with which publications, products, and programs need to be modified is reduced. *Frequency of Response:* On occasion. *Affected Public:* Individuals. *Type of Respondents:* Adults at risk for HIV/AIDS; healthcare providers; representatives of organizations disseminating HIV-related messages or materials. The total reporting burden over the 3-year period is shown in the table below. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Note: The burden table below reflects what NIAID anticipates would be accomplished over the total 3-year life of the clearance. (Annual burden, therefore, is one-third of the total figures presented here.)

TABLE 1—ESTIMATES OF HOUR BURDEN BY ANTICIPATED DATA COLLECTION METHODS

	Total number of respondents	Frequency of response	Hours per response	Total hours
Individual In-Depth Interviews (in person or telephone)	228	1	1	228
	22 (Partners/Stakeholders)	2	1	44
Focus Group Interviews	864	1	2	1728
Intercept Interviews/Surveys	4500	1	.25	1125
Gatekeeper Reviews	150	1	.25	37.5
Self-Administered Questionnaires: Random selection from central location, online, etc.	1500	1	.25	375
Self-Administered Customer Satisfaction Surveys of Meetings and Conference Sessions.	2265	1	.2	453
	50 (Partners/Stakeholders)	3	.2	30
Self-Administered: Customer Satisfaction Surveys of Materials and Services.	50 (Partners)	3	.25	37.5
Self-Administered Customer Satisfaction Pop-up Surveys	900	1	.08	72
Telephone Surveys	1000	1	.25	250
Totals	11,529			4,380

(**Note:** On an annual basis, the total number of respondents is 3,843; and the total annual hours are 1,460)

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: 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: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Katharine Kripke, Assistant Director, Vaccine Research Program, Division of AIDS, NIAID, NIH, 6700B Rockledge Dr., Bethesda, MD 20892–7628, or call non-toll-free number 301–402–0846, or e-mail your request, including your address to *kripkek@niaid.nih.gov.*

Comments due date: Comments regarding this information collection are best assured of having their full effect if

received within 30-days of the date of this publication.

Dated: January 28, 2011.

William A. Gillen,

Acting Deputy Director for Science Management, National Institute of Allergy and Infectious Diseases, NIH/HHS.

[FR Doc. 2011–2546 Filed 2–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Short Follow-Up Questionnaire for the National Institutes of Health (NIH)–AARP Diet and Health Study (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Short Follow-Up Questionnaire for the National Institutes of Health (NIH)–AARP Diet and Health Study (NCI). *Type of Information Collection Request:* Extension. *Need and Use of Information Collection:* The purpose of this short 2-page questionnaire is to obtain information on 18 different medical conditions, several medical procedures, and lifestyle characteristics from 485,909 participants of the NIH–AARP Diet and Health Study. The questionnaire will support the ongoing examination between cancer and nutritional exposures. A pilot mailing to 1,600 randomly selected NIH–AARP Diet and Health study participants confirmed the feasibility of the methodology and willingness of respondents to participate in this data collection effort. This questionnaire adheres to The Public Health Service Act, Section 412 (42 U.S.C. 285a–1) and Section 413 (42 U.S.C. 285a–2), which authorizes the Division of Cancer Epidemiology and Genetics of the National Cancer Institute (NCI) to establish and support programs for the detection, diagnosis, prevention and treatment of cancer; and to collect, identify, analyze and disseminate information on cancer research, diagnosis, prevention and treatment. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* U.S. adults (persons aged 50–85). The annual reporting burden is displayed in the table below. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondents	Number of respondents	Frequency of response	Average time per response (Minutes/Hour)	Annual hour burden
Senior Adults	485,909	1	4/60 (0.067)	32,394

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Yikyung Park, Sc.D., Staff Scientist, Nutritional Epidemiology Branch, Division of Cancer Epidemiology and Genetics, National Cancer Institute, NIH, DHHS, 6120 Executive Blvd., Rockville, MD 20852 or call non-toll-free number 301–594–6394 or e-mail your request, including your address to: *parkyik@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 28, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–2540 Filed 2–3–11; 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 the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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 Neurological Disorders and Stroke Initial Review Group; NST–2 Subcommittee.

Date: March 7–8, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Willard InterContinental Washington, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

Contact Person: JoAnn McConnell, PhD, Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–5324, *mcconnej@ninds.nih.gov.*

(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: January 31, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2500 Filed 2–3–11; 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: Vascular and Hematology.
Date: February 24–25, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Ai-Ping Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Kidney and Urologic Diseases.
Date: March 2, 2011.
Time: 1 p.m. to 3 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: Atul Sahai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Channels and Synapses.
Date: March 2, 2011.
Time: 12 p.m. to 1:30 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: Deborah L Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Topics in Bacterial Pathogenesis.
Date: March 7–8, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Rolf Menzel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952, *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurodegeneration, Trauma, Immunology and Imaging.
Date: March 7–8, 2011.
Time: 8 a.m. to 8 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Julius Cinque, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Health IT.
Date: March 7, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.
Contact Person: Melinda Jenkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–437–7872, *jenkinsml2@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Diagnostics, Food Safety, Sterilization/Disinfection and Bioremediation.
Date: March 7–8, 2011.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Memory, Pain and Auditory Neuroscience.
Date: March 8–9, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Kirk Thompson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS-associated Opportunistic Infections and Cancer Study Section.
Date: March 8, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Delfina Santa Monica Hotel, 530 Pico Boulevard, Santa Monica, CA 90405.
Contact Person: Eduardo A Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Health and Health Related Behavior of Individuals and Populations.
Date: March 9, 2011.
Time: 8 a.m. to 6 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: Karin F Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Molecular and Cellular Biology Study Section.
Date: March 9, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Delfina Santa Monica Hotel, 530 Pico Boulevard, Santa Monica, CA 90405.
Contact Person: Kenneth A Roebuck, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Learning, Alcohol and Neurotoxicology.
Date: March 9–10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member

Conflicts: Lung Immunology, Asthma, and Cystic Fibrosis Applications.

Date: March 9, 2011.

Time: 9 a.m. to 12 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: Everett E Sinnett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@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: January 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2494 Filed 2–3–11; 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 the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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 Neurological Disorders and Stroke Special Emphasis Panel; EUREKA.

Date: March 17, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892, 301–496–0660, *Benzingw@mail.nih.gov.*

(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: January 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2491 Filed 2–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Fellowships and Dissertation Grants.

Date: February 28, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2493 Filed 2–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Announcement of Workshop on Clarifying Directions and Approaches to Mechanistic and Translational Research on Omega-3 Fatty Acids and Their Metabolites

ACTION: Notice.

SUMMARY: The National Center for Complementary and Alternative Medicine (NCCAM) invites the research community to participate in a Workshop on Clarifying Directions and Approaches to Mechanistic and Translational Research on Omega-3 Fatty Acids and their Metabolites. The purpose of this workshop is to bring together researchers from a variety of fields to discuss cutting edge mechanistic and translational research related to the underlying mechanisms of Omega-3 fatty acids and their metabolites. The goal is to identify opportunities to move Omega-3 fatty acid of research forward by highlighting barriers to progress with potential solutions and elucidation of gaps in the field which can be addressed. The Workshop will take place on February 14–15, 2011.

Location: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

For registration information please contact Dawn Wayman at 301.594.9877 or *waymandm@mail.nih.gov*.

Background: The National Center for Complementary and Alternative Medicine (NCCAM) was established in 1999 with the mission of exploring complementary and alternative healing practices in the context of rigorous science, training CAM researchers, and disseminating authoritative information to the public and professionals. NCCAM funds research grants that explore the science of CAM. For more information, see *http://nccam.nih.gov/*.

Participating: Other institutes participating in this workshop include: the Office of Dietary Supplements (ODS), National Cancer Institute (NCI), National Heart, Blood and Lung Institute (NHLBI), National Institute of Mental Health (NIMH), National Institute on Aging (NIA), National Institute of Neurological Disorders and Stroke (NINDS), National Institute on Alcohol Abuse and Alcoholism (NIAAA), and the National Eye Institute (NEI).

FOR FURTHER INFORMATION CONTACT: To request more information, call 301.594.9877 (Dawn Wayman) or e-mail at *waymandm@mail.nih.gov*.

Dated: January 26, 2011.

Wendy Weber,

Program Officer, Division of Extramural Research, National Center for Complementary and Alternative Medicine, National Institutes of Health.

[FR Doc. 2011–2545 Filed 2–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–11]

Notice of Submission of Proposed Information Collection to OMB; HUD-Owned Real Estate—Good Neighbor Next Door Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This collection of information will be used in binding contracts between the purchaser and HUD in implementing the Good Neighbor Next Door program. The respondents are purchasers of HUD-owned properties, teachers, law enforcement officers, and firefighters/emergency responders.

DATES: *Comments Due Date:* March 7, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502–0570) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov*; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and 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: HUD-Owned Real Estate—Good Neighbor Next Door program.

OMB Approval Number: 2502–0570.

Form Numbers: HUD–9549–D, HUD–9549–E, HUD–9549–C, HUD–9549–B, HUD–9549–A, HUD–9549, HUD–9548–a.

Description of the Need for the Information and Its Proposed Use: This collection of information will be used in binding contracts between the purchaser and HUD in implementing the Good Neighbor Next Door program. The respondents are purchasers of HUD-owned properties, teachers, law enforcement officers, and firefighters/emergency responders.

Frequency of Submission: On-occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	20,292	0.0615		10.517		13,136

Total Estimated Burden Hours: 13,136.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 1, 2011.

Colette Pollard,

Departmental Reports Management Officer.

[FR Doc. 2011–2525 Filed 2–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–12]

Notice of Submission of Proposed Information Collection to OMB Conversion of Efficiency Units to One-Bedroom Units Multifamily Housing Package

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is collected from owners seeking to convert efficiency units into one bedroom units in certain types of HUD assisted and/or insured housing. The Department has developed standards and requirements via Housing Notice and forms to permit the conversion of efficiencies to one-bedrooms provided it can be demonstrated that the conversion is warranted by local demands and results in the long-term financial and physical repositioning of the project.

DATES: *Comments Due Date: March 7, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0592) and should be sent to: HUD Desk Officer,

Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. This notice also lists the following information:

Title of Proposal: Conversion of Efficiency Units to One-Bedroom Units Multifamily Housing Package.

OMB Approval Number: 2502–0592.

Form Numbers: HUD 92040, HUD 92466, HUD 9647, HUD 92030, HUD–92032, HUD 92033, HUD 92031–IRP.

Description of the Need for the Information and Its Proposed Use: This information is collected from owners seeking to convert efficiency units into one bedroom units in certain types of HUD assisted and/or insured housing. The Department has developed standards and requirements via Housing Notice and forms to permit the conversion of efficiencies to one-bedrooms provided it can be demonstrated that the conversion is warranted by local demands and results in the long-term financial and physical repositioning of the project.

Frequency of Submission: On-occasion, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	23,578	6.250		0.159		23,578

Total Estimated Burden Hours: 23,578.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 1, 2011.

Colette Pollard,

Departmental Reports Management Officer

[FR Doc. 2011–2520 Filed 2–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–05]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, Room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other

Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (703) 601–2545; (This is not a toll-free number).

Dated: January 27, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 02/04/2011

Unsuitable Properties

Building

Kentucky

24 Bldgs.
Fort Knox
Ft. Knox KY 40121
Landholding Agency: Army
Property Number: 21201110003
Status: Unutilized
Directions: 1727, 3107, 6898, 7014, 7015, 7021, 7022, 7042, 7044, 7050, 7104, 7121, 7469, 7741, 9205, 9215, 9231, 9256, 9272, 9276, 9278, 9619, 9639, 9680
Reasons: Extensive deterioration

[FR Doc. 2011–2168 Filed 2–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2011–N021; 80221–1113–0000–F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before March 7, 2011.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; *see* **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests. Before including your address, phone number, e-mail 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.

Permit No. TE–31042A

Applicant: Texas A&M University, Corpus Christi, Texas.

The applicant requests a permit to take (trap, seine, capture, handle, fin clip, release, collect, transport, and captive breed) the Owens tui chub (*Siphateles bicolor snyderi*) in conjunction with surveys, genetic research, and captive breeding experiments in Inyo and Mono Counties, California, for the purpose of enhancing its survival.

Permit No. TE–30656A

Applicant: James E. Berrian, San Diego, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–30659A

Applicant: Creekside Center for Earth Observation, Menlo Park, California.

The applicant requests a permit to take (survey, capture, handle, collect, translocate, and release) the Mission Blue butterfly (*Icaricia icarioides missionensis*) in conjunction with translocation activities from San Bruno Mountain, San Mateo County, to Twin Peaks Natural Area, San Francisco County, California, for the purpose of enhancing its survival.

Permit No. TE–233367

Applicant: Laura E. Gorman, Redondo Beach, California.

The applicant requests an amendment to an existing permit (December 16, 2009, 74 FR 66668) to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys and population monitoring activities throughout the range of the species in California and Nevada for the purpose of enhancing its survival.

Permit No. TE–31406A

Applicant: California State Parks, Channel Coast District, Ventura, California.

The applicant requests a permit to take (survey, locate and monitor nests, install fence, population monitor, and collect carcasses) the California least tern (*Sterna antillarum browni*) in conjunction with surveys and population monitoring activities at the McGrath State Beach and Mandalay State Beach, Ventura County, California, for the purpose of enhancing its survival.

Permit No. TE–798003

Applicant: North State Resources, Redding, California.

The applicant requests an amendment to an existing permit (February 22, 2000, 65 FR 8731) to take (survey, capture, handle and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–32399A

Applicant: Judson D. Sechrist, Denver, Colorado.

The applicant requests a permit to take (capture, handle, collect, transport, and kill) the Lost River sucker (*Deltistes luxatus*) and the shortnose sucker (*Chasmistes brevirostris*) in conjunction with research, entrainment minimization studies, and testing effectiveness of non-physical fish barriers in Klamath County, Oregon, for the purpose of enhancing their survival.

Permit No. TE–170381

Applicant: William F. Stagnaro, San Francisco, California.

The applicant requests an amendment to an existing permit (December 16, 2009, 74 FR 66668) to take (collect tissue samples) the California tiger salamander (*Ambystoma californiense*) in conjunction with genetic studies throughout the range of the species in California for the purpose of enhancing its survival.

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Michael Long,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. 2011–2425 Filed 2–3–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N261; 80221–1112–80221–F2]

San Diego County Water Authority Subregional Natural Community Conservation Program/Habitat Conservation Plan, San Diego and Riverside Counties, CA; Final Environmental Impact Statement and Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Under the National Environmental Policy Act (NEPA), we, the Fish and Wildlife Service (Service), announce the availability of the final Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) on the application from the San Diego County Water Authority (Water Authority; Applicant) for an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the Water Authority's Subregional Natural Community Conservation Program/Habitat Conservation Plan (NCCP/HCP), which the applicant has submitted with their incidental take permit application and Implementing Agreement (IA). If issued, the permit would authorize incidental take of species for a 55-year term during construction, operations, and maintenance activities by the Applicant in San Diego and Riverside Counties, California.

DATES: A record of decision will be signed no sooner than 30 days after the publication of the Environmental Protection Agency (EPA) notice of the Final EIS in the **Federal Register**. We must receive any comments by 5 p.m. on March 7, 2011.

ADDRESSES: Send comments by U.S. mail to Mr. Jim Bartel, Field Supervisor, at Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; or by facsimile to (760) 431–5902.

FOR FURTHER INFORMATION CONTACT: Ms. Karen A. Goebel, Assistant Field Supervisor, at the Carlsbad Fish and Wildlife Office address above; or telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION: We advise the public of the availability of the final EIR/EIS on the application from Water Authority for an incidental take permit. The EIR portion of the joint document was prepared by the Water Authority in compliance with the California Environmental Quality Act (CEQA).

We also announce the availability of the Water Authority Subregional Natural Community Conservation Program/Habitat Conservation Plan (NCCP/HCP), which the applicant has submitted with their incidental take permit application and Implementing Agreement (IA). If issued, the permit would authorize incidental take of 37 animal species and provide assurances for 26 plant species (including 18 federally listed species) during the proposed 55-year term of the permit. The permit is needed because incidental take of federally listed animal species could occur during construction, operations, and maintenance activities by the Applicant within the approximately 992,000-acre (401,450-hectare) Plan Area in western San Diego County and south-central Riverside County, California.

Availability of Documents

Documents available for public review include the final EIR/EIS which includes response to public comments received on the draft EIR/EIS, the Water Authority NCCP/HCP, and the IA. For copies of the documents, please contact the Service by telephone at (760) 431–9440, or by letter to the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Copies of the documents also are available for public review, by appointment, during regular business hours, at the Carlsbad Fish and Wildlife Office or at the San Diego County Water Authority Office (4677 Overland Avenue, San Diego, CA 92123). Copies are also available for viewing in select San Diego County and Riverside County public libraries (listed below) and at the Water Authority's Web site: *http://www.sdcwa.org/*.

1. Carlsbad Public Library—Reference Desk. 1775 Dove Lane, Carlsbad, CA 92009.
2. Chula Vista Public Library—Reference Desk. 365 F Street, Chula Vista, CA 91910.
3. Escondido Public Library—Reference Desk. 239 S. Kalmia Street, Escondido, CA 92025.
4. Lakeside Public Library—Reference Desk. 9839 Vine Street, Lakeside, CA 92040.
5. Mission Valley Branch Library—Reference Desk. 2123 Fento Parkway, San Diego, CA 92108.
6. San Diego Public Library—Reference Desk. 820 E Street, San Diego, CA 92101.
7. Temecula Public Library—Reference Desk. 30600 Pauba Road, Temecula, CA 92592.

Background

Section 9 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), and Federal regulations prohibit the "take" of fish and wildlife species federally listed as endangered or threatened. Take of federally listed fish or wildlife is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct (16 U.S.C. 1538). "Harm" includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). Under limited circumstances, we may issue

permits to authorize incidental take, which is defined under the Act as take that is incidental to, and not the purpose of, otherwise lawful activities. Although take of plant species is not prohibited under the Act, and therefore cannot be authorized under an incidental take permit, plant species are proposed to be included on the permit in recognition of the conservation benefits provided to them under the NCCP/HCP. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively. All species included on the incidental take permit, if issued, would receive assurances under the Service's "No Surprises" regulation (50 CFR 17.22(b)(5) and 17.32(b)(5)).

The Applicant seeks incidental take authorization for 37 animal species and assurances for 26 plant species. Collectively the 63 listed and unlisted species are referred to as "Covered Species" by the NCCP/HCP and include 26 plant species (5 endangered, 5 threatened, and 16 unlisted); 5 invertebrate species (3 endangered and 2 unlisted); 2 amphibian species (1 endangered and 1 unlisted); 9 reptile species (all unlisted); 13 bird species (2 endangered, 1 threatened, and 10 unlisted); and 8 mammal species (1 endangered and 7 unlisted). Take authorized for listed covered animal species would be effective upon permit issuance. For currently unlisted covered animal species, take authorization would become effective concurrent with listing, should the species be listed under the Act during the permit term.

The proposed permit would include the following eight federally listed animal species: Stephens' kangaroo rat (*Dipodomys stephensi;* endangered), least Bell's vireo (*Vireo bellii pusillus;* endangered), coastal California gnatcatcher (*Polioptila californica californica;* threatented), southwestern willow flycatcher (*Empidonax traillii extimus;* endangered), arroyo toad (*Anaxyrus (=Bufo) californicus;* endangered), Quino checkerspot butterfly (*Euphydryas editha quino;* endangered), Riverside fairy shrimp (*Streptocephalus woottoni;* endangered), and San Diego fairy shrimp (*Branchinecta sandiegoensis;* endangered). The proposed permit would include assurances for the following 10 federally listed plant species: Encinitas baccharis (*Baccharis vanessae;* threatened), Otay mesa mint (*Pogogyne nudiuscula;* endangered), Otay tarplant (*Deinandra conjugens;* threatened), San Diego ambrosia (*Ambrosia pumila;* endangered), San Diego button-celery (*Eryngium aristulatum* var. *parishii;* endangered), San Diego mesa mint (*Pogogyne abramsii;* endangered), San Diego thornmint (*Acanthomintha ilicifolia;* threatened), spreading navarretia (*Navarretia fossalis;* threatened), thread-leaved brodiaea (*Brodiaea filifolia;* threatened), and willowy monardella (*Monardella viminea;* endangered). See the final EIR/EIS and NCCP/HCP for information on unlisted species proposed for coverage under the permit.

The Water Authority NCCP/HCP is intended to protect and sustain viable populations of native plant and animal species and their habitats in perpetuity through avoidance, minimization, and mitigation measures, including purchase of lands for permanent conservation and use of mitigation credits in mitigation banks previously established to address mitigation requirements associated with the proposed NCCP/HCP. The proposed NCCP/HCP and permit would accommodate the Water Authority's ongoing operations and maintenance requirements, future facility upgrades, and construction of new facilities that are needed to maintain a safe, reliable water source to its member agencies and the San Diego region.

The Water Authority's NCCP/HCP Plan Area encompasses approximately 992,000 acres (401,450 hectares) in western San Diego County and the vicinity of Lake Skinner in south-central Riverside County. The NCCP/HCP is intended to function independently of other HCPs within the San Diego region [*e.g.,* San Diego Multiple Species Conservation Plan (MSCP) and its associated subarea plans, and Western Riverside County's Multiple Species Habitat Conservation Plan (MSHCP)].

As described in the NCCP/HCP and the final EIR/EIS, the proposed NCCP/HCP would provide protection measures for species on Water Authority property and easements, in part by using available mitigation credits from mitigation banks previously established or in planning by the Water Authority as habitat management areas (HMAs). Covered activities, including planned and future projects, are estimated to impact up to 373 acres (151 hectares) of habitat for Covered Species that will require mitigation over the 55-year term of the permit. When on-site mitigation for permanent impacts is not feasible, available mitigation credits would be debited from HMAs in accordance with in-kind mitigation ratios identified in the NCCP/HCP. The Water Authority has established four HMAs (including three upland properties and one wetland creation property) and will establish two addition wetland HMAs totaling 1,920 acres (775 hectares), for which the Water Authority has or will provide endowments for permanent management. Of these acres, approximately 700 acres (283 hectares) would be available as credits to mitigate for project impacts to Covered Species. Costs associated with the NCCP/HCP would be funded as a capital cost under the Water Authority Capital Improvement Program's (CIP) Mitigation Program or within individually approved CIP project budgets, and/or the annual operating budget of the Water Authority's Water Resources Department. The Water Authority estimates its long-term financial needs based on the CIP and has adopted a 2-year budget cycle to address short-term funding and expenditures. Also, contingency measures have been included in the plan should the Water Authority's costs to implement, monitor, and report on the NCCP/HCP's measures exceed the budgeted amount. The Water Authority maintains a diverse revenue base and consistently evaluates existing and potential revenue sources to ensure that funding of all Water Authority projects is adequate.

The NCCP/HCP includes measures to avoid, minimize, and mitigate incidental take of the Covered Species, emphasizing project design modifications to protect Covered Species and their habitats. A monitoring and reporting plan would gauge the Plan's success based on achievement of biological goals and objectives and would ensure that conservation keeps pace with development. The NCCP/HCP also includes a management program, including adaptive management, which allows for changes in the conservation program if the biological species objectives are not met or if new information becomes available to improve the efficacy of the NCCP/HCP's conservation strategy.

Covered Activities would include developing new water transmission, storage, and flow management facilities, in addition to conducting operation and maintenance activities. These Covered Activities fall under three primary categories, including:

(1) Construction of Capital Improvement Program Facilities;

(2) Operation and Maintenance Activities; and

(3) Preserve Area Management, Monitoring, and Adaptive Management

National Environmental Policy Act Compliance

Our proposal to issue an incidental take permit is a Federal Action that triggers the need for compliance with NEPA. Accordingly, as the Federal

agency responsible for compliance under NEPA, we have prepared jointly with the Water Authority an EIR/EIS that analyzes three alternatives in addition to the proposed action (*i.e.,* permit issuance based on the Water Authority NCCP/HCP) described above. The other alternatives include a no-action (*i.e.,* no permit) alternative, a larger species list alternative, and a reduced plan area alternative. Two other alternatives were considered during the planning process but were not evaluated because neither met the purpose and need of both the Water Authority and the Service; these alternatives involved a no-take alternative and an alternative requiring the Water Authority to participate in other existing regional HCPs.

The final EIR/EIS includes all comments we received on the draft EIR/EIS and our responses to those comments. After the 30-day waiting period, we will complete a Record of Decision that announces our decision on what action will be implemented and discusses all factors leading to the decision.

Public Involvement

We published a notice of intent to prepare an EIS for this project in the **Federal Register** on November 26, 2003 (68 FR 66478). The Service and Water Authority held a public scoping meeting on December 11, 2003. On March 4, 2010, we published a notice of availability of the draft EIR/EIS, draft Water Authority NCCP/HCP, and draft IA in the **Federal Register** (75 FR 9921). Public meetings were held on March 17 and March 18, 2010. The draft documents were available for a 90-day public comment period ending on June 2, 2010.

Public Review

Copies of the final EIR/EIS, Water Authority NCCP/HCP, and IA are available for review (see Availability of Documents). Any comments we receive will become part of the administrative record and may be available to the public. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 20, 2011.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2011–2264 Filed 2–3–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed K Road/Moapa Band of Paiute Indians Photovoltaic Solar Facility, Clark County, NV

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), as lead agency, with the Moapa Band of Paiute Indians (Tribe), the Bureau of Land Management (BLM), the Environmental Protection Agency (EPA), and the Army Corps of Engineers (Corps), as cooperating agencies, intend to gather information necessary for preparing an environmental impact statement (EIS) for the proposed Moapa Band of Paiute Indians Solar Generation Facility on the Moapa River Indian Reservation, Nevada. This notice also announces public scoping meetings to identify potential issues and content for inclusion in the EIS.

DATES: Written comments on the scope and implementation of the proposal must arrive by March 7, 2011. Several public scoping meetings will be held and notices will be published in local newspapers announcing the dates and locations of the meetings.

ADDRESSES: You may mail, e-mail, hand carry or fax written comments to either Ms. Amy Heuslein, Regional Environmental Protection Officer, BIA Western Regional Office Branch of Environmental Quality Services, 2600 North Central Avenue, 4th Floor Mail Room, Phoenix, AZ 85004–3008; telephone: (602) 379–6750; fax: (602) 379–3833; e-mail: *amy.heuslein@bia.gov*; or Mr. Paul Schlafly, Natural Resource Officer, BIA Southern Paiute Agency, 180 N. 200 E., Suite 111 or P.O. Box 720, St. George, UT 84771; telephone: (435) 674–9720; fax: (435) 674–9714; e-mail: *paul.schlafly@bia.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Heuslein at (602) 379–6750 or *amy.heuslein@bia.gov*; or Mr. Paul Schlafy at (435) 674–9720 or *paul.schlafly@bia.gov*.

SUPPLEMENTARY INFORMATION: The proposed Federal action, taken under 25 U.S.C. 415, is the BIA approval of a solar energy ground lease and associated agreements entered into by the Moapa Band of Paiute Indians with K Road Moapa Solar LLC (K Road), and associated approval of rights-of-way and easements, for K Road to construct and operate an up-to 350 MW solar photovoltaic electricity generating facility located entirely on Moapa tribal lands. The Moapa Band of Paiute Indians may use this EIS to make decisions under the Tribal Environmental Policy Ordinance. The BLM may use this EIS to support a decision for a proposed approximately 0.5 mile right-of-way across Federal public lands adjoining the Moapa River Indian Reservation. The right-of-way may be used to link the proposed solar generation facility to an existing substation on a transmission line with a rating up to 500 kilovolts. The USFWS may use this EIS to support its decisions under the Endangered Species Act.

The purposes of the proposed action are to: (1) use the Tribe's solar energy resources and complete a transmission line from the existing electrical grid to the Tribe-owned travel plaza on Interstate 15 (thereby reducing or eliminating the use of diesel-powered generation at the plaza, improving and diversifying the economy of the Moapa Band of Paiute Indians, and providing other benefits to their members in an environmentally compatible manner); and (2) generate clean, renewable electricity that can be efficiently connected to existing transmission lines to help utilities in the region meet their renewable energy goals.

The EIS will assess the alternatives to, and the environmental consequences of, BIA approval, under 25 U.S.C. 415, of a proposed solar energy ground lease and associated agreements between the Moapa Band of Paiute Indians as lessor and K Road as lessee. The ground lease will enable K Road to construct and operate an up-to 350 MW solar photovoltaic electricity generating facility on approximately 2,000 acres of tribal lands held in trust by the United States and located on the Moapa River Indian Reservation, Nevada. The facility will utilize transformers to step up the voltage to interconnection voltage, which will facilitate a connection of the facility with one or more of the following: an existing transmission line on tribal lands (up to 500 kV); the existing 230 kV Crystal substation operated by NV Energy outside tribal lands; and/or the existing 500 kV Crystal substation operated by NV Energy outside tribal lands. The Crystal

substation complex is located on BLM land, approximately 0.5 mile from the southern border of the Moapa River Indian Reservation. The proposed BIA actions include approval of the solar energy ground lease and associated agreements, and approval of rights-of-way and easements on the Moapa River Indian Reservation for K Road to construct electric transmission lines and other supporting facilities for one or more interconnections.

K Road has requested the BLM to approve a right-of-way across approximately a 0.5 mile of Federal public lands in Township 17 South, Range 64 East, Section 10, for purposes of constructing an electrical transmission line to connect the solar generating facility and electric transmission on the Moapa River Indian Reservation with the Crystal substation.

K Road intends to construct and operate the solar facility for a period of 35 years, with an option to renew the lease for another 15 years, if mutually acceptable to the Moapa Tribe and K Road. This area is located in Clark County, Nevada, approximately one mile west of Interstate 15 and approximately 30 miles northeast of Las Vegas, Nevada.

The proposed solar facility will be built in phases of 50 to 100 MW each to meet the needs of offtakers or utilities, up to a total of 350 MW. During the construction of each phase, photovoltaic panels will be affixed to the earth using concrete posts, concrete ballast, or other suitable foundation design techniques appropriate to the topography and site conditions. Some or all of the panels may employ trackers to track the sun during the day. No water will be used in the production of electricity. Water will periodically be used for cleaning the photovoltaic panels during routine maintenance, administrative and sanitation uses at the site (*e.g.,* water in a small office on site), and fugitive dust control.

As lead agency, the BIA will have authority over decisions regarding the EIS and BIA's approval of the solar energy ground lease and associated agreements. These decisions will be documented in a Record of Decision (ROD). BLM will have authority over approval of the off-reservation right-of-way, documented in its ROD. Cooperating agencies, including BLM, will provide expertise and data for their resources of interest and will aid in the development of alternatives and mitigation measures that will minimize or prevent significant adverse impacts.

Significant issues to be covered during the scoping process may include, but would not be limited to: air quality, geology and soils, surface and groundwater resources, biological resources, threatened and endangered species, cultural resources, socioeconomic conditions, land use, aesthetics, environmental justice, and Indian trust resources.

Directions for Submitting Public Comments

Please include your name, return address, and the caption "EIS, K Road and Moapa Band of Paiute Indians Solar Facility" on the first page of any written comments you submit. You may also submit comments at the public scoping meetings.

Public Availability of Comments

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section of this notice, during regular business hours, Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with sections 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) and Section 46.305 of the Department of Interior Regulations (43 CFR part 46), implementing the procedural requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs, by part 209 of the Departmental Manual.

Dated: January 28, 2011.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2011–2554 Filed 2–1–11; 4:15 pm]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–LL230 0000–L11100000–PH.0000]

Notice of Availability of a Memorandum of Understanding Between the Bureau of Land Management and the U. S. Fish and Wildlife Service To Promote Conservation of Migratory Birds

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of the final signed Memorandum of Understanding (MOU) between the Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (FWS) to Promote Conservation of Migratory Birds.

FOR FURTHER INFORMATION CONTACT: Geoff Walsh, Wildlife Biologist, 202–912–7271, *geoffrey_walsh@blm.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of the MOU between the BLM and the FWS to Promote Conservation of Migratory Birds signed April 12, 2010. The MOU provides for strengthening migratory bird conservation by identifying and implementing strategies that promote conservation and reduce or eliminate adverse impacts on migratory birds through enhanced collaboration between the BLM and the FWS, in coordination with State, tribal, and local governments. This MOU identifies specific activities where cooperation between the BLM and the FWS will contribute to the conservation of migratory birds and their habitat. These activities are intended to complement and support existing partnerships and efforts, and to facilitate new collaborative conservation partnerships and comprehensive planning efforts for migratory birds. Pursuant to Executive Order 13186, [FR 66 3853] published on January 17, 2001, entitled "Responsibilities of Federal agencies to Protect Migratory Birds," this MOU outlines a collaborative approach to promote the conservation of migratory bird populations. The Executive Order also directs agencies to take certain actions to further implement the migratory bird conventions, the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA) and other pertinent statutes. The implementation of the MOU will be coordinated through ongoing communication between the BLM Division of Fish, Wildlife, and Plant Conservation and the FWS Division of

Migratory Bird Management. Major implementation elements include, but are not limited to, BLM development of a migratory bird strategic conservation plan and the FWS completion of raptor conservation measures.

National Environmental Policy Act (NEPA)

NEPA will be complied with as the MOU is implemented.

Robert V. Abbey,

Director, Bureau of Land Management.

[FR Doc. 2011–2528 Filed 2–3–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–1210–6465; 2330–RYY]

Proposed Information Collection; National Park Service Natural Quiet Valuation

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The National Park Service (NPS) will ask the Office of Management and Budget (OMB) to approve the Information Collection (IC) for a pretest and a subsequent survey of the general public concerning the use and non-use value of natural quiet in national parks. Under the provisions of the Paperwork Reduction Act of 1995 and a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

DATES: Public comments will be accepted on the proposed Information Collection (IC) on or before April 5, 2011.

ADDRESSES: Send Comments concerning this IC to: Catherine Taylor, Volpe National Transportation Systems Center, Economics and Industry Analysis Division (RVT–21), 55 Broadway, Cambridge, MA 02142; via e-mail at *Catherine.Taylor@dot.gov* or via phone at 617–494–2380. Also, you may send comments to: Dr. Bruce Peacock, Chief, Social Science Division, Natural Resource Program Center, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525–5596, via e-mail at *Bruce_Peacock@nps.gov* or via phone at 970–267–2106. All responses to this Notice will be summarized and included in the proposed Information Collection Request (ICR) for the Office of Management and Budget (OMB) approval. Please note that all comments will become a matter of public record.

To Request a Draft of Proposed Collection of Information, Contact: Catherine Taylor, Volpe National Transportation Systems Center, Economics and Industry Analysis Division (RVT–21), 55 Broadway, Cambridge, MA 02142; or via e-mail at *Catherine.Taylor@dot.gov* or via phone at 617–494–2380.

FOR FURTHER INFORMATION CONTACT: Dr. Bruce Peacock, Chief, Social Science Division, Natural Resource Program Center, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525–5596, or via e-mail at *Bruce_Peacock@nps.gov* or via phone at 970–267–2106.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Park Service (NPS) Act of 1916, 38 Stat 535, 16 U.S.C. 1, *et seq.,* requires that the NPS preserve national parks for the use and enjoyment of present and future generations. In keeping with this mission, the NPS must be sensitive to human activity in parks that can impact the natural landscape. An area of growing concern has been the increasing presence of human-caused sounds at the national parks, including sounds from road vehicles, aircraft, and construction and mining equipment. These human-caused sounds can affect both human visitors and wildlife that live in the park.

Due to adverse impacts of human-caused sounds, the NPS is developing sound management policies at a number of national parks. To better inform the development of such practices, the NPS seeks to understand the "use" and "non-use" values the general public (visitors and non-visitors) hold for preserving natural quiet at national parks.

This information collection will consist of pre-tests and a final survey instrument that will be used to derive estimates of the use and non-use value of natural quiet to the public. The pre-test will involve a series of focus groups for the purpose of developing and refining the questions to be used in the survey. Following the focus groups, the revised survey will then be pre-tested among a small group of respondents for final feedback and refinement. The final survey will be administered to the park visitors to estimate their use value and to the general public to estimate their non-use value of natural quiet in a national park.

II. Data

OMB Control Number: None. This is a new collection.

Title: Quantifying the Non-use Value of Natural Quiet at National Parks to the General Public.

Type of Request: New.

Respondent Obligation: Voluntary.

Frequency of response: One-time per respondent.

Description of Respondents: General public; visitors and non-visitors.

Estimated Number of Respondents: 1,140.

	Visitor	General public
Pretest	52	88
Survey	500	500
Total Number of Respondents	552	588

Estimated Total Annual Burden Hours: 534.

	Visitor	General public
Pretest	132	68
Survey	167	167
Total Hours	299	235

III. Request for Comments

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information techniques or other forms of information technology. Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment; please 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 personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 31, 2011.

Robert Gordon,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2011–2450 Filed 2–3–11; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Special Flight Rules Area in the Vicinity of Grand Canyon National Park, Draft Environmental Impact Statement, Grand Canyon National Park, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement for the Special Flight Rules Area in the Vicinity of Grand Canyon National Park, Grand Canyon National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Draft Environmental Impact Statement for the Special Flight Rules Area in the Vicinity of Grand Canyon National Park for Grand Canyon National Park, Arizona.

The four alternatives in the Draft Environmental Impact Statement (DEIS) that are being considered include:

Alternative A Current Condition: Key elements are corridors open year round, annual allocation cap of 93,971, and no quiet technology incentive. Current tours for helicopters and fixed wing remain the same.

Alternative E Alternating Seasonal Use: Key elements are corridors alternating on a seasonal basis, daily allocation cap of 364 for air tour and air tour related, and conversion to quiet technology aircraft.

Alternative F Modified Current Condition: Key elements are similar to current condition except for one way east bound tour for quiet technology, elimination of Nankoweap loop, incentives for quiet technology aircraft, and seasonal shift for Dragon corridor.

NPS Preferred Alternative: Key elements are short-loop corridors alternate on a seasonal basis, four-year phase in of long-loop for quiet technology aircraft, annual allocation cap of 65,000 air tour and related operations and a daily cap of 364 for commercial air tours, increased altitudes for some areas and flight free zones, and conversion of quiet technology within ten years.

DATES: The National Park Service will accept comments on the Draft Environmental Impact Statement from the public for 120 days after the date the Environmental Protection Agency publishes this Notice of Availability. Public meetings will be held within the 120-day public comment period in Phoenix, AZ; Flagstaff, AZ; Grand Canyon National Park, AZ; Las Vegas, NV; and Salt Lake City, UT; with specific dates, times, and venue locations to be determined. Updates will be announced separately in a press release, and on the NPS's Planning, Environment and Public Comment (PEPC) Web site at *http://www.parkplanning.pepc.gov/grca*.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov/grca*, and at Grand Canyon National Park in the Office of the Superintendent, PO Box 129, Grand Canyon, Arizona 86023, 928–638–7945, and in the Office of Planning and Compliance, Mary Killeen, PO Box 129, Grand Canyon, Arizona 86023, 928–638–7885.

FOR FURTHER INFORMATION CONTACT: Mary Killeen, PO Box 129, Grand Canyon, Arizona 86023, 928–638–7885, *Mary_Killeen@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. The preferred method is to comment on the Planning Environment and Public Comment Web site (PEPC) via the Internet at *http://parkplanning.nps.gov/grca*. You may also mail comments to the Office of Planning and Compliance, PO Box 129, Grand Canyon, Arizona 86023. Finally, you may hand-deliver comments to Superintendent, 1 Village Loop, Park Headquarters, Grand Canyon National Park, Grand Canyon, Arizona 86023. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 15, 2010.

Mary Gibson-Scott,

Acting Regional Director, Intermountain Region, National Park Service.

Editorial Note: This document was received in the Office of the Federal Register on February 1, 2011.

[FR Doc. 2011–2521 Filed 2–3–11; 8:45 am]

BILLING CODE 4312–ED–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–737]

In the Matter of Certain Liquid Crystal Display Devices and Products Interoperable With the Same; Notice of Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 6) granting a joint motion to terminate the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on September 27, 2010, based upon a complaint filed on behalf of Chimei Innolux Corp. of Miaoli County, Taiwan; Chi Mei Optoelectronics U.S.A., Inc., of San Jose, California; and Innolux Corp. of Austin, Texas, on August 23, 2010, and supplemented on September 2 and 10, 2010. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain liquid crystal display devices and products interoperable with the same by reason of infringement of certain claims of one or

more of claims 1, 5, 12, 17, 18, 20, 21, and 26 of U.S. Patent No. 6,134,092; claims 1–4, 8, 11–14, and 19 of U.S. Patent No. 6,671,019; and claims 1, 5–7, 9, 10, 16, 19–21, 23, and 25 of U.S. Patent No. 5,732,241. The notice of investigation named as respondents Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, New York; Sony Electronics Corporation of San Diego, California; and Sony Computer Entertainment America, LLC of Foster City, California.

On December 16, 2010, complainants and respondents filed a joint motion to terminate the investigation based on a settlement agreement. On December 22, 2010, the Commission investigative attorney ("IA") filed a response in support of the motion. The IA stated that terminating the investigation would not be contrary to the public interest. On January 3, 2011, the ALJ issued Order No. 6, granting the motion. No petitions for review were filed.

The Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: January 31, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–2454 Filed 2–3–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Clean Water Act

Notice is hereby given that on January 31, 2011, a proposed Consent Decree was filed with the United States District Court for the District of Kansas in *United States* v. *Orval Kent Food Company, Inc.,* No. 2:11-cv-02057-JAR-JPO (D. Kansas). The proposed Consent Decree entered into by the United States and the company resolves the United States' claims against the Orval Kent for civil penalties and injunctive relief pursuant to the Clean Water Act, 33 U.S.C. 1319. Under the terms of the Consent Decree, Orval Kent will pay the United States a civil penalty of $390,000, for excessive discharges of pollutants to the publicly-owned treatment works operated by the city of Baxter Springs, Kansas. In addition, Orval Kent will increase its monitoring of its discharges, and if necessary, install additional treatment. Further, Orval Kent will undertake a fish re-stocking project at a cost of $32,500.

The Department of Justice will receive comments relating to the proposed Consent Decree for an additional period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed 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. *Orval Kent Food Company,* DJ Ref. No. 90–5–1–1–09625.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Kansas, 500 State Ave. Suite 360. Kansas City, KS 66101 (913) 551–6730, and at the Environmental Protection Agency, Region 7, 901 N. 5th Street Kansas City, KS 66101. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–2427 Filed 2–3–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Industrial Nacromolecular Crystallography Association

Notice is hereby given that, on January 10, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Industrial Nacromolecular Crystallography Association ("INCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Johnson & Johnson Pharmaceutical Research & Development, LLC, Raritan, NJ, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and INCA intends to file additional written notifications disclosing all changes in membership.

On October 23, 1990, INCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 3, 1990 (55 FR 49952).

The last notification was filed with the Department on January 16, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 26, 2009 (74 FR 8811).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–2412 Filed 2–3–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on January 10, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), American Society of Mechanical Engineers ("ASME") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since October 7, 2010, ASME has published three new standards, initiated three new standards activities, and withdrawn one standard within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these

changes can be found at *http://www.asme.org.*

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on October 14, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 16, 2010 (75 FR 70031).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–2414 Filed 2–3–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

155th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Teleconference Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 155th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on February 28, 2011. The session will take place in Room N5677, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Public access is available only in this room (*i.e.* not by telephone). The purpose of the open meeting, which will run from 2 p.m. to approximately 4:30 p.m. (EST), is to introduce the Council Chair and Vice Chair, receive an update from the Assistant Secretary of Labor for the Employee Benefits Security Administration, and determine the topics to be addressed by the Council in 2011.

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before February 21, 2011 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted as e-mail attachments in text or pdf format transmitted to *good.larry@dol.gov.* It is requested that statements not be included in the body of the e-mail. Relevant statements received on or before February 21, 2011 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary by e-mail or telephone (202–693–8668). Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by February 21 at the telephone number indicated.

Signed at Washington, DC, this 31st day of January 2011.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2011–2505 Filed 2–3–11; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 5:30 p.m., Wednesday, February 2, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel. Closed pursuant to exemption (2).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2011–2583 Filed 2–2–11; 11:15 am]

BILLING CODE P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection; Comment Request

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

DATES: Comments on this information collection must be submitted on or before April 5, 2011.

ADDRESSES: Send comments to Ms. Susan Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 311, Washington, DC 20506, or by email to: *sdaisey@neh.gov.* Telephone: 202–606–8494.

SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L 104–13, 44 U.S.C. chapter 35). This notice is soliciting comments from members of the public and affected agencies. NEH is particularly interested in comments which help the agency 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, 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 electronic submissions of responses.

This Notice also lists the following information:

Type of Review: New collection.

Agency: National Endowment for the Humanities.

Title of Proposal: General Clearance Authority to Develop Evaluation Instruments for the National Endowment for the Humanities.

OMB Number: N/A.

Affected Public: NEH grantees.

Total Respondents: 1,000.

Frequency of Collection: On occasion.

Total Responses: 1,000.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 500 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Carole Watson,

Deputy Chairman.

[FR Doc. 2011–2517 Filed 2–3–11; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Cyber Review of Phase I Centers for Chemical Innovation (CCI), 2011 Awardees by NSF Division of Chemistry (1191).

Dates and Times: February 17, 2011; 8 a.m.–6 p.m. February 18, 2011; 8 a.m.–5 p.m.

Place: National Center for Supercomputing Applications, 901 Stuart Street, Suite 800, Arlington, VA 22203.

Type of Meeting: Part-open.

Contact Person: Dr. Robert Kuczkowski, Program Director, Chemistry Centers Program, Division of Chemistry, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4454.

Purpose of Meeting: To provide advice and recommendations concerning Phase I progress.

Agenda: Thursday, February 17, 2011

8 a.m.–9:30 a.m Closed—Panel Briefing and Discussion.

9:30 a.m.–11:15 a.m. Open—Presentation: Center for Molecular Tools for Conjugated Polymer Analysis and Optimization.

11:15 a.m.–11:45 a.m. Open—Panel-Center Q&A.

11:45 a.m.–1 p.m. Closed—Lunch/Panel Discussion.

1 p.m.–2:45 p.m. Open—Presentation: Center for Stereoselective C–H Functionalization.

2:45 p.m.–3:15 p.m. Open—Panel-Center Q&A.

3:15 p.m.–6 p.m. Closed—Panel Discussion.

Friday, February 18, 2011

8 a.m.–8:30 a.m. Closed—Panel Discussion.

8:30 a.m.–10:15 a.m. Open—Presentation: Center for Molecular Spintronics.

10:15 a.m.–10:45 a.m. Open—Panel-Center Q&A.

10:45 a.m.–12 p.m. Closed—Lunch/Panel Discussion.

12 p.m.–1:45 p.m. Open—Presentation: Center for Energetic Non-Equilibrium Chemistry at Interfaces.

1:45 p.m.–2:15 p.m. Open—Panel-Center Q&A.

2:15 p.m.–5 p.m. Closed—Panel Discussion.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–2461 Filed 2–3–11; 8:45 am]

BILLING CODE 7555–01–P

PEACE CORPS

Public Availability of FY 2010 Service Contract Inventories

ACTION: Notice of public availability of FY 2010 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Office of Acquisitions and Contract Management is publishing this notice to advise the public of the availability of the FY 2010 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2010. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at: *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf*. Office of Acquisitions and Contract Management has posted its inventory and a summary of the inventory on the Peace Corps homepage at the following link: *http://multimedia.peacecorps.gov/multimedia/pdf/policies/PC_Service_Contracts_FY2010.pdf.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Nikki Hunter, Contract Specialist in the Office of Acquisitions and Contract Management at 202–692–2627 or *nhunter@peacecorps.gov.*

Dated: January 31, 2011.

Earl W. Yates,

Associate Director, Management.

[FR Doc. 2011–2462 Filed 2–3–11; 8:45 am]

BILLING CODE 6015–01–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 an Open Meeting on February 9, 2011 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

The Commission will consider whether to propose amendments to rules and forms under the Securities Act of 1933 and Schedule 14A under the Securities Exchange Act of 1934, to replace references to credit ratings with alternative criteria. These amendments are in accordance with Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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: February 2, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2649 Filed 2–2–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

China 9D Construction Group; Order of Suspension of Trading

February 2, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China 9D Construction Group because it has not filed any periodic reports since the period ended September 30, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on February 2, 2011, through 11:59 p.m. EST on February 15, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2602 Filed 2–2–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63799; File No. SR–FINRA–2010–053]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Amendments to the Panel Composition Rule, and Related Rules, of the Code of Arbitration Procedure for Customer Disputes

January 31, 2011.

I. Introduction

On October 25, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposal to amend the panel composition rule, and related rules, of the Code of Arbitration Procedure for Customer Disputes ("Customer Code"),[3] to provide customers with the option to choose an all public arbitration panel in all cases. The proposed rule change was published for comment in the **Federal Register** on November 12, 2010.[4] The Commission received 125 comments on the proposed rule change.[5] Of the comments received, 103 commenters support the proposal as filed, 21 commenters support the proposal with suggested modifications, and one commenter opposes the proposal. On December 16, 2010, FINRA responded to comments and filed Amendment No. 1 to the proposed rule change.[6] The Commission is publishing this notice and order to solicit comment on Amendment No. 1 and to approve, on an accelerated basis, the proposal as modified by Amendment No. 1.

II. Description of the Proposed Rule Change as Modified by Amendment No. 1

FINRA proposed to amend the panel composition rule, and related rules, of the Customer Code to provide customers with the option to choose an all public arbitration panel in all cases.

A. Background

Under the Customer Code, parties in arbitration participate in selecting the arbitrators who serve on their cases. For customer claims of more than $100,000, the Customer Code currently provides for a three arbitrator panel [7] comprised of a chair-qualified public arbitrator,[8] a public arbitrator,[9] and a non-public arbitrator ("Majority Public Panel").[10] FINRA uses its computerized Neutral List Selection System ("NLSS") to generate random lists of 10 arbitrators from each of these categories.[11] The parties select their panel through a process of striking and ranking the arbitrators on the lists generated by NLSS. The Customer Code permits the parties to strike the names of up to four arbitrators from each list. The parties then rank the arbitrators remaining on the lists in order of preference. FINRA appoints the panel from among the names remaining on the lists that the parties return.

B. FINRA's Public Arbitrator Pilot Program

In order to address the perception that FINRA's mandatory inclusion of a non-public arbitrator (often referred to as the "industry" arbitrator) in the Majority Public Panel is not fair to customers, FINRA launched a pilot program ("the Pilot") that allows parties to choose a panel of three public arbitrators instead of two public arbitrators and one non-public arbitrator ("Optional All Public Panel").

FINRA designed the Pilot to run for two sequential years ("Year One" and "Year Two"), beginning October 6, 2008, and ending October 5, 2010. In Year One, 11 brokerage firms volunteered to participate in the Pilot, each contributing a set number of cases to the Pilot per year for two years. In Year Two, FINRA expanded the number of participating brokerage firms to 14 firms. In addition, several of the original participants increased their respective case commitments for Year Two. Participating firms agreed to extend the Pilot for a third year at the same case levels as Year Two, while FINRA proceeds with the current rulemaking process. Year Three of the Pilot began October 6, 2010, and ends October 5, 2011, or upon implementation of this proposed rule change, whichever comes first.

Under the Pilot, only a customer may decide whether his or her case should proceed under Pilot rules; the participating firms cannot select the Pilot cases. Under the Pilot rules, the parties receive the same three lists of proposed arbitrators that parties in non-Pilot cases receive. However, in the Pilot cases, any party can strike up to four arbitrators on the chair-qualified public arbitrator list, up to four arbitrators on the public arbitrator list, as well as *all* of the arbitrators on the non-public list. After striking arbitrators from the lists, the parties will rank the remaining arbitrators in order of preference and FINRA will appoint the panel from among the names remaining on the lists that the parties return. By striking all the arbitrators on the non-public list, any party may ensure a panel of three public arbitrators.

FINRA stated that reactions from participants in the Pilot indicate that customer representatives strongly support the right of customers to decide whether to exclude any non-public arbitrator.[12] That feedback led FINRA to propose amending the panel composition rule for customer cases to follow the Pilot model, and to allow the customer party to choose between the existing panel selection method and the method used in the Pilot. Unlike the Pilot, however, the proposed rule would apply to all customer disputes against

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FINRA Manual, Rule 12000, *et seq.,* available on FINRA's Web site, *http:www.finra.org.*

[4] *See* Securities Exchange Act Release No. 63250 (Nov. 5, 2010), 75 FR 69481 (Nov. 12, 2010) ("Notice").

[5] The comment period ended on December 3, 2010; all comments are posted on the Commission's Web site, *http://www.sec.gov/rules/sro.shtml.*

[6] *See* Response to Comments and Amendment No. 1. The text of the proposal and Response to Comments and Amendment No. 1 are available on FINRA's Web site, *http:www.finra.org,* at the principal office of FINRA, and on the Commission's Web site, *http://www.sec.gov/rules/sro.shtml.* Amendment No. 1 imposes an additional notice requirement from FINRA to customers, provides minor clarifications regarding FINRA's original intent for the scope of the rule change, and makes other minor technical edits. FINRA identifies and discusses the particular commenters that support, request modification and oppose the proposal in its Response to Comments and Amendment No. 1. For the purposes of this Order, we will use the same designations for the commenters that are used by FINRA in that response.

[7] Rule 12401 provides for a single, chair-qualified public arbitrator if the amount of the claim is not more than $100,000. It provides for a three arbitrator panel if the amount of a claim is more than $100,000, or is unspecified, or if the claim requests non-monetary damages. The parties, in claims of more than $25,000, but not more than $100,000, may agree in writing to have a three arbitrator panel.

[8] Rule 12400(c) specifies the criteria for arbitrator inclusion on the chairperson roster.

[9] Rule 12100(u) specifies the criteria FINRA uses to classify arbitrators as public.

[10] Rule 12100(p) specifies the criteria FINRA uses to classify arbitrators as non-public.

[11] Rule 12400.

[12] During the Pilot FINRA conducted surveys, focus groups, and met with customer representatives from the Securities Industry Conference on Arbitration and FINRA's National Arbitration and Mediation Committee.

any firm and any registered representative.

C. Details of the Proposed Rule Change

FINRA based the proposed rule change on its experience with the Pilot. Under the proposed rule change, a customer could elect either arbitrator selection method within 35 days from service of the Statement of Claim. If the customer declined to make an affirmative election by the 35-day deadline, FINRA would apply the composition rule for the existing Majority Public Panel.

Under either panel selection option, the parties would receive three lists—one with 10 chair-qualified public arbitrators, one with 10 public arbitrators, and one with 10 non-public arbitrators. The parties would select their panel through a process of striking and ranking the arbitrators on the lists. Under the Majority Public Panel method, FINRA would permit each party to strike up to four arbitrators on the chair-qualified public, public, and non-public lists, leaving at least six arbitrator names remaining on each party's list. Under the Optional All Public Panel, any party may strike up to four arbitrators on the chair-qualified public and public lists, but may also strike all proposed non-public arbitrators and thereby effectively choose a panel of three public arbitrators.

Currently, six rules enumerate the procedures for selecting, appointing, and replacing arbitrators.[13] FINRA proposed to consolidate these six rules into two new rules: New Rule 12402 relating to customer cases with one arbitrator, and new Rule 12403 relating to customer cases with three arbitrators.[14] New Rule 12402 would describe the procedures for selecting, appointing, and replacing the arbitrator in a single arbitrator case. New Rule 12403 would describe the two options that customers have for selecting arbitrators and would include the procedures for appointing and replacing arbitrators. The proposed rule change would apply to all customer cases.

[13] Rule 12402 (Composition of Arbitration Panels) specifies the panel composition for all customer cases. Rules 12403 (Generating and Sending Lists to the Parties), 12404 (Striking and Ranking Arbitrators), 12405 (Combining Lists), 12406 (Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List), and 12411 (Replacement of Arbitrators) enumerate the procedures for selecting, appointing, and replacing arbitrators.

[14] FINRA would delete current Rules 12402, 12403, 12404, 12405, 12406, and 12411 in their entirety. FINRA would renumber the remaining rules in the 12400 series so that the numbering would remain consecutive after FINRA consolidated the rules.

III. Summary of Comments

A. Customer Election of Panel Composition Method

Some commenters suggested that the Optional All Public Panel method of panel composition should be the default instead of the Majority Public Panel method.[15] Commenters also raised concerns that customers without attorneys ("pro se" claimants), or attorneys new to the practice of securities arbitration, might not elect the Optional All Public Panel method within the prescribed deadline, or might not appreciate the benefit of electing this method.[16] One commenter stated that pro se claimants may be confused by receiving a list of non-public arbitrators after making the election for the Optional All Public Panel method.[17] Another commenter suggested that, if a customer elects to proceed with the Optional All Public Panel method of panel composition, the parties should only receive lists of public arbitrators (*i.e.,* they should not receive a list of non-public arbitrators).[18] Finally, two commenters asked FINRA to clarify whether customers may make their panel composition election at the time of filing the Statement of Claim.[19]

FINRA responded to these comments by stating that it believes it is appropriate to have customers elect the Optional All Public Panel method rather than having that option as the default.[20] During the Pilot, a substantial percentage of customers opted for a Majority Public Panel. From launch of the Pilot in October 2008, until December 1, 2010, in 74 percent of cases eligible for the Pilot, customers accepted a non-public arbitrator on their panel either by choosing not to participate in the Pilot or by ranking one or more non-public arbitrators.[21] FINRA stated that there were very few complaints from customers that they were not aware of the Pilot and that it is appropriate to have customers elect, rather than be defaulted to, the Optional All Public Panel method.[22]

While FINRA indicated that the percentage of pro se claimants that file arbitration claims over $100,000 at FINRA is very small, to respond to the commenters' concerns relating to pro se claimants and to attorneys new to the practice of securities arbitration, FINRA is proposing to amend the proposed rule change to state that FINRA will notify the customer in writing that the customer has 35 days from service of the Statement of Claim to elect the Optional All Public Panel method. Further, FINRA will highlight the rule change in its case filing instructions, website information, and other materials, as applicable. FINRA stated that it believes that amending the proposed rule change to add a customer notification provision and highlighting in its written materials how the panel composition methods work will ensure that customers understand how to elect the Optional All Public Panel method and are aware of the applicable deadlines for election. FINRA also stated that during the Pilot, a substantial percentage of customers opted for a majority public panel and for this reason did not change the selection process in the proposal.

With regard to the comment that customers electing the Optional All Public Panel receive three lists of public arbitrators, FINRA stated that given the data FINRA compiled from the Pilot, it did not at this time find persuasive the comments requesting that customers receive a list only of public arbitrators.[23]

FINRA also stated that it intends to allow customers to make their election of the Optional All Public Panel in the Statement of Claim (or correspondence accompanying the Statement of Claim) in instances when the customers are claimants.[24] Therefore, FINRA is proposing to amend the proposed rule change to state that the customer may elect in writing to proceed under either the composition rules for the Majority Public Panel or the composition rules for the Optional All Public Panel in the customer's Statement of Claim, if the customer is a claimant, or at any time up to 35 days from service of the Statement of Claim, whether the customer is a complainant or respondent.

In addition, FINRA is proposing to correct an error in the title of proposed Rule 12403(b) which, as proposed, states "Customer Claimant Election." FINRA proposes to amend the title to

[15] *See* Haigney comment, Sutherland comment, Black and Gross comment, Berg comment, PIABA comment; St. John's comment; and NASAA comment.

[16] *See* Haigney comment.

[17] *See* NASAA comment. The comment also suggests that FINRA change the "majority public panel" option label to "mixed affiliation" and that FINRA describe the term "non-public arbitrator" as "industry-affiliated." In its response to comments, FINRA stated that the Majority Public Panel label clearly describes the panel composition and that changing the term "non-public" at this point would cause confusion.

[18] *See* Berg comment.

[19] *See* the Haigney comment and the PIABA comment.

[20] *See* Response to Comments and Amendment No. 1, *supra,* note 6.

[21] *Id.*

[22] *Id.*

[23] *See* Response to Comments and Amendment No. 1, *supra,* note 6.

[24] *Id.*

eliminate the reference to "Claimant" because a customer may be a respondent in FINRA arbitration and FINRA intends the proposed rule change to apply to all customer disputes regardless of whether customers are claimants or respondents.

B. Effect of Proposed Rule Change on Individually Named Registered Representatives

The proposed rule change would apply to all firms and all registered representatives. One commenter opposed applying the proposed rule change to individually named registered representatives.[25] According to the commenter, FINRA should provide registered representatives with the procedural protection of having a non-public arbitrator on their arbitration panel. FINRA stated that it believes that the commenter's suggestion is unworkable.[26] If FINRA does not apply the proposed rule change to individually named registered representatives, customers that wish to proceed under the Optional All Public Panel method for their claims against firms would be compelled to bifurcate their claims against firms from their claims against registered representatives. Moreover, if the firm wishes to assert a third party claim against a registered representative in a customer case where a customer elected the Optional All Public Panel composition method, the firm's claim could interfere with the customer's election of the Optional All Public Panel. Finally, FINRA believes that bifurcation of customers' claims is likely to result in higher overall arbitration costs for customers. FINRA, thus, concluded that the consequences of the commenter's suggestion would make the suggestion inefficient and impractical.

C. Inclusion of a Non-Public Arbitrator

Two commenters stated that inclusion of a non-public arbitrator would benefit all the parties to a dispute, as well as the public arbitrators on the panel, by appropriately educating them about industry-related issues.[27] One commenter stated that the non-public arbitrator may also reduce costs for the parties by limiting the need for the parties to call expert witnesses.[28]

In contrast, a number of commenters stated that parties frequently use expert witnesses in cases with majority public panels, which limits the need for the non-public arbitrator's industry expertise and any potential cost savings.[29]

Under the Pilot and the amended rules, customers who do not elect the Optional All Public Panel selection method, will continue to have a panel that includes a non-public arbitrator. FINRA stated that it received feedback on the Pilot from both investor and industry attorneys that indicates that panel composition made no difference in how parties used experts to try their cases.[30] In addition, a number of commenters expressed concerns about the non-public arbitrator offering expert opinions to the other arbitrators where those opinions would not be subject to cross-examination.[31] Regarding the comments that a non-public arbitrator may act as an expert witness not subject to cross-examination, FINRA stated that it believes that the proposed rule mitigates the concern because any customer that shares this concern may elect the Optional All Public Panel.[32] Therefore, FINRA did not amend the proposal as it relates to the non-public arbitrator.

D. Request To Reject the Proposed Rule Change

One commenter requested that the Commission reject the proposed rule change as contrary to the public interest.[33] The commenter stated that FINRA has other tools to correct the public's perception that FINRA arbitration is not fair to investors. FINRA stated that it believes that the results of the Pilot, the public's feedback on the program, and the overwhelming support reflected in the comments submitted on the proposed rule change support the need to provide customers with the choice of whether to select an Optional All Public Panel or a Majority Public Panel.[34]

E. Comments Outside the Scope of the Proposed Rule Change

Commenters raised a number of additional issues, including concerns regarding mandatory arbitration of investor disputes;[35] the definition of "public arbitrator";[36] investor arbitration fees;[37] the discovery process at FINRA;[38] the NLSS; and blue sky laws.[39] Stating that all of these comments are outside of the scope of the proposed rule change, FINRA declined to make changes to address them.[40] FINRA also stated that it believes its arbitration forum is fair, and highlighted that it does not require firms to use pre-dispute arbitration clauses.[41]

IV. Discussion and Finding

After carefully reviewing the proposed rule change, the comment letters, and FINRA's Response to Comments and Amendment No. 1, 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.[42] In particular, the Commission believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act, 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.[43] The Commission believes the proposed rule change, as amended, will enhance the public's perception that the FINRA securities arbitration process and rules are fair and would promote just and equitable principles of trade by giving investors additional choices regarding the composition of panels that will hear their cases. This, in turn, should help enhance public confidence in, and perception of, the fairness of the FINRA arbitration forum. We understand that FINRA plans to implement this rule change as soon as possible to provide this option to as many customers as possible.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the

[25] *See* SIFMA comment.

[26] *See* Response to Comments and Amendment No. 1, *supra,* note 6.

[27] *See* SIFMA comment and Wacht comment.

[28] *See* SIFMA comment.

[29] *See* Neuman comment, Shewan comment, Banks comment, and Rosenberg comment.

[30] *See* Response to Comments and Amendment No. 1, *supra,* note 6.

[31] *See* Aidikoff comment, Coleman comment, Amato comment, Eccleston comment, Goldstein comment, Karen comment, Fogel comment, Cornell comment, Mihalek comment, PIABA comment, and NASAA comment.

[32] *See* Response to Comments and Amendment No. 1, *supra,* note 6.

[33] *See* Wacht comment.

[34] *See* Response to Comments and Amendment No. 1, *supra,* note 6.

[35] *See:* Layne comment, Steiner comment, Chalmers comment, Gladden comment, Estell comment, Sutherland comment, Furgison comment, Healy comment, Samson comment, Berg comment, Miller comment, Ilgenfritz comment, Rosenfield comment, Bleecher comment, Mihalek comment, and NASAA comment.

[36] *See* Goldstein comment.

[37] *See* Layne comment.

[38] *See* Layne comment and Estell comment.

[39] *See* Estell comment.

[40] *See* Response to Comments and Amendment No. 1, *supra,* note 6.

[41] *Id.*

[42] In approving the proposed rule change, the Commission has considered the rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[43] *See* 15 U.S.C. 78*o*–3(b)(6).

Act,[44] for approving the proposed rule change, as amended, prior to the 30th day after the date of publication in the **Federal Register**. The changes proposed in Amendment No. 1 do not raise novel regulatory concerns. Moreover, accelerating approval of this proposal should benefit investors by providing customers with the immediate option to select an all public arbitration panel for all cases. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

VI. 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–053 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–FINRA–2010–053. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2010–053 and should be submitted on or before February 25, 2011.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (SR–FINRA–2010–053), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2492 Filed 2–3–11; 8:45 am]

BILLING CODE 8011–01–P

[44] 15 U.S.C. 78s(b)(2).

[45] 15 U.S.C. 78s(b)(2).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63802; File No. SR–NYSEArca–2010–118]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF

January 31, 2011.

I. Introduction

On December 15, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the following Managed Fund Shares under NYSE Arca Equities Rule 8.600: SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF. The proposed rule change was published for comment in the **Federal Register** on December 28, 2010.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the shares ("Shares") of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF (each a "Fund" and, collectively, "Funds") under NYSE Arca Equities Rule 8.600. The Shares will be offered by AdvisorShares Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[4] The investment advisor to the Funds is AdvisorShares Investments, LLC ("Advisor"), and Strategic Income Management, LLC ("Sub-Advisor" or "SiM") serves as investment sub-advisor to the Funds. Foreside Fund Services, LLC is the principal underwriter and distributor of the Funds' Shares. The Bank of New York Mellon Corporation ("Administrator") serves as the administrator, custodian, transfer agent, and fund accounting agent for the Funds. Each Fund is an actively managed exchange-traded fund ("ETF") and thus does not seek to replicate the performance of a specified index, but uses an active investment strategy to meet its investment objective. Accordingly, the Sub-Advisor manages each Fund's portfolio in accordance with each Fund's investment objective.

SiM Dynamic Allocation Diversified Income ETF

This Fund's objective is to provide total return, consisting primarily of reinvestment and growth of income with some long-term capital appreciation. The Fund is considered a "fund-of-funds" that will seek to achieve its investment objective by primarily investing in other ETFs that offer diversified exposure to various investment types (equities, bonds, etc.), global regions, countries, styles (market capitalization, value, growth, etc.) or sectors, and exchange-traded products ("ETPs," and, together with ETFs, "Underlying ETPs") including, but not limited to, exchange-traded notes ("ETNs"), exchange-traded currency trusts, and closed-end funds.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63587 (December 21, 2010), 75 FR 81697 ("Notice").

[4] The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On October 14, 2010, the Trust filed with the Commission Post-Effective Amendment No. 13 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Funds (File Nos. 333–157876 and 811–22110) ("Registration Statement").

[5] Underlying ETPs, which will be listed on a national securities exchange, include: Investment Company Units (as described in NYSE Arca

Continued

The Fund will seek to offer the potential for total return from a high level of income and a low level of capital growth, with exposure to a low level of principal risk. The Fund, through its investments in the Underlying ETPs, generally will invest at least 60% of its net assets in domestic and international fixed-income funds. The Fund will allocate its assets among Underlying ETPs in accordance with the Sub-Advisor's outlook for the economy, the financial markets, and the relative market valuations of the Underlying ETPs. The Fund will sell interests or reduce investment exposure among market segments or Underlying ETPs, if appropriate, when the Sub-Advisor's fundamental and quantitative factors indicate a low relative strength of such market segments and that such market segments are likely to underperform the market as a whole.

Under normal market conditions, the Fund's portfolio will generally:

- Invest up to 85% of its assets in Underlying ETPs that hold fixed-income securities as well as cash equivalents;
- Not invest more than 40% of its net assets in Underlying ETPs that primarily hold equity securities; and
- Invest up to 20% of its assets in any single Underlying ETP.

The Fund's portfolio may temporarily exceed these percentage ranges for short periods without notice, and the Sub-Advisor, due to certain market conditions, may alter the percentage ranges when it deems appropriate.

SiM Dynamic Allocation Growth Income ETF

This Fund's objective is to provide total return, consisting primarily of long-term capital appreciation with some reinvestment and growth of income. The Fund is considered a "fund-of-funds" that will seek to achieve its investment objective by primarily investing in Underlying ETPs that offer diversified exposure to various investment types (equities, bonds, etc.), global regions, countries, styles (market capitalization, value, growth, etc.) or sectors, and ETPs including, but not limited to, ETNs, exchange-traded currency trusts, and closed-end funds.

In general, the Fund will seek to offer investors the potential for total return from a low to medium level of income and a medium to high level of capital growth, while exposing them to a medium to high level of principal risk. The Fund, through its investments in the Underlying ETPs, generally will invest at least 60% of its net assets in domestic and international equity funds. The Fund will allocate its assets among Underlying ETPs in accordance with the Sub-Advisor's outlook for the economy, the financial markets, and the relative market valuations of the Underlying ETPs. The Fund will sell interests or reduce investment exposure among market segments or Underlying ETPs when the Sub-Advisor's fundamental and quantitative factors indicate a low relative strength of such market segments and that such market segments are likely to underperform the market as a whole.

The Fund's portfolio will generally:

- Invest up to 85% of its assets in Underlying ETPs that hold equity securities as well as cash equivalents;
- Not invest more than 40% of its net assets in Underlying ETPs that primarily hold fixed-income securities; and
- Invest up to 20% of its assets in any single Underlying ETP.

The Fund's portfolio may temporarily exceed these percentage ranges for short periods without notice, and the Sub-Advisor, due to certain market conditions, may alter the percentage ranges when it deems appropriate.

Other Investments

The Funds and the Underlying ETPs may invest in equity securities representing ownership interests in a company or partnership and that consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships.[6] The Funds may enter into repurchase agreements, which may be deemed to be loans, with financial institutions, and reverse repurchase agreements as part of the Funds' investment strategy. The Funds may also invest in U.S. government securities, U.S. Treasury zero-coupon bonds, and shares of real estate investment trusts, which are pooled investment vehicles that primarily invest in real estate or real estate-related loans. To respond to adverse market, economic, political, or other conditions, the Funds may invest 100% of their total assets, without limitation, in high-quality short-term debt securities and money market instruments.

Additional details regarding the Trust, Shares, and the Funds, including, among other things, investment strategies, risks, creations and redemptions of Shares, fees, portfolio holdings disclosure policies, distributions, taxes, the calculation of the net asset value ("NAV"), dissemination and availability of key information about the Funds, trading halts, trading rules, surveillance, and the Information Bulletin can be found in the Notice and the Registration Statement, as applicable.[7]

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[9] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that it has approved the listing and trading of other similar Managed Fund Shares.[10]

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[11] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and

Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds.

[6] The Funds will hold only equity securities traded in the United States on registered exchanges.

[7] *See supra* notes 3 and 4.

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See, e.g.,* Securities Exchange Act Release No. 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (approving the listing and trading of the Cambria Global Tactical ETF, which is a "fund-of-funds" that seeks to invest primarily in other exchange-traded funds listed and traded in the United States and certain other exchange-traded products including, but not limited to, exchange-traded notes, exchange-traded currency trusts, and closed-end funds).

[11] 15 U.S.C. 78k–1(a)(1)(C)(iii).

last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line. In addition, the Portfolio Indicative Value will be disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors. On each business day before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their website the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Funds' calculation of NAV at the end of the business day.[12] The NAV per Share for the Funds will be calculated by the Administrator and determined as of the close of the regular trading session on NYSE Arca (ordinarily 4:00 p.m., Eastern Time) on each day that the Exchange is open. Information regarding market price and trading volume of the Underlying ETPs will be continually available on a real-time basis throughout the day from major market data vendors, and last-sale and closing price information for Underlying ETPs will be available on the website of the national securities exchange on which such securities are listed or through major market data vendors. Information regarding market price and trading volume of the Shares will be continually available on a real time basis through the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. The Funds' Web site will also include a form of the Prospectus for the Funds, information relating to NAV, and other quantitative and trading information. Further, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[13] In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares to the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[14] In addition, NYSE Arca Equities Rule 8.600(d)(2)(B)(ii) requires that the Reporting Authority that provides the Disclosed Portfolio implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio. Further, the Commission notes that neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer.[15] In the event (a) the Advisor or the Sub-Advisor becomes newly affiliated with a broker-dealer, or (b) any new advisor or sub-advisor becomes affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individual redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) A minimum of 100,000 Shares for each Fund will be outstanding at the

[12] On a daily basis, the Advisor will disclose for each portfolio security or other financial instrument of the Funds the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

[13] *See* NYSE Arca Equities Rule 8.600(d)(1)(B) (also requiring that the Exchange obtain a representation from the issuer that NAV per Share for each Fund will be calculated daily).

[14] *See* NYSE Arca Equities Rule 8.600(d)(2)(C)(ii). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[15] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. With respect to the Funds, the Exchange represents that the Advisor and Sub-Advisor, and their related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment advisor to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment advisor to provide investment advice to clients unless such investment advisor has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment advisor and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

commencement of trading on the Exchange.

(6) For initial and/or continued listing, the Funds will be in compliance with Rule 10A–3 under the Act.[16]

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [17] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSEArca–2010–118), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2457 Filed 2–3–11; 8:45 am]

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[16] 17 CFR 240.10A–3.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63804; File No. SR–NASDAQ–2010–134]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Instituting Proceedings To Determine Whether To Disapprove Proposed Rule Change To Adopt Additional Criteria for Listing Commodity Stockpiling Companies That Have Indicated Their Business Plan Is To Buy and Hold Commodities

January 31, 2011.

I. Introduction

On October 15, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt additional criteria for listing companies that have indicated that their business plan is to buy and hold commodities. The proposed rule change was published for comment in the **Federal Register** on November 3, 2010.[3] The Commission subsequently extended the time period in which to either approve the proposed rule change, or to institute proceedings to determine whether to disapprove the proposed rule change, to February 1, 2011.[4] The Commission received one comment letter on the proposal.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to disapprove the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt additional listing standards for companies that have indicated that their business plan is to purchase and stockpile raw materials or other commodities ("commodity stockpiling companies"). Under the proposal, such companies are required to meet all other applicable Nasdaq initial listing requirements, as well as the following additional listing standards. First, within 18 months of the effectiveness of its initial public offering registration statement, or such shorter period as the company specifies in the registration statement, the company would be required to invest at least 85% of the net proceeds of the initial public offering in the raw material or commodity identified in the registration statement, or return the unused amount pro rata to its shareholders.[6]

Second, the company would be required to publish, or facilitate access to, at no cost and in an easily accessible manner, regular pricing information regarding the raw material or other commodity from a reliable, independent source, at least as frequently as current industry practice but no less than twice per week.[7]

Third, the company would be required to publish its net market value on a daily basis, or where pricing information for the raw material or other commodity is not available on a daily basis, no less frequently than twice per week.[8] If the spot price of the raw material or commodity fluctuates by more than 5%, the company shall publish the net market value within one business day of the fluctuation.

Fourth, the company would be required to publish the quantity of the raw material or other commodity held in inventory, the average price paid, and the company's net market value within two business days of any change in inventory held.[9] Where the company contracts to purchase or sell a material quantity of the raw material or commodity, such information would be required to be disclosed in a Form 8–K filing within four business days.

Fifth, the company would be required to employ the services of one or more independent third party storage facilities to safeguard the physical holdings of the raw material or commodity.[10] Finally, the company would be required to create a committee comprised solely of independent directors who shall consider, at least quarterly, whether the company's purchasing activities have had a measurable impact on the market price of the raw material or other commodity and shall report such determinations and make subsequent recommendations to the company's board of directors.[11]

Nasdaq also is proposing to adopt additional audit committee requirements applicable to commodity stockpiling companies. In addition to the existing audit committee requirements in Nasdaq rules, audit committees for commodity stockpiling companies would be required to establish procedures for the identification and management of potential conflicts of interest, and would be required to review and approve any transactions where such potential conflicts have been identified.[12]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63207 (October 28, 2010), 75 FR 67788.

[4] *See* Securities Exchange Act Release No. 63508 (December 9, 2010), 75 FR 78300 (December 15, 2010).

[5] *See* Letter from Edward H. Smith, Jr. to Florence E. Harmon, Deputy Secretary, Commission, dated January 18, 2011.

[6] *See* proposed Nasdaq IM–5101–3(a).

[7] *See* proposed Nasdaq IM–5101–3(b).

[8] *See* proposed Nasdaq IM–5101–3(d). Net market value would be determined by multiplying the volume of the raw material or commodity held in inventory by the last spot price published or otherwise relied upon by the company, plus cash and other assets, less any liabilities.

[9] *See* proposed Nasdaq IM–5101–3(c).

[10] *See* proposed Nasdaq IM–5101–3(e). Under the proposed rule language, the facility "should provide services consistent with those provided by custodians and these must include: Storage and safeguarding; insurance; transfer of the raw material or other commodity in and out of the facility; visual inspections, spot checks and assays; confirmation of deliveries to supplier packing lists; and reporting of transfers and of inventory to the [commodity stockpiling company] and its auditors." The company must oversee the third party storage facility with its committee of independent directors.

[11] *See* proposed Nasdaq IM–5101–3(f). The independent directors may rely upon and shall have the authority to engage and pay an industry expert in conducting this review. If the company's board of directors disagrees with or does not accept the recommendations of the committee, the company will be required to file a Form 8–K with the Commission outlining the relevant events, committee's determinations and recommendations, and rationale for the board of directors' determination.

[12] *See* proposed Nasdaq Rule 5605(c)(3) and IM–5605. Under the proposal, the procedures should include any material amendment to the

III. Comment Letter

The Commission received one comment letter on the proposal.[13] The commenter, a shareholder in SMG Indium Resources Ltd. ("SMG"), supported the proposal and stated, among other things, that approval of the proposal would "support making the market for commodities, such as Indium, more efficient and transparent by providing investors * * * with an easier and more cost-effective alternative for investing in such commodities." This commenter further noted that, unlike commodity-based trust shares, which are designed along the lines of an exchange-traded fund ("ETF") structure and offer exposure to very liquid and actively-traded commodities, commodity stockpiling companies "provide investment exposure to select strategic and commercial commodities which do not have substantial liquid and active trading markets nor extensive and well developed derivative and/or spot markets and pricing mechanisms." The commenter explained his view that the proposed listing standards would assure appropriate investor protection in connection with the listing of commodity stockpiling companies, and cited particular aspects of the proposal, including the frequency and source of pricing information, the requirement to calculate and disseminate net market value, and the use of third-party storage facilities.

IV. Proceedings To Determine Whether To Disapprove SR–NASDAQ–2010–134 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be disapproved. Institution of such proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal, discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(5) of the Act[14] requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Nasdaq's proposal would authorize a national securities exchange, for the first time, to list an operating company that simply plans to buy and hold a commodity or other raw material. A liquid market may not exist for the commodity or other raw material to be held by the commodity stockpiling company. Despite the commenter's view that the proposal would provide appropriate investor protections for the listing of commodity stockpiling companies such as SMG, the Commission believes that the proposal raises issues, among other things, as to (1) whether the dissemination of up-to-date pricing information twice per week about the sole asset of an operating company would be sufficient to support the fair and efficient exchange trading of its equity securities; (2) in the absence of a liquid and transparent market for the commodity or other raw material held by the company, whether the pricing information from the "independent source" would in fact have sufficient reliability and integrity, or whether there are risks that information could be manipulated; (3) whether there would be risks such pricing information may be available to some market participants sooner than others, thereby giving the former an unfair trading advantage; and (4) whether Nasdaq's proposal adequately addresses any special risks to investors that might be presented by the exchange trading of an operating company in the business solely of stockpiling an illiquid commodity. The Commission believes these concerns raise questions as to whether Nasdaq's proposal is consistent with the requirements of Section 6(b)(5) of the Act, including whether the nature of the required pricing information, and the frequency and manner of its dissemination, would prevent manipulation, promote just and equitable principles of trade, perfect the mechanism of a free and open market and the national market system, or protect investors and the public interest.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any others they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[15]

Interested persons are invited to submit written data, views and arguments regarding whether the proposed rule change should be disapproved by March 21, 2011. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 5, 2011. 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–134 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–2010–134. This file number should be included on the subject line if e-mail 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

management agreement, including any change with respect to the compensation of the manager.

[13] *See,* note 4, *supra.*

[14] 15 U.S.C. 78f(b)(5).

[15] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–134 and should be submitted on or before March 21, 2011. Rebuttal comments should be submitted by April 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2447 Filed 2–3–11; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(57).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before April 5, 2011.

Addresses: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jules Lichtenstein, Economist, Office of Advocacy, Small Business Administration, 409 3rd Street, 7th Floor, Washington, DC 20416.

For Further Information Contact: Jules Lichtenstein, Economist, Office of Advocacy, 202–205–6537, *jules.lichtenstein@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

Supplementary Information: The survey is intended to improve understanding of the relative roles of immigrants and U.S.-born citizens in founding U.S. high-tech companies. The population for the survey is drawn from the Corporate Research Boards database of "gazelle" firms in high-technology which is licensed from Dun & Bradstreet.

Title: "High-Tech Immigrant Entrepreneurship".

Description of Respondents: Firms in selected industries in the Dun and Bradstreet database.

Form Number: N/A.

Annual Responses: 1,000.

Annual Burden: 167.

Addresses: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Rachel Newman-Karton, Program Analyst, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

For Further Information Contact: Rachel Newman-Karton, Program Analyst, Office of Small Business Development Centers, 202–619–1816, *Rachel.newman-karton@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

Supplementary Information: The Drug Free Workplace Grantees are required to submit quarterly reports which will report the grantees progress on helping small businesses implement Drug Free Workplace programs including education and training. The SBA requires such information to track the grantees progress to assess the effectiveness of the Drug Free Workplace Program, and report this information to Congress.

Title: "Quarterly Reports file by Grantees of the Drug Free Workplace Program".

Description of Respondents: Eligible Intermediaries who have received a Drug Free Workplace Program grant.

Form Number: N/A.

Annual Responses: 28.

Annual Burden: 112.

Addresses: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Gail Hepler, Chief 7(a) Program Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

For Further Information Contact: Gail Hepler, Chief 7(a) Program Branch, Office of Financial Assistance, 202–205–7530, *gail.hepler@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

Supplementary Information: Since 2005 SBA has been opening the Gulf Opportunity Pilot Loan Program, which provides financing to small businesses in communities located to or re-locating in the parishes/counties that were Presidential declared disaster area as a results of Hurricanes Katrina or Rita plus any parishes/counties contiguous to these parishes. This information is collected from those parishes. This information is collected from those lenders and small business owners who participate or seek to participate in the program and is used for portfolio risk management loan monitoring and lender oversight.

Title: "Gulf Opportunity Pilot Loan Program (GO) Loan Pilot".

Description of Respondents: Applicants requesting an SBA loan for Katrina or Rita.

Form Number's: 2276 A, B, C, 2281, 2282.

Annual Responses: 580.

Annual Burden: 362.

Supplementary Information: This form is used to assist borrowers (20% or greater owners, corporate officers, or loan guarantors) in preparing their total net worth by listing all of their assets and liabilities, including current income.

Title: "Personal Financial Statement".

Description of Respondents: Applicants for an SBA Loan.

Form Number: 413.

Annual Responses: 91,937.

Annual Burden: 137,095.

Addresses: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Holly Schick, Deputy Associate Administrator for Entrepreneurial Development, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

For Further Information Contact: Holly Schick, Deputy Associate Administrator for Entrepreneurial Development, 202–205–7755, *holl.schick@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

Supplementary Information: Entrepreneurial Development Management Information (EDMIS) is used to collect and transmit the data provided on SBA Forms 641and 888. EDMIS collects information using a uniform method in order to provide appropriate counseling and training to report to Congress and the President on these programs. Respondents are small business owners and potential small business owners throughout the United States. SBA staff and resource partners also use these forms. Changes made to SBA Form 641 are necessary to comply with data requirements specified in the Small Business Jobs Act 2010 related to international trade assistance. No changes are being made to the Form 888.

Title: "Entrepreneurial Development Management Information System (EDMIS) Counseling Information Form & Management Training Report".

Description of Respondents: SBA Resource Partners.

Form Number: 641, 888.

Annual Responses: 480,252.

Annual Burden: 233,631.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2011–2438 Filed 2–3–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7312]

Notice of Certification; Foreign Military Financing, and International Military Education and Training; Guatemala

AGENCY: Department of State.

ACTION: Notice.

The Department of State hereby provides notice that on July 23, 2009, and May 14, 2010, the Deputy Secretary of State for Management and Resources signed certifications under Section 7045(d) of the Department of State, Foreign Operations, and Related Programs Appropriations Acts of 2009 and 2010 respectively, concerning the Guatemalan Air Force, Navy, and Army Corps of Engineers.

The certifications state that for the relevant fiscal year, "(A) the Guatemalan Air Force, Navy, and Army Corps of Engineers are respecting internationally recognized human rights; (B) the Guatemalan Air Force, Navy, and Army Corps of Engineers are cooperating with civilian judicial investigations and prosecutions of current and retired military personnel who have been credibly alleged to have committed violations of such rights, including protecting and providing to the Attorney General's office all military archives pertaining to the internal armed conflict; and (C) the Guatemalan Air Force, Navy, and Army Corps of Engineers are cooperating with the International Commission Against Impunity in Guatemala (CICIG) by granting access to CICIG personnel, providing evidence to CICIG, and allowing witness testimony."

True and correct copies of the certifications are published as Appendix A and Appendix B to this notice.

Dated: January 5, 2011.

Arturo A. Valenzuela,

Assistant Secretary of State for Western Hemisphere Affairs, Department of State.

[Appendix A]

Certification Related to Guatemalan Armed Forces Under Section 7045(D) of the Department of State, Foreign Operations and Related Programs Appropriations Act, 2009

Pursuant to the authority vested in me as Deputy Secretary of State, including under Section 7045(d) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Div. H, Pub. L. 111–8)("the Act") and Delegation of Authority No. 245–1, I hereby certify that:

(A) The Guatemalan Air Force, Navy, and Army Corps of Engineers are respecting internationally recognized human rights;

(B) The Guatemalan Air Force, Navy, and Army Corps of Engineers are cooperating with civilian judicial investigations and prosecutions of current and retired military personnel who have been credibly alleged to have committed violations of such rights, including protecting and providing to the Attorney General's office all military archives pertaining to the internal conflict; and

(C) The Guatemalan Air Force, Navy, and Army Corps of Engineers are cooperating with the International Commission Against Impunity in Guatemala (CICIG) by granting access to CICIG personnel, providing evidence to CICIG, and allowing witness testimony.

This Certification shall be published in the **Federal Register**, and copies shall be transmitted to the appropriate committees of Congress.

JUL 23 2009

Date

Jacob J. Lew

Deputy Secretary of State

[Appendix B]

Certification Related to Guatemalan Armed Forces Under Section 7045(d) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010

Pursuant to the authority vested in me as Deputy Secretary of State, including under Section 7045(d) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117)("the Act") and Delegation of Authority No. 245–1, I hereby certify that:

(A) The Guatemalan Air Force, Navy, and Army Corps of Engineers are respecting internationally recognized human rights;

(B) The Guatemalan Air Force, navy, and Army Corps of Engineers are cooperating with civilian judicial investigations and prosecutions of current and retired military personnel who have been credibly alleged to have committed violations of such rights, including protecting and providing to the Attorney General's office all military

archives pertaining to the internal armed conflict; and

(C) The Guatemalan Air Force, Navy, and Army Corps of Engineers are cooperating with the International Commission Against Impunity in Guatemala (CICIG) by granting access to CICIG personnel, providing evidence to CICIG, and allowing witness testimony.

05/14/10
Date

Jacob J. Lew
Deputy Secretary of State
for Management and Resources

This Certification shall be published in the **Federal Register**, and copies shall be transmitted to the appropriate committees of Congress.

[FR Doc. 2011–2523 Filed 2–3–11; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Final Environmental Impact Statement (FEIS) for the Airfield Improvement Program at Palm Beach International Airport, West Palm Beach, FL

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

ACTION: Notice of Availability of the Final Environmental Impact Statement.

Location of Proposed Action: The Palm Beach International Airport (PBIA) is located in east Palm Beach County, Florida, adjacent to the City of West Palm Beach and immediately east of the Town of Haverhill.

SUMMARY: The FAA announces that the FEIS for the proposed Airfield Improvement Program (AIP) at PBIA is available for public review.

The FEIS includes the Section 106 consultation with the Florida State Historic Preservation Officer (SHPO) and the Keeper of the National Register of Historic Places (Keeper) regarding the National Register eligibility of properties within the EIS Area of Potential Effect (APE) and the proposed action's potential effect to historic resources eligible for, or listed-in, the National Register of Historic Places. Pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended, the proposed AIP is being evaluated in the FEIS for consistency with the Florida Coastal Management Program (FCMP). Comments regarding the compatibility of the No-Action Alternative, the AIP, and Alternative 2 with regard to Section 106 resources and the Florida's Coastal Management Program are encouraged by the FAA.

The FAA is seeking comments on those sections of the FEIS that have been updated and/or contain information that has become available since the release of the DEIS. Please see the **SUPPLEMENTARY INFORMATION** section below for more information.

Updated information regarding the forecasts of aviation operations at PBIA became available and was published following the public availability of the September, 2008 Draft Environmental Impact Statement (DEIS). Also, Palm Beach County (the Airport Sponsor) submitted to the FAA a revised implementation plan and schedule for the proposed AIP after the publication of the DEIS. The FAA determined that this information should be considered by the agency and be disclosed to the public in the FEIS.

All comments on the FEIS are to be submitted to Mr. Bart Vernace of the FAA, at the address shown in the section below entitled For Further Information or to Submit Comments Contact. The FAA is providing a forty-five (45) day comment period for the public to comment on the FEIS. The comment period begins on the date of the publication of this Notice of Availability (NOA) in the **Federal Register**, and will close on March 21, 2011.

SUPPLEMENTARY INFORMATION: The FAA, as the lead Federal agency, has prepared the EIS for the proposed AIP at PBIA. The FAA published a DEIS in September, 2008. The DEIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The DEIS comparatively assessed and disclosed the potential future impacts of the No-Action Alternative (no development at PBIA besides that which has already been planned, environmentally reviewed, and/or that are needed for safety, security or maintenance reasons), and two proposed action alternatives, designated as the Airport Sponsor's AIP (Proposed Project) and Alternative 2. The primary capacity enhancement elements of these two proposed action alternatives consists of the following: AIP—relocate existing Runway 10R/28L 100 feet south of its existing location and expand the runway to a length of 8,000 feet and a width of 150 feet; Alternative 2—construct new Runway 10L/28R located 800 feet north of existing Runway 10L/28R to a length of 10,000 feet and a width of 150 feet. Both the AIP and Alternative 2 include other less substantial airport-related projects that are either associated with the primary runway development components of each alternative or are stand-alone projects that could be constructed by the Airport Sponsor outside of the EIS process.

Since the publication of the DEIS, the economic recession has resulted in a decrease in aviation activity at PBIA and changes in the FAA's forecasts of aviation activity for both PBIA and for the national system. The actual and forecast decrease in aircraft operations at PBIA have been, and are expected to continue to be, substantial enough to bring into question the initially proposed timing for implementation of the airport improvement program studied in the DEIS. As a result, the FAA made a determination that the 2006 PBIA Master Plan Update forecasts approved for use in the DEIS, and which were used as the basis for the justification for the airport capacity enhancement component of the Airport Sponsor's AIP, were no longer appropriate for use in determining the timing for the implementation of the AIP and Alternative 2. After the publication of the DEIS, and the review of comments on the DEIS, the FAA determined that a more recent forecast of aviation activity that is representative of the changed conditions at PBIA should be used for the FEIS. Subsequently, the FAA decided that the agency's own 2009 Terminal Area Forecast (2009 TAF) would be the most applicable forecast of aviation activity

for use in the FEIS. The 2009 TAF shows that future aircraft activity at PBIA would likely increase at only a modest annual rate when compared to the 2006 PBIA Master Plan Update Forecasts.

After consultation with the FAA and review of the 2009 TAF, the Airport Sponsor concluded, and the FAA agreed, that the airfield capacity enhancement elements of the AIP and Alternative 2, the primary components of which is the relocation and expansion of Runway 10R/28L, would not be needed at PBIA by the year 2013, which was the proposed AIP and Alternative 2 implementation year identified and evaluated by the FAA in the DEIS.

As a result, the Airport Sponsor proposed to the FAA a revised implementation plan and schedule for the AIP. The revised plan and schedule consists of developing the AIP in two components, which are designated in the FEIS as the Near-Term AIP Project and the Long-Term AIP Project. The FAA subsequently evaluated in the FEIS both the Airport Sponsor's AIP and Alternative 2 based on the revised implementation plan and schedule.

The Near-Term AIP Alternative component consists of the development of general aviation (GA) facilities in the northwest quadrant of PBIA; widening Taxiway "L" from 50 feet to 75 feet, and the acquisition of approximately 13.2 acres of property along the western PBIA property line. The Long-Term AIP Alternative component consists of the expansion of Runway 10R/28L as described above, the shortening of the southeast end of Runway 14/32 by 3,412 feet, the extension of the northwest end of Runway 14/32 by 480 feet, GA facility relocation, other connected actions to the Runway 10R/28L project, and other minor stand alone airport improvement projects.

The Near-Term Alternative 2 component consists of essentially the same projects as the Near-Term AIP Alternative component, with the exception of a revised configuration for the GA development area in the northwest quadrant of PBIA. The Long-Term Alternative 2 component consists of the development of new Runway 10L/28R as described above, the closure of Runway 14/32, relocation of portions of Concourses "B" and "C", relocation of the ARFF and Air Cargo Building, other connected actions to the Runway 10L/28R project, and other minor stand alone airport improvement projects.

The Airport Sponsor is requesting the FAA's "unconditional" approval of the Near-Term AIP Project through the FAA's findings and determinations in its Record of Decision (ROD) on the FEIS. If "unconditional" approval is granted by the FAA in its ROD, the Airport Sponsor anticipates that the Near-Term AIP Projects would be constructed and operational by the year 2015. However, the FAA acknowledges that the development schedule for future GA facilities would be influenced by prevailing market conditions, the demand for additional GA facilities, and respective business decisions by the Airport Sponsor and Fixed Base Operators (FBO's). Therefore, the build-out of the Near-Term AIP or Near-Term Alternative 2 GA facilities could occur sometime before or after the FEIS Near-Term study year of 2015.

Through the EIS process and the FAA's subsequent ROD, the Airport Sponsor is also requesting the FAA's "conditional" approval of the Long-Term AIP Project. The Long-Term AIP Project consists of the primary airfield capacity enhancement components of the AIP, which includes the relocation and expansion of Runway 10R/28L and connected actions, as well as other minor stand-alone airport improvement projects. The Long-Term AIP Project would be considered by the FAA for unconditional approval only when the number of aircraft operations at PBIA returns to the levels that would cause unacceptable aircraft operational delay. At such time that this occurs, the FAA will consider the appropriate level of additional NEPA processing and environmental analysis/documentation that may be needed to fully evaluate and disclose the potential environmental impacts associated with the Long-Term AIP Project and its connected actions.

Public Comment: Because of the amount of time that has elapsed since the publication of the DEIS, the consideration of revised forecasts (FAA's 2009 TAF) in the FEIS, and the Airport Sponsor's revised implementation plan and schedule for the proposed project, the FAA is seeking comments on its FEIS for a period of 45 days following the publication of the NOA of the FEIS in the **Federal Register.** After review and consideration of the comments received on the FEIS, and sometime after the 45-day comment period on the FEIS has ended, the FAA will issue its ROD. The public comment period on the FEIS will begin on February 4, 2011 and will close on March 21, 2011. Copies of the FEIS are available for review at the following locations during regular business hours:

- Palm Beach County Library Greenacres Branch, 3750 Jog Road, Greenacres, FL 33467.
- Palm Beach County Library Okeechobee Boulevard Branch, 5689 West Okeechobee Boulevard, West Palm Beach, FL 33417.
- West Palm Beach Public Library, 411 Clematis Street, West Palm Beach, FL 33401.

A limited number of copies of the FEIS will be available for review by appointment only during regular business hours at the following locations:

- Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive Citadel International Building, Suite 400, Orlando, Florida. Contact Bart Vernace at (407) 812–6331.
- Palm Beach International Airport, Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, Florida. Contact Gary Sypek at (561) 471–7412.

An electronic copy of the FEIS will be available for review and download from the EIS Web site (*http://www.pbia-eis.com*) beginning February 4, 2011.

Written comments on the FEIS may be mailed or e-mailed to Mr. Bart Vernace of the FAA at the address shown in the section below entitled For Further Information or to Submit Comments Contact. All comments must be postmarked by March 21, 2011.

Comments should be as specific as possible and address the analysis of potential environmental impacts, the adequacy of the proposed action, or the merits of alternatives and the mitigation being considered. Reviewers should organize their participation so that it is meaningful and makes the agency aware of the viewer's interests and concerns using quotations and other specific references to the text of the FEIS and related documents. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them in its ROD.

Comments can only be accepted with the full name and address of the individual commenting. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask the FAA in your comment to withhold from public review your personal identifying information, the FAA cannot guarantee that it will be able to do so.

For Further Information or to Submit Comments Contact: Mr. Bart Vernace, PE, Assistant Manager, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National

Drive, Citadel International Building, Suite 400, Orlando, Florida 32822. Phone: (407) 812–6331. E-mail: *pbia-eis@urscorp.com.*

Issued in Orlando, Florida on January 25, 2011.

W. Dean Stringer,

Manager, Orlando Airports District Office, Federal Aviation Administration.

[FR Doc. 2011–2065 Filed 2–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2011–0010]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on an extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 5, 2011.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room W12–140, Ground level, 1200 New Jersey Avenue, SE., Washington, DC 20590 by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the Docket Management System.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery/Courier:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 1–800–647–5527.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room W12–140 on the ground level of the DOT Building, 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Carlita Ballard, NHTSA 1200 New Jersey Ave., SE., Room W43–439, NVS–131, Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i.) 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;

(ii.) 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;

(iii.) How to enhance the quality, utility, and clarity of the information to be collected and;

(iv.) How 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 or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Procedures for Selecting Lines to be Covered by the Theft Prevention Standard (49 CFR 542)

OMB Control Number: 2127–0539

Form Number: None.

Affected Public: Motor vehicle manufacturers.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: Manufacturers of light duty trucks must identify new model introductions that are likely to be high-theft lines as defined in 49 U.S.C. 33104.

Estimated Annual Burden: 315 hours.

Number of Respondents: 7.

In 1984, Congress enacted the Motor Vehicle Theft Law Enforcement Act (the 1984 Theft Act). As a means to prevent the theft of motor vehicles for their parts, the 1984 Theft Act required vehicle manufacturers to mark the major parts of "high-theft" passenger cars and the major replacement parts for those cars. The Anti Car Theft Act of 1992 (ACTA) amended the 1984 Theft Act to extend its provisions to multipurpose passenger vehicles (MPVs) and light duty trucks (LDTs).

The 1984 Theft Act, as amended by ACTA, requires NHTSA to promulgate a theft prevention standard for the designation of high-theft vehicle lines. The specific lines are to be selected by agreement between the manufacturer and the agency. If there is a disagreement of the selection, the statute states that the agency shall select such lines and parts, after notice to the manufacturer and an opportunity for written comment. NHTSA's procedures for selecting high theft vehicle lines are contained in 49 CFR part 542.

In a final rule published on April 6, 2004, the Federal Motor Vehicle Theft Prevention Standard was extended to include all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, regardless of whether they were likely to be high or low theft, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles. The final rule became effective September 1, 2006.

As a result of this amendment, determination of high theft status is required only for LDTs manufactured on or after that date. There are seven vehicle manufacturers who produce

LDTs. Generally, these manufacturers would not introduce more than one new LDT line in any year. NHTSA estimates the maximum number of responses to be seven. NHTSA estimates that the average hours per submittal are 45, for a total annual burden of 315 hours. NHTSA estimates that the cost associated with the burden hours is $57.06 per hour, for a total cost of approximately $18,000.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: January 31, 2011.

Joseph S. Carra,

Acting, Associate Administrator for Rulemaking.

[FR Doc. 2011–2470 Filed 2–3–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2010–0182]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Request for public comment on extension of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 5, 2011.

ADDRESSES: You may submit comments identified by DOT Docket No. NHTSA–2010–0182 by any of the following methods:

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail*: *Docket Management Facility*: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier*: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. *Telephone*: 1–800–647–5527.
- *Fax*: 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. *Please see* the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Alex Ansley, Recall Management Division (NVS–215), Room W46–412, NHTSA, 1200 New Jersey Ave., SE., Washington, DC 20590. *Telephone*: (202) 493–0481.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation, *see* 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How 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 or other forms of information technology, *e.g.* permitting electronic submission of responses

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Names and Addresses of First Purchasers of Motor Vehicles.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2127–0044.

Affected Public: Businesses or others for profit.

Abstract: Pursuant to 49 U.S.C. 30117(b), a manufacturer of a motor vehicle or tire (except a retread tire) must maintain a record of the name and address of the first purchasers of each vehicle or tire it produces and, to the extent prescribed by regulation of the Secretary, must maintain a record of the name and address of the first purchaser of replacement equipment (except a tire) that the manufacturer produces.

Vehicle manufacturers presently collect and maintain purchaser information for business reasons, such as for warranty claims processing and marketing, and experience with this statutory requirement has shown that manufacturers have retained this information in a manner sufficient to enable them to expeditiously notify vehicle purchasers in the case of a safety recall. Based on industry custom and this experience, NHTSA therefore determined that the regulation mentioned in 49 U.S.C. 30117(b) was unnecessary as to vehicle manufacturers. As an aside, the requirement for maintaining tire purchaser information are contained in 49 CFR part 574, Tire Identification and Recordkeeping, and the burden of that information collection is not part of this information collection.

Estimated annual burden: Zero. As a practical matter, vehicle manufacturers are presently collecting from their

dealers and then maintaining first purchaser information for their own commercial reasons. Therefore, the statutory requirement does not impose any additional burden.

Number of respondents: We estimate that there are roughly 1,000 manufacturers of motor vehicles that collect and keep first purchaser information.

Issued on: January 31, 2011.

Frank Borris,

Director, Office of Defects Investigation.

[FR Doc. 2011–2468 Filed 2–3–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2011–0011]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on an extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 5, 2011.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room W12–140, Ground Level, 1200 New Jersey Avenue, SE., Washington, DC 20590 by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the Docket Management System.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery/Courier:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. *Telephone:* 1–800–647–5527.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room W12–140 on the ground level of the DOT Building, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Carlita Ballard, NHTSA, 1200 New Jersey Avenue, SE., Room W43–439, NVS–131, Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information.

The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected and;

(iv) How 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 or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Petitions for Exemption from the Vehicle Theft Prevention Standard (49 CFR Part 543).

OMB Control Number: 2127–0542.

Form Number: None.

Affected Public: Motor vehicle manufacturers.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: Manufacturers of passenger vehicle lines may petition the agency for an exemption from Part 541 requirements, if the line is equipped with an anti-theft device as standard equipment and meets agency criteria. Device must be as effective as parts-marking.

Estimated Annual Burden: 1,808.

Number of Respondents: 8.

49 U.S.C. chapter 331 requires the Secretary of Transportation to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. 49 U.S.C. 33106 provides for an exemption to this identification process by petitions from manufacturers who equip covered vehicles with standard original equipment antitheft devices, which the Secretary determines are likely to be as effective in reducing or deterring theft as parts-marking. NHTSA may exempt a vehicle line from the parts marking requirement, if the manufacturer installs an antitheft device as standard equipment on the entire vehicle line for which it seeks an exemption and NHTSA determines that the antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with 49 U.S.C. 33106, after model year (MY) 2000, the number of new exemptions is contingent on a finding by the Attorney General as part of its long-range review of effectiveness. After consulting with DOJ, the agency decided it could continue granting one exemption per model year pending the results of the long-term review.

In a final rule published on April 6, 2004, the Federal Motor Vehicle Theft Prevention Standard was extended to include all passenger cars and multipurpose passenger vehicles with a gross vehicle rating of 6,000 pounds or

less, and to light duty trucks with major parts that are interchangeable with a majority of the covered major parts of multipurpose passenger vehicles. Consistent with this DOJ consultation, the April 6, 2004 final rule amended the general requirements of Section 543.5 of Chapter 49 of the Code of Federal Regulations, allowing a manufacturer to petition NHTSA to grant an exemption for one additional line of its passenger motor vehicles from the requirements of the theft prevention standard for each model year after MY 1996. The final rule became effective September 1, 2006.

Prior to September 1, 2006, manufacturers were only allowed to petition NHTSA for high-theft vehicles lines. In its April 6, 2004 final rule, the agency amended part 543 to allow vehicle manufacturers to file petitions to exempt all vehicle lines that would become subject to parts-marking requirements beginning with the effective date of the final rule. As a result of this amendment, vehicle manufacturers are allowed to file petitions to exempt all vehicles lines that would become subject to the parts-marking requirements regardless of their theft status (high or low). While there are approximately 27 vehicle manufacturers, since the effective date of the rule, 23 petitions for exemption from the parts-marking requirements have been received by the agency for MYs 2011–2013, averaging approximately 8 responses per year. We anticipate this to remain the average number of yearly responses received by the agency.

NHTSA estimates that the average hours per submittal will be 226, for a total annual burden of 1,808. NHTSA estimates that the cost associated with the burden hours is $36.62 per hour, for a total cost of approximately $66,209.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: January 31, 2011.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2011–2467 Filed 2–3–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2010–0181]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Request for public comment on extension of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 5, 2011.

ADDRESSES: You may submit comments identified by DOT Docket No. NHTSA–2010–0181 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Alex Ansley, Recall Management Division (NVS–215), Room W46–412, NHTSA, 1200 New Jersey Ave., Washington, DC 20590. Telephone: (202) 493–0481.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation, *see* 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how 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 or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Petitions for Hearings on Notification and Remedy of Defects.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2127–0039.

Affected Public: Businesses or others for profit.

Abstract: Sections 30118(e) and 30120(e) of Title 49 of the United States Code specify that any interested person may petition NHTSA to hold a hearing to determine whether a manufacturer of motor vehicles or motor vehicle equipment has met its obligation to notify owners, purchasers, and dealers of vehicles or equipment of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in the manufacturer's products and to remedy that defect or noncompliance.

To implement these statutory provisions, NHTSA promulgated 49 CFR part 557, Petitions for Hearings on Notification and Remedy of Defects. Part 577 establishes procedures providing for the submission and disposition of petitions for hearings on the issues of whether the manufacturer has met its obligation to notify owners, purchasers, and dealers of safety-related defects or noncompliance, or to remedy such defect or noncompliance free of charge.

Estimated annual burden: During NHTSA's last renewal of this information collection, the agency estimated it would receive one petition a year, with an estimated one hour of preparation for each petition, for a total of one burden hour per year. That estimate remains unchanged with this notice.

Number of respondents: 1.

Issued on: January 31, 2011.

Frank Borris,

Director, Office of Defects Investigation.

[FR Doc. 2011–2469 Filed 2–3–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2011–0009]

Insurance Cost Information Regulation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of the 2011 text and data for the annual insurance cost information booklet that all car dealers must make available to prospective purchasers, pursuant to 49 CFR 582.4. This information is intended to assist prospective purchasers in comparing differences in passenger vehicle collision loss experience that could affect auto insurance costs.

ADDRESSES: Interested persons may obtain a copy of this booklet or read background documents by going to *http://regulations.dot.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: Pursuant to section 201(e) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1941(e), on March 5, 1993, 58 FR 12545, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR part 582, *Insurance Cost Information Regulation,* to require all dealers of automobiles to distribute to prospective customers information that compares differences in insurance costs of different makes and models of passenger cars based on differences in damage susceptibility.

Pursuant to 49 CFR 582.4, all automobile dealers are required to make available to prospective purchasers booklets that include this comparative information as well as certain mandatory explanatory text that is set out in section 582.5. Early each year, NHTSA produces a new version of this booklet to update the Highway Loss Data Institute's (HLDI) December Insurance Collision Report.

NHTSA is mailing a copy of the 2011 booklet to each dealer that the Department of Energy uses to distribute the "Gas Mileage Guide." Dealers will have the responsibility of reproducing a sufficient number of copies of the booklet to assure that they are available for retention by prospective purchasers by March 7, 2011. Dealers who do not receive a copy of the booklet within 15 days of the date of this notice should contact Ms. Ballard of NHTSA's Office of International Policy, Fuel Economy, and Consumer Programs (202) 366–0846 to receive a copy of the booklet and to be added to the mailing list. Dealers may also obtain a copy of the booklet through the NHTSA Web page at: *http://www.nhtsa.dot.gov/*. From there, click on the Vehicle Safety tab, then choose the Vehicle-Related Theft category, on that page, under the Additional Resources Panel, click on 2011 Comparison of Insurance Costs.

(49 U.S.C. 32302; delegation of authority at 49 CFR 1.50(f).)

Issued on: January 31, 2011.

Joseph S. Carra,

Acting, Associate Administrator for Rulemaking.

[FR Doc. 2011–2471 Filed 2–3–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: PHMSA–2010–0354]

Pipeline Safety: Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collections

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on this ICR was published in the **Federal Register** on November 29, 2010 (75 FR 73160) under Docket No. PHMSA–2010–0354. No comments were received. The purpose of this notice is to allow the public an additional 30 days to submit comments to OMB on the information collection described below.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for DOT/PHMSA, 725 17th Street, NW., Washington, DC 20503.

DATES: Interested persons are invited to submit comments on or before March 7, 2011.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by e-mail at *angela.dow@dot.gov,* or by mail at U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Title: Reporting Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

OMB Control Number: 2137–0578.

Type of Request: Renewal of a currently approved information collection.

Abstract: Each operator of a pipeline facility (except master meter operators) must submit to DOT a written report on any safety-related condition that causes or has caused a significant change or restriction in the operation of a pipeline facility or a condition that is a hazard to life, property or the environment.

Affected Public: Operators of pipeline facilities (except master meter operators).

Estimated number of responses: 142.

Estimated annual burden hours: 852 hours.

Frequency of collection: On occasion.

Comments are invited on: 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; 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; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques. A comment to OMB is most effective if OMB receives it within 30 days of the date of publication in the **Federal Register**.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR Part 1.

Issued in Washington, DC, on January 31, 2011.

Linda Daugherty,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2011–2451 Filed 2–3–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35461]

Carolina Coastal Railway, Inc.—Lease and Operation Exemption—Norfolk Southern Railway Company

Carolina Coastal Railway, Inc. (CLNA), a Class III carrier, has filed a verified notice of exemption [1] under 49 CFR 1150.41 to lease and operate, pursuant to an amendment to an existing lease agreement entered into on June 22, 2007, with Norfolk Southern Railway Company (NSR), a line of railroad known as the SB Line located between milepost 134.2 at Kings Creek, S.C., and milepost 141.35 at Blacksburg, S.C., located entirely in Cherokee County, S.C.[2] According to CLNA, the total length of the line is about 7.5 miles, including approximately 0.3 miles of connecting track between the SB Line and NSR's Blacksburg Yard. The lease and operation transaction also includes operating rights for interchange purposes in NSR's Blacksburg Yard.

As a result of this transaction, CLNA will continue providing common carrier rail freight service to International Minerals, Inc., the sole remaining customer located at Kings Creek.

According to CLNA, the amendment to the lease does not contain any language limiting CLNA's ability to interchange with other carriers. *See* 49 CFR 1150.43(h).

CLNA certifies that its projected annual revenues as a result of the transaction will not exceed $5 million annually and will not result in it becoming a Class I or Class II rail carrier.

The earliest this transaction can be consummated is February 18, 2011, the effective date of the exemption (30 days after the exemption was filed). CLNA states that it plans to consummate the transaction on or about 30 days from the date of filing its notice of exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than February 11, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35461, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

[1] A milepost referenced in the notice of exemption was clarified by letter filed on January 27, 2011.

[2] CLNA states that it has executed an amendment to its existing lease with NSR, which expires on June 30, 2027, that covers the proposed lease and operation of the SB Line. The line is currently owned and operated by NSR.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 28, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–2356 Filed 2–3–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35380]

San Luis & Rio Grande Railroad—Petition for a Declaratory Order

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public meeting.

SUMMARY: Staff members of the Surface Transportation Board will hold a public meeting concerning the declaratory order proceeding in the above-titled docket. The purpose of the meeting is to allow interested persons to comment on the issues raised in the proceeding.

Date/Location: The public meeting will take place on Thursday, February 17, 2011, beginning at 10 a.m. (local time), in Our Lady of Guadalupe Parish Hall, 6631 County Road 13, Conejos, Colorado 81129.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In response to a petition filed by San Luis & Rio Grande Railroad (SLRG), the Board instituted a declaratory order proceeding under 5 U.S.C. 554(e) and 49 U.S.C. 721 on August 12, 2010, to determine whether the Board's jurisdiction preempts the land-use code of Conejos County, Colorado (County) that may otherwise apply to SLRG's proposed operation of a truck-to-rail transload facility in Antonito, Colorado. *See San Luis & Rio Grande R.R.—Petition for a Declaratory Order,* FD 35380 (STB served Aug. 12, 2010) (*August decision*). Specifically, the facility will be used to transfer containers and/or bags of contaminated dirt and debris from trucks originating at Los Alamos National Laboratory in New Mexico to railcars.

In the *August decision* instituting a proceeding, the Board opened the matter for public comment on the petition and gave SLRG the opportunity

to supplement its filing. The Board requested that the filings focus on issues related to the Clean Railroads Act of 2008, 49 U.S.C. 10501(c)(2), 10908–10910 (CRA), including whether SLRG's containers are original shipping containers under 49 U.S.C. 10908(e)(1)(H)(i), and whether the dirt SLRG plans to transload and transport is subject to the CRA. The *August decision* also established an initial procedural schedule.

In response to the Board's request for public comments, several entities and individuals filed comments. One such entity, Conejos County Clean Water, Inc. (CCCW) included in its extensive comments a request for the opportunity to provide oral public comments on what the Board deemed novel issues at a hearing proceeding in Conejos County. In support of this request, CCCW attached a letter from its Chair explaining that Conejos County is the poorest county in Colorado with a median income of $24,744, making it almost impossible for its residents to travel to Washington, DC to participate in this proceeding. By decision served December 20, 2010, the Board granted the request for a public meeting in Conejos County to be held by Board staff to give local stakeholders the opportunity to provide public comment on the proceeding.

During the public meeting, Board staff will hear comments regarding the declaratory order proceeding. The meeting will continue until all interested persons or parties have had an opportunity to speak. Persons wishing to speak should place their names on the list of speakers upon arrival at the Parish Hall of Our Lady of Guadalupe Church. A court reporter will transcribe the meeting and prepare a transcript that will be included in the public record of the proceeding.

All decisions, notices, and filings in this proceeding are available on the Board's Web site at *http://www.stb.dot.gov.* A transcript of the meeting will also be posted on the Board's Web site.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: January 31, 2011.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–2460 Filed 2–3–11; 8:45 am]

BILLING CODE 4915–01–P

FEDERAL REGISTER

Vol. 76 Friday,

No. 24 February 4, 2011

Part II

The President

Proclamation 8627—National African American History Month, 2011

Federal Register
Vol. 76, No. 24
Friday, February 4, 2011

Presidential Documents

Title 3—

The President

Proclamation 8627 of February 1, 2011

National African American History Month, 2011

By the President of the United States of America

A Proclamation

The great abolitionist and orator Frederick Douglass once told us, "If there is no struggle, there is no progress." Progress in America has not come easily, but has resulted from the collective efforts of generations. For centuries, African American men and women have persevered to enrich our national life and bend the arc of history toward justice. From resolute Revolutionary War soldiers fighting for liberty to the hardworking students of today reaching for horizons their ancestors could only have imagined, African Americans have strengthened our Nation by leading reforms, overcoming obstacles, and breaking down barriers. During National African American History Month, we celebrate the vast contributions of African Americans to our Nation's history and identity.

This year's theme, "African Americans and the Civil War," invites us to reflect on 150 years since the start of the Civil War and on the patriots of a young country who fought for the promises of justice and equality laid out by our forbearers. In the Emancipation Proclamation, President Abraham Lincoln not only extended freedom to those still enslaved within rebellious areas, he also opened the door for African Americans to join the Union effort.

Tens of thousands of African Americans enlisted in the United States Army and Navy, making extraordinary sacrifices to help unite a fractured country and free millions from slavery. These gallant soldiers, like those in the 54th Massachusetts Infantry Regiment, served with distinction, braving both intolerance and the perils of war to inspire a Nation and expand the domain of freedom. Beyond the battlefield, black men and women also supported the war effort by serving as surgeons, nurses, chaplains, spies, and in other essential roles. These brave Americans gave their energy, their spirit, and sometimes their lives for the noble cause of liberty.

Over the course of the next century, the United States struggled to deliver fundamental civil and human rights to African Americans, but African Americans would not let their dreams be denied. Though Jim Crow segregation slowed the onward march of history and expansion of the American dream, African Americans braved bigotry and violence to organize schools, churches, and neighborhood organizations. Bolstered by strong values of faith and community, black men and women have launched businesses, fueled scientific advances, served our Nation in the Armed Forces, sought public office, taught our children, and created groundbreaking works of art and entertainment. To perfect our Union and provide a better life for their children, tenacious civil rights pioneers have long demanded that America live up to its founding principles, and their efforts continue to inspire us.

Though we inherit the extraordinary progress won by the tears and toil of our predecessors, we know barriers still remain on the road to equal opportunity. Knowledge is our strongest tool against injustice, and it is our responsibility to empower every child in America with a world-class education from cradle to career. We must continue to build on our Nation's foundation of freedom and ensure equal opportunity, economic security,

and civil rights for all Americans. After a historic recession has devastated many American families, and particularly African Americans, we must continue to create jobs, support our middle class, and strengthen pathways for families to climb out of poverty.

During National African American History Month, we recognize the extraordinary achievements of African Americans and their essential role in shaping the story of America. In honor of their courage and contributions, let us resolve to carry forward together the promise of America for our children.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 2011 as National African American History Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

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

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