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DEPARTMENT OF ENERGY

10 CFR Part 429

[Docket Number: EERE–2010–BT–CE–0014]

RIN 1904–AC23

Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE or the ''Department'') is adopting amendments to the compliance dates for manufacturers to submit certification reports for the certification provisions for commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; commercial water heating (WH) equipment; and automatic commercial ice makers, which are covered under the Energy Policy and Conservation Act of 1975, as amended (EPCA or the ''Act''). Manufacturers of these products will be required to submit certification reports no later than December 31, 2012.

DATES: This rule is effective July 5, 2011.

ADDRESSES: This rulemaking can be identified by docket number EERE–2010–BT–CE–0014 and/or RIN number 1904–AC23.

Docket: The docket is available for review at *http://www.regulations.gov,* including **Federal Register** notices, public meetings attendee lists, transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

For further information on how to review public comments or view hard copies of the docket in the Resource Room, contact Ms. Brenda Edwards at (202) 586–2945 or e-mail: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. E-mail: *Ashley.Armstrong@ee.doe.gov;* and Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 287–6122. E-mail: *Celia.Sher@hq.doe.gov.*

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I. Introduction

A. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended (''EPCA'' or ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part A–1 of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) [1]

Sections 6299–6305, and 6316 of EPCA authorize DOE to enforce compliance with the energy and water conservation standards (all non-product specific references herein referring to energy use and consumption include water use and consumption; all references to energy efficiency include water efficiency) established for certain consumer products and commercial equipment. (42 U.S.C. 6299–6305 (consumer products), 6316 (commercial equipment)) DOE has promulgated enforcement regulations that include specific certification and compliance requirements. *See* 10 CFR part 429; 10 CFR part 431, subparts B, U, and V.

B. Background

On March 7, 2011, DOE published a final rule in the **Federal Register** that, among other things, modified the requirements regarding manufacturer submission of compliance statements and certification reports to DOE (March 2011 final rule). 76 FR 12421. This rule was largely procedural in nature; it did not amend pre-existing sampling provisions, test procedures, or conservation standard levels for any covered products or equipment. It did, however, impose new or revised reporting requirements for some types of covered products and equipment, including a requirement that manufacturers submit annual reports to the Department certifying compliance of their basic models with applicable standards. Finally, the Department emphasized that manufacturers could use their discretion in grouping individual models as a ''basic model'' such that the certified rating for the basic model matched the represented rating for all included models. *See* 76 FR 12428–12429 for more information. This reflected a basic requirement of the Department's longstanding self-certification compliance regime—that efficiency certifications and representations must be supported by either testing or an approved alternative method of estimating efficiency.

Since the publication of the March 2011 final rule, certain manufacturers of particular types of commercial and industrial equipment have stated that they would be unable to meet the July 5th deadline for complying with the certification requirements. In particular, manufacturers of commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers (as defined in 10 CFR part 431) contend that certifying supported basic model ratings under the revised provisions would require a cost-prohibitive amount of additional testing and take far longer than the time allowed. Some commercial manufacturers also expressed concern over DOE's regulations for alternative efficiency determination methods (AEDMs), which are intended to reduce testing burdens by allowing

[1] For editorial reasons, Parts B (consumer products) and C (commercial equipment) of Title III of EPCA were re-designated as parts A and A–1, respectively, in the United States Code.

manufacturers to use computer simulations, mathematical models, and other alternative methods to determine the amount of energy used or efficiency by a particular basic model. These manufacturers suggested that the AEDM provisions are too restrictive, overly burdensome, and unavailable for some products that would benefit from them and, as a result, do not permit the viable alternative to testing intended by the Department.

The Department responded in part to these concerns by taking two immediate steps. On April 8, 2011, DOE issued a request for information (RFI) (available at *http://www.eere.energy.gov/buildings/appliance_standards/pdfs/arm_aedms_rfi.pdf*) seeking comment on, among other things, the use of such alternative methods for determining the efficiency of commercial and industrial equipment. 76 FR 21673 (April 18, 2011). As the RFI explained, the Department intends to use this information to propose revisions and expansions, as necessary, to the existing AEDM provisions in a future rulemaking. The Department expects that addressing manufacturers' concerns with the AEDM provisions may alleviate some of industry's estimated burden of complying with DOE's existing testing regulations and allow the development of the data necessary to file the certifications and compliance reports as required by the March 2011 final rule.

Given the testing burdens reported by certain commercial manufacturers and the Department's recent RFI on alternative ways to estimate efficiency in lieu of testing, on April 19, 2011, DOE published in the **Federal Register**, a notice of proposed rulemaking regarding the compliance date for certification of certain commercial and industrial equipment (April 2011 NOPR). 76 FR 21813. In the April 2011 NOPR, DOE proposed an 18-month extension to the compliance date for the certification provisions for commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers. In the April 2011 NOPR, the Department sought comment on whether a limited reporting requirement should be required of manufacturers of these types of commercial equipment during an interim 18-month period. Additionally, the Department noted it was considering extending the compliance date for the certification provisions for other commercial equipment based on comments from interested parties. *Id.*

II. Discussion of Comments

The Department received comments on the April 2011 NOPR from a number of interested commenters, including various manufacturers, trade associations, and advocacy groups. The comments and DOE's responses to them are generally discussed below.

A. Extension of Certification Deadline for Commercial Refrigeration Equipment; HVAC Equipment; Commercial WH Equipment; and Automatic Commercial Ice Makers

As stated above, DOE proposed a tentative 18-month extension to the compliance date for filing complete certification reports for manufacturers of commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers in the April 2011 NOPR. 76 FR 21815. Most commenters were in support of such an extension, including the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), Traulsen, International Cold Storage (ICS), Crown Tonka, ThermalRite (ICS, Crown Tonka and ThermalRite hereafter referred to as ''Joint Manufacturers''), Carrier Corporation (Carrier), National Automatic Merchandising Association (NAMA), AAON, Inc. (AAON), Lennox International Inc. (Lennox), Heatcraft Refrigeration Products LLC (Heatcraft), Hill Phoenix Walk-Ins (Hill Phoenix), Royal Vendors, Inc., Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEE), and the Natural Resources Defense Council (NRDC) (ASAP, ACEEE, and NRDC hereafter referred to as ''Joint Advocacy Comments''). (AHRI, No. 113.1 at p. 1; Traulsen, No. 111.1 at p. 1; Joint Manufacturers, No. 115.1 at p. 1; Carrier, No. 114.1 at p. 1; NAMA, No. 116.1 at p. 2; AAON, No. 118.1 at p. 1; Lennox, No. 119.1 at p. 1; Heatcraft, No. 124.1 at p. 1; Hill Phoenix, No. 121.1 at p. 1; Royal Vendors, Inc., No. 123.1 at p. 1; Joint Advocacy Comments, No. 125.1 at p. 1) For example, Traulsen commented that the proposed extension should provide a significant time frame required to review and adjust the open issues such as sample size, tolerances, and base models. (Traulsen, No. 111.1 at p. 1) Carrier additionally commented that the proposed 18-month extension is warranted to revise the AEDM procedures to reduce the envisioned testing burden. (Carrier, No. 114.1 at p. 2) Carrier further requested that DOE amend the confidence level to be used for calculating energy efficiency levels for commercial HVAC equipment, noting an inconsistency in the confidence levels used for commercial HVAC equipment and residential central air conditioners and heat pumps in the March 2011 final rule. (Carrier, No. 114.1 at p. 2) The Joint Advocacy Comments noted their support of DOE's proposal to extend the certification deadline, and also suggested DOE consider whether a blanket 18-month extension is needed for all products and requirements. (Joint Advocacy Comments, No. 125.1 at p. 1)

Some of the commenters were in favor of increasing the proposed compliance timeline. In particular, the Joint Manufacturers recommended that the extension be increased to 24 months for walk-in coolers and walk-in freezers, given the inherent cost burden and logistical challenges of the physical testing that must be absorbed by smaller manufacturers. (Joint Manufacturers, No. 115.1 at p. 1) AHRI suggested a further extension of time may be necessary depending on the extent to which DOE modifies its AEDM/Alternate Rating Method (ARM) provisions and validation requirements. (AHRI, No. 113.1 at p. 2) Along these lines, Zero Zone, Inc. (Zero Zone) commented that, with the current definition of the basic model in the March 2011 final rule and the exclusion of AEDM methods, 18 months is not enough time to comply with the regulations. (Zero Zone, No. 127.1 at p. 1) Moreover, Zero Zone asserted that the compliance regulations in the March 2011 final rule are new for the commercial refrigeration industry and burdensome. *Id.*

AAON reported that the AEDM validation test tolerance stated in the March 2011 final rule is less than the current level of repeatability achievable in independent test laboratories making this validation impossible to achieve. Until these issues can be resolved and made clear, AAON stated it could not comment on the time required to comply with new testing burdens or AEDM requirement. (AAON, No. 118.1 at p. 1)

While many commenters supported the certification extension for certain commercial equipment, Earth Justice was the sole commenter arguing against the proposed 18-month extension, noting that any delay would undermine the energy savings achieved by the standards-setting process. (Earth Justice, No. 120.1 at p. 1) Instead, Earth Justice suggested DOE consider an alternative approach that would maintain some certification requirements for these products but make those requirements

less onerous for the first 18 months that the rule is effective. *Id.*

The Department appreciates Earth Justice's concern but declines to adopt interim certification requirements in this final rule. Although today's rule delays the reporting requirements for some products distributed in commerce, such products must still meet all prescribed energy conservation standards under DOE's regulations. As DOE has previously made clear, the existing energy conservation standards, test procedures, and sampling provisions are not affected by this rule. While the Department believes the certification reporting requirements are a good monitoring tool, their impact on energy savings should not be wholly undermined by a delay because the energy conservation standards themselves will still be enforced. Based on the volume of questions DOE has received since the issuance of the March 2011 final rule, the Department believes that a phased-in certification requirement is likely to result in industry confusion that would more than offset any benefit. The Department believes that industry should focus its efforts on developing a basis for future regulatory compliance.

In light of most of the comments above, DOE is extending the compliance date for the certification provisions for commercial refrigeration equipment; commercial warm air furnaces, commercial packaged boilers, and commercial air conditioners and heat pumps (collectively referred to as commercial HVAC equipment); commercial water heaters, commercial hot water supply boilers, and unfired hot water storage tanks (collectively referred to as commercial WH equipment); and automatic commercial ice makers to 18 months from the publication of this final rule. Thus, the certification compliance date for these products will now be December 31, 2012. DOE believes 18 months is a reasonable extension to provide manufacturers with the time necessary to develop the data and supporting documentation needed to populate the certification reports and certify compliance with DOE's regulations, including the existing testing and sampling procedures.

Manufacturer responses, however, indicate that numerous manufacturers for certain types of commercial equipment have been making representations of efficiency and determining compliance with the applicable energy conservation standards without testing products in accordance with all of the provisions of the DOE test procedures, which include sampling plans and certification testing tolerances. As such, it is apparent from the comments and concerns expressed to the Department that a subset of manufacturers of commercial equipment now require additional time to comply with testing and sampling requirements. In addition, manufacturer comments have demonstrated to DOE that the existing AEDM provisions need to be carefully reviewed and modified, as necessary, in order to permit manufacturers to determine compliance without undue test burden. DOE is committed to reviewing the AEDM provisions quickly and to enable manufacturers to determine compliance through approved methodologies. To that end, any comments regarding the AEDM provisions, such as Carrier's request to amend the confidence levels for calculating energy efficiency, will be addressed in the current ARM/AEDM rulemaking.

DOE emphasizes that the testing and sampling requirements for commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; and automatic commercial ice makers were not adopted or revised in the March 2011 final rule and are unchanged by this extension. These regulations can be found on a per product basis in Subpart B to Part 429 (sampling plans for testing) and 431.64, 431.76, 431.86, 431.96, 431.106, and 431.134 (uniform test methods). Those provisions were previously finalized in various product-specific rulemakings after being subject to notice and comment.

While AAON stated its support for the proposed 18-month extension, it requested clarification from DOE on how the March 2011 final rule indicates that ''manufacturers could use their discretion in grouping individual models as a certified basic model such that the certified rating for the basic model matched the represented rating for all included models'' as stated in the April 2011 NOPR. (AAON, No. 118.1 at p. 1) DOE provided clarification of its basic model definition in the March 2011 final rule. See 76 FR 12428–12429 for more information.

B. Extension of Certification Deadline for Walk-In Coolers and Freezers

In the April 2011 NOPR, DOE initially proposed an 18-month extension for manufacturers of walk-in coolers and freezers to certify compliance. As noted above, AHRI, ICS, Crown Tonka, the Joint Manufacturers, and Hill Phoenix all supported the certification extension for these products. Additionally, the Joint Manufacturers commented in support of an interim reporting requirement, suggesting mandatory registration with the Department's CCMS system for all walk-in coolers and walk-in freezers (WICFs) manufacturers based on published ratings and operating characteristics of components and materials used in construction of these products. (Joint Manufacturers, No. 115.1 at p. 1) The Joint Manufacturers clarified that this mandatory filing should be delayed until January 1, 2012, to allow all parties time to become acclimated to the system and to prevent an influx of errors and subsequent delays in completion of the filing. *Id.*

Although the Department tentatively proposed an extension to the certification compliance date for WICFs in the April 2011 NOPR, upon further consideration, DOE has determined that an 18-month extension for these products is not warranted. The current Federal energy conservation standards for walk-in coolers and freezers are design requirements prescribed under section 312(b) of the Energy Independence and Security Act of 2007 (EISA 2007), subsequently codified in 10 CFR 431.306. Manufacturers of WICFs are not currently required to comply with a performance-based standard, which could require extensive testing to determine the efficiency of each WICF and/or WICF component. Instead, EISA 2007 prescribed a number of design requirements, only one of which requires the use of a testing procedure. Because determining compliance with the design standard does not require extensive, time-consuming testing, DOE believes an 18-month delay to certify compliance with the EISA 2007 design standards is unwarranted.

WICFs that did not meet the EISA 2007 design requirements could not be distributed in commerce in the United States since January 1, 2009. As DOE clarified in the March 2011 final rule, EISA 2007 provided the framework for a component-based approach since each design standard is based on the performance of a given component of the WICF. Accordingly, DOE believes manufacturers of WICF components should be able to attest and demonstrate their products meet the design requirements without any additional time. Based on manufacturers' request for additional time, however, DOE will delay the certification compliance date to October 1, 2011, in order to provide manufacturers with sufficient time and notice to certify compliance to the Department. The new certification deadline is after the annual submission deadline for WICFs eliminating the need for manufacturers to submit two

complete certification reports this year and provides for a little extra time for component manufacturers to certify compliance to the design standards.

C. Extension of Certification Deadline for Other Types of Commercial or Industrial Equipment

Several commenters requested that the Department extend the compliance date for filing certification reports to other types of commercial or industrial equipment, such as beverage vending machines, distribution transformers and metal halide lamp ballasts and fixtures. A discussion of the comments and DOE response is presented below by product.

For instance, Royal Vendors, Inc., NAMA and Automated Merchandising Systems Inc. (AMS) all asserted that DOE should provide an 18-month extension for beverage vending machines for compliance with the certification provisions. Specifically, NAMA noted that manufacturers of beverage vending machines will be impacted by increased costs relating to compliance and testing; and operators will be impacted by increased prices for beverage vending machines, due to passed-along costs from manufacturers. (NAMA, No. 116.1 at p. 1) NAMA further stated that if the ''July 5, 2011 compliance date is allowed to stand, operators could also be impacted by a reduced number of compliant and certified vending machine models available for sale if manufacturers cannot bring their designs into compliance and obtain certification in this very short time.'' *Id.* Additionally, Royal Vendors, Inc. reported that, because it offers such a proliferation of product models, the quantity of testing required to verify compliance to the DOE 2012 requirement is quite extensive and costly to achieve in the timeline required. (Royal Vendors, Inc., No. 123.1 at p. 1) AMS similarly commented that the lead times for testing and the costs involved necessitate additional time to obtain the necessary certifications. (AMS, No. 128.1 at pp. 1–2)

The Department is clarifying that covered bottled or canned beverage vending machines are not required to be certified until the compliance date for the applicable energy conservation standards, which is August 31, 2012. 10 CFR 431.296. Irrespective of certification provisions, all manufacturers must bring their designs into compliance by that compliance date to continue distributing them in commerce. While many of the commenters suggested that the certification burden is large due to the compliance and testing costs, DOE considered these costs in the test procedure and energy conservation standards rulemakings for this product. See 71 FR 71340 (December 8, 2006) and 74 FR 74 44914 (August 31, 2009), respectively. Manufacturers of bottled and canned beverage vending machines should have the required information readily available by August 31, 2012. Additionally, DOE notes that it uses a self-certification process, where a manufacturer is attesting to the compliance of its products upon submission of the templates in CCMS; manufacturers are not required to obtain a third-party testing facility's certification.

With regard to distribution transformers, the National Electrical Manufacturers Association (NEMA) Transformers Products Section requested that DOE delay the compliance date for certification until 120 days from May 13, 2011, the day the Compliance Certification Management System (CCMS) templates for distribution transformers were published. (NEMA, No. 117.1 at p. 2) NEMA commented that such a 120 day delay is justified, reasonable and absolutely necessary, as any reporting represents a significant effort, both in time and labor; initial reporting even more so. *Id.* at pp 1–2. Similarly, NEMA requested DOE delay the enforcement of compliance reporting for metal halide lamp ballasts and fixtures until a date no earlier than September 1, 2012, because of the breadth of basic models covered and ballast testing requirements. (NEMA, No. 122.1 at pp. 1–2) NEMA noted this date coincides with the annual reporting date, minimizing the burden of multiple reports within the same year. *Id.* at p. 2.

DOE acknowledges that both distribution transformers and metal halide lamp ballasts and fixtures are unique markets. DOE understands, as noted by NEMA, that the distribution transformer market contains a great deal of customization, where many models are built-to-order. This can result in a large number of models requiring certification to DOE before distribution in commerce. DOE also understands it is common in the distribution transformer market to maintain many legacy models that were custom built for a given client instead of discontinuing them. DOE believes that manufacturers of distribution transformers will need sufficient time to review their records for legacy models to make sure that all models currently distributed in commerce are properly certified with the Department. As such, a large number of basic models may need to be certified in the initial certification report.

Metal halide lamp ballasts and fixtures are also a unique market since the manufacturer of the metal halide lamp fixture is responsible for compliance and certification to the Department, but the standards are based on the ballast (i.e., one component of the fixture). While the testing procedures and standards for these products are already effective and any representations of the efficiency must be made using the existing test procedure, DOE believes manufacturers of metal halide fixtures may require additional time to submit the certification reports. Many of these manufacturers will need to gather data on the ballasts from their component suppliers before the certification reports can be completed.

Rather than adopting a compliance date mid-month, DOE is delaying the compliance date for certification of distribution transformers and metal halide lamp ballasts and fixtures until October 1, 2011. This date provides slightly more time to allow for sufficient notice, data gathering, and certifying compliance, and addresses the concerns voiced by the manufacturers that they would be required to submit an annual certification report just a few months after the initial certification was due.

D. Reporting Requirement During Interim Period

In the April 2011 NOPR, the Department sought comment on whether a limited reporting requirement should be established for manufacturers receiving a compliance date extension for the certification reporting provisions. In response, numerous commenters stated their opposition to any such type of interim reporting requirement. AHRI asserted that DOE should not require registration with CCMS and the reporting of efficiency ratings before reasonable testing requirements and AEDM/ARM authorization and validation requirements have been clearly established, and manufacturers have been provided adequate time for compliance. (AHRI, No. 113.1 at p. 2) Hill Phoenix, NAMA, Lennox and Heatcraft were also opposed to reporting in the interim period. (Hill Phoenix, No. 121.1 at p. 1; NAMA, No. 116.1 at p. 3; Lennox, No. 119.1 at p. 2; Heatcraft, No. 124.1 at p. 2)

AHRI further stated that manufacturers should not have to worry about being prosecuted for inaccurate ratings or reporting errors while DOE has yet to determine what product rating methods and procedures will be deemed acceptable. (AHRI, No. 113.1 at

p. 2) Lennox and Heatcraft noted that the new certification requirements already impose an additional significant reporting burden on manufacturers, and DOE should not impose still another reporting obligation on an interim basis. (Lennox, No. 119.1 at p. 2; Heatcraft, No. 124.1 at p. 2) Instead, manufacturers should be able to simply maintain in their files, accessible on request by DOE, records demonstrating that covered equipment is in compliance with applicable conservation standards. *Id.* NAMA argued that adding limited reporting requirements will complicate testing, cost valuable staff time and could slow accurate conclusion of testing procedures. (NAMA, No. 116.1 at p. 3)

In response to these commenters, DOE desires to clarify that all products distributed in commerce must comply with the applicable energy conservation standards. Today's rule delays the reporting requirements only; existing energy conservation standards, test procedures and sampling provisions are not affected by this rule. Therefore, during the interim period before compliance is required for compliance certification, manufacturers must maintain records to demonstrate that covered equipment meet the applicable conservation standards—even if the manufacturers' determination of compliance was not made in accordance with DOE testing and sampling requirements.

E. Timing of Annual Filing Deadline

The March 2011 final rule added an annual certification requirement for all covered products and covered equipment currently subject to standards. The annual reporting requirement covers: (1) All discontinued basic models previously certified that have not previously been reported as discontinued (marked as discontinued); (2) all previously certified basic models that are still in distribution in commerce that are unchanged (marked as carryover); (3) all previously certified basic models that are still in distribution in commerce but for which the manufacturer needs to report new or changed information (marked as modified/revised) (e.g., new brand info, new or different model numbers, modified rating); and (4) any new models a manufacturer anticipates offering for distribution in commerce (marked as new). Lennox and Heatcraft requested DOE clarify the timing of the annual filing deadline of certification-related information (pursuant to 10 CFR 429.12(d)) and the 18-month extension. (Lennox, No. 119.1 at p. 2; Heatcraft, No. 124.1 at p. 2) These commenters suggested that the first certification reports for covered equipment should not be due until the DOE-specified month following the expiry of the 18-month extension (and any requirement for submitting a certification report before distributing relevant covered equipment in commerce should also be deferred until that date). *Id.* Lennox and Heatcraft believe this approach would preserve DOE's rolling submittal approach for annual reports and also clarify that a manufacturer is not required to submit a certification report twice in the first year that these reports are due. *Id.* With regard to timing, Carrier urged DOE to establish, once the AEDM procedures are amended, a subsequent effective date to actually conduct any required tests under the amended procedures. (Carrier, No. 114.1 at p. 2)

As discussed above, DOE is delaying the compliance date for the submittal of certification reports for certain commercial equipment. The annual certification requirement does not apply until the initial certification requirements are required. As an example, the earliest annual reporting deadline for commercial WH equipment will be May 1, 2013.

F. Compliance and Enforcement

DOE emphasizes that all covered equipment must meet the applicable energy conservation standard. Furthermore, all testing procedures and sampling provisions are unaffected by this final rule. DOE is adopting a delayed compliance date only for the reporting requirements in the March 2011 final rule and only for the equipment types discussed above.

DOE has also received questions regarding the compliance date for covered products and covered equipment, where compliance with the standards are not yet required, like general service incandescent lamps (GSILs). Covered products and covered equipment are not required to be certified until the compliance date of an applicable standard, so equipment such as GSILs and beverage vending machines are not required to be certified until the compliance date of the applicable energy conservation standard. Further, DOE is adopting clarifying language in today's final rule, which makes it clear that certification is required by the compliance date of the initial set of applicable energy conservation standards.

DOE encourages manufacturers to become familiar with the CCMS prior to the certification deadline. The CCMS requires users to apply to use the system by filling out a registration form, signing a compliance statement, and receiving a personal password. The CCMS has templates for all covered products and covered equipment available for manufacturers to use when submitting certification data to DOE. The Department encourages manufacturers, to the extent possible, to fill out these templates in advance of the compliance date in case questions arise.

G. Technical Amendments

DOE is modifying the regulatory text for cast-iron sectional boilers and hot water boilers (429.18), vented hearth heaters (429.22), general service incandescent lamps (429.27), and refrigerated bottled or canned beverage vending machines (429.52) to remove the reference to the conservation standards compliance date. Because DOE has added new regulatory text in section 429.12 explicitly stating for all product categories that certification is not required until compliance with a standard is required, the product-specific regulatory text is now redundant.

DOE is also deleting the regulatory text in section 429.35 requiring reporting and record retention relating to production dates for compact fluorescent lamps. That requirement was inadvertently added in the March 2011 final rule. Because there is no sampling requirement related to dates for compact fluorescent lamps, there is no purpose to this information.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Administrative Procedure Act

DOE has determined, pursuant to authority at 5 U.S.C. 553(b)(B), that there is good cause to waive the requirement to provide prior notice and an opportunity for comment concerning two technical amendments described in section G above as such procedures would be unnecessary. Both technical amendments merely conform the existing text to previously existing or newly added regulatory text without adding any new substantive requirements. These amendments are of a type in which the public would not be particularly interested or for which an

opportunity for comment would serve any purpose.

DOE has determined, pursuant to authority at 5 U.S.C. 553(d)(1), that this final rule is not subject to a 30-day effective date because this rule extending the compliance date for requirement relieves a restriction.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov.*

DOE reviewed this rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This rule merely extends the compliance date of a rulemaking already promulgated. To the extent such action has any economic impact it would be positive in that it would allow regulated parties additional time to come into compliance. DOE did undertake a full regulatory flexibility analysis of the original Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment rulemaking. That analysis considered the impacts of that rulemaking on small entities. As a result, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

Issued in Washington, DC, on June 21, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends part 429 of chapter II of Title 10 of the Code of Federal Regulations to read as follows:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for Part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Revise § 429.12 by adding a new paragraph (i) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(i) *Compliance dates.* For any product subject to an applicable energy conservation standard for which the compliance date has not yet occurred, a certification report must be submitted not later than the compliance date for the applicable energy conservation standard. The following covered products are subject to delayed compliance dates for certification:

(1) Commercial refrigeration equipment, December 31, 2012;

(2) Commercial heating, ventilating, and air-conditioning equipment, December 31, 2012;

(3) Commercial water heating equipment, December 31, 2012;

(4) Walk-in coolers and freezers, October 1, 2011;

(5) Distribution transformers, October 1, 2011; and

(6) Metal halide lamp ballasts and fixtures, October 1, 2011.

§ 429.18 [Amended]

■ 3. Amend § 429.18(b)(2)(ii) and (b)(3) by removing the words, ''no later than September 1, 2012''.

§ 429.22 [Amended]

■ 4. Amend § 429.22(b)(2) by removing the last sentence.

§ 429.27 [Amended]

■ 5. Amend § 429.27(b)(2)(iii) by removing the phrase, ''On or after the effective dates specified in § 430.32,''.

§ 429.35 [Amended]

■ 6. Section 429.35 is amended:

■ a. In paragraph (b)(1) by removing ''bare of'' and adding in its place ''bare or'';

■ b. In paragraph (b)(2) by removing the text, ''production dates for the units tested,''; and

■ c. By removing paragraph (c).

■ 7. Revise § 429.42(b)(2)(iii) to read as follows:

§ 429.42 Commercial refrigerators, freezers, and refrigerator-freezers.

* * * * *

(b) * * *

(2) * * *

(iii) Remote condensing commercial refrigerators, freezers, and refrigerator-freezers, self-contained commercial refrigerators, freezers, and refrigerator-freezers without doors, commercial ice-cream freezers, and commercial refrigeration equipment with two or more compartments (i.e., hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers): The maximum daily energy consumption in kilowatt hours per day (kWh/day), the total display area (TDA) in feet squared (ft^2) or the chilled volume in cubic feet (ft^3) as necessary to demonstrate compliance with the standards set forth in § 431.66, the rating temperature in degrees Fahrenheit (°F), the operating temperature range in degrees Fahrenheit (*e.g.,* ≥32 °F, <32 °F, and ≤ − 5 °F), the equipment family designation as described in § 431.66, and the condensing unit configuration.

■ 8. Revise § 429.52(b)(2) to read as follows:

§ 429.52 Refrigerated bottled or canned beverage vending machines.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The maximum average daily energy consumption in kilowatt

hours per day (kWh/day), the refrigerated volume (V) in cubic feet (ft^3) used to demonstrate compliance with standards set forth in § 431.296, the ambient temperature in degrees Fahrenheit (°F), and the ambient relative humidity in percent (%) during the test.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–64748; File No. S7–03–10]

RIN 3235–AK53

Risk Management Controls for Brokers or Dealers With Market Access

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; limited extension of compliance date for certain requirements.

SUMMARY: The Commission is extending the compliance date for certain recently adopted requirements of Rule 15c3–5 under the Securities Exchange Act of 1934 (''Exchange Act''). Specifically, the Commission is extending the compliance date, until November 30, 2011, for all of the requirements of Rule 15c3–5 for fixed income securities, and the requirements of Rule 15c3–5(c)(1)(i) for all securities. The compliance date remains July 14, 2011 for all provisions of Rule 15c3–5 not subject to this limited extension. Among other things, Rule 15c3–5 requires broker-dealers with access to trading securities directly on an exchange or alternative trading system (''ATS''), including those providing sponsored or direct market access to customers or other persons, and broker-dealer operators of an ATS that provide access to trading securities directly on their ATS to a person other than a broker-dealer, to establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, is reasonably designed to systematically limit the financial exposure of the broker-dealer that could arise as a result of market access, and ensure compliance with all regulatory requirements that are applicable in connection with market access.

The Commission is extending the compliance date for all of the requirements of Rule 15c3–5 for fixed income securities, and the requirements of Rule 15c3–5(c)(1)(i) for all securities to give broker-dealers with market access additional time to develop, test, and implement the relevant risk management controls and supervisory procedures required under the Rule.

DATES: The effective date for this release is June 30, 2011. The effective date for Rule 15c3–5 remains January 14, 2011. The compliance date is extended to November 30, 2011, for all of the requirements of Rule 15c3–5 for fixed income securities, and the requirements of Rule 15c3–5(c)(1)(i) for all securities. The compliance date remains July 14, 2011, for all provisions of Rule 15c3–5 not subject to the limited extension.

FOR FURTHER INFORMATION CONTACT: Theodore S. Venuti, Senior Special Counsel, at (202) 551–5658; Marc F. McKayle, Special Counsel, at (202) 551–5633; and Daniel Gien, Special Counsel, at (202) 551–5747, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 3, 2010, the Commission adopted Rule 15c3–5 under the Exchange Act.[1] Among other things, Rule 15c3–5 requires each broker-dealer with access to trading securities[2] directly on an exchange or ATS, including a broker-dealer providing sponsored or direct market access to customers or other persons, and each broker-dealer operator of an ATS that provides access to trading securities directly on their ATS to a person other than a broker-dealer, to establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, is reasonably designed to (1) systematically limit the financial exposure of the broker-dealer that could arise as a result of market access,[3] and (2) ensure compliance with all regulatory requirements that are applicable in connection with market access.[4] The required financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds,[5] or that appear to be erroneous.[6] The regulatory risk management controls and supervisory procedures must also be reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis,[7] prevent the entry of orders that the broker-dealers or customer is restricted from trading,[8] restrict market access technology and systems to authorized persons,[9] and assure appropriate surveillance personnel receive immediate post-trade execution reports.[10]

The Commission understands that, as broker-dealers with market access have worked to meet the July 14, 2011 compliance date, some have determined that additional time is needed to implement effective policies and procedures and complete the systems changes necessary to comply with certain requirements of Rule 15c3–5. The Financial Information Forum (''FIF''), the Securities Industry and Financial Markets Association (''SIFMA''), and the Wholesale Market Brokers' Association (''WMBA'') have submitted letters requesting that the Commission extend the compliance date for those requirements.[11] Specifically, FIF, SIFMA, and WMBA have indicated that more time is needed to comply with Rule 15c3–5(c)(1)(i), which requires the implementation of risk management controls and supervisory procedures that are reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, because the type of controls required by the Rule are not currently in place at many broker-dealers, and developing and implementing appropriate controls in this area can be a complex exercise.[12] In addition, they have indicated that more time is needed generally to comply with the requirements under Rule 15c3–5 with respect to fixed income securities, because the type of pre-trade controls required by the Rule have generally not been used in the fixed income market, and developing and implementing controls that appropriately account for the differences in fixed income trading

[1] *See* Exchange Act Release No. 63241 (Nov. 3, 2010), 75 FR 69792 (Nov. 15, 2010) (''Rule 15c3–5 Adopting Release'').

[2] Rule 15c3–5 applies to trading in all securities on an exchange or ATS. *Id.* at 69765.

[3] *See* 17 CFR 240.15c3–5(c)(1).

[4] *See* 17 CFR 240.15c3–5(c)(2).

[5] *See* 17 CFR 240.15c3–5(c)(1)(i).

[6] *See* 17 CFR 240.15c3–5(c)(1)(ii).

[7] *See* 17 CFR 240.15c3–5(c)(2)(i).

[8] *See* 17 CFR 240.15c3–5(c)(2)(ii).

[9] *See* 17 CFR 240.15c3–5(c)(2)(iii).

[10] *See* 17 CFR 240.15c3–5(c)(2)(iv).

[11] *See* letter from Manisha Kimmel, Executive Director, Financial Information Forum, to David Shillman, Associate Director, Division of Trading and Markets (''Division''), Commission, dated April 15, 2011; *see also* letters from Sean Davy, Managing Director, *et al.,* Securities Industry and Financial Markets Association, to Robert Cook, Director, Division, Commission, dated April 21, 2011; and Stephen Merkel, Chairman, Wholesale Markets Brokers' Association, Americas, to Robert Cook, Director, Division, Commission, dated May 31, 2011.

[12] *Id.*

will require substantial effort.[13] SIFMA and WMBA requested that the compliance date for these provisions be extended until November 30, 2011, and FIF requested an extension until January 2012.

The Commission believes that providing a limited extension of the compliance date to November 30, 2011, for (1) all of the requirements of Rule 15c3–5 for fixed income securities, and (2) the requirements of Rule 15c3–5(c)(1)(i) for all securities, is reasonable to assure market participants have sufficient time to develop and implement the required risk management controls for activities where the application of these types of controls may not be widespread. Accordingly, the Commission is extending the compliance date to November 30, 2011, for (1) all of the requirements of Rule 15c3–5 for fixed income securities, and (2) the requirements of Rule 15c3–5(c)(1)(i) for all securities.

II. Conclusion

For the reasons cited above, the Commission, for good cause, finds that notice and solicitation of comment regarding the extension of the compliance date set forth herein are impractical, unnecessary, or contrary to the public interest.[14] The Commission notes that the compliance date is quickly approaching, and that a limited extension of the compliance date for the reasons cited above will facilitate the orderly implementation of Rule 15c3–5. In light of time constraints, full notice and comment could not be completed prior to the July 14, 2011 compliance date. Broker-dealers with market access will have additional time to comply with the provisions of Rule 15c3–5 discussed above beyond the compliance date originally set forth in the Rule 15c3–5 Adopting Release. Further, the Commission recognizes that it is imperative for broker-dealers with market access to receive notice of the extended compliance date, and providing immediate effectiveness upon publication of this release will allow them to adjust their implementation plans accordingly.[15]

The Commission identified certain costs and benefits associated with the Rule in the Rule 15c3–5 Adopting Release. The extension of the compliance date for Rule 15c3–5 will delay benefits of the Rule, but the Commission believes that the limited extension is necessary and appropriate because it will provide broker-dealers with market access additional time to develop, test, and implement certain of the required risk management controls and supervisory procedures under the Rule. The extension also will delay the costs of complying with the Rule.[16] The Commission believes that the extension does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, because the extension will give broker-dealers with market access additional time to develop, test, and implement certain of the risk management controls and supervisory procedures that are required under the Rule.

Dated: June 27, 2011.
By the Commission.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011–16467 Filed 6–29–11; 8:45 am]

BILLING CODE 8011–01–P

[13] *Id.*

[14] *See* Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (stating that an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are ''impractical, unnecessary, or contrary to the public interest''). This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a Federal agency finds that notice and public comment are ''impractical, unnecessary or contrary to the public interest,'' a rule ''shall take effect at such time as the Federal agency promulgating the rule determines''). Also, because the Regulatory Flexibility Act (5 U.S.C. 601—612) only requires agencies to prepare analyses when the Administrative Procedures Act requires general notice of rulemaking, that Act does not apply to the actions that we are taking in this release.

[15] The compliance date extensions set forth in this release are effective upon publication in the **Federal Register**. Section 553(d)(1) of the Administrative Procedure Act allows effective dates that are less than 30 days after publication for a ''substantive rule which grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d)(1).

[16] The Commission identified in the Rule 15c3–5 Adopting Release certain ongoing costs associated with Rule 15c3–5. Because of the extension of the compliance date, certain costs may be avoided from July 14, 2011 to November 30, 2011.

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

30 CFR Parts 250 and 253

[Docket ID: BOEM–2010–0070]

RIN 1010–AD74

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Civil Penalties

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Final rule.

SUMMARY: The Outer Continental Shelf Lands Act (OCSLA) requires the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) to review the maximum daily civil penalty assessment for violations of regulations implementing the OCSLA at least once every 3 years (43 U.S.C. 1350). Similarly, a review and adjustment process is required at least once every 4 years for the maximum daily civil penalty assessment allowable under the Oil Pollution Act (OPA) of 1990 for violations of regulations governing financial responsibility (28 U.S.C. 2461). These reviews ensure that the maximum penalty assessments reflect any increases in the Consumer Price Index (CPI) as prepared by the Bureau of Labor Statistics, U.S. Department of Labor, and therefore keep up with inflation. BOEMRE conducted these reviews in October 2010 for the OCSLA regulations and in January 2011 for the OPA regulations. BOEMRE determined that the maximum daily civil penalty assessment for violations of its OCSLA regulations should be increased to $40,000, and the maximum daily civil penalty assessment for violations of its financial responsibility regulations should be increased to $30,000.

DATES: *Effective Date:* This rule becomes effective on August 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joanne McCammon, Safety and Enforcement Branch at (703) 787–1292 or email at *Joanne.McCammon@boemre.gov.*

SUPPLEMENTARY INFORMATION:

Background

The goal of BOEMRE's Outer Continental Shelf (OCS) Civil Penalty Program is to help promote safe and environmentally sound operations on the OCS. The program is designed to encourage compliance with statutes and regulations that apply to activities on the OCS by facilitating the assessment and collection of civil penalties. OCSLA authorizes the Secretary of the Interior to assess civil penalties under certain conditions for violations of any provision of OCSLA; any term of a lease, license, or permit; or any regulation or order implementing OCSLA.

Not all violations warrant a review to initiate civil penalty proceedings. Review is only triggered by violations that an operator fails to correct after notice and an opportunity to correct, or violations that constitute a threat of serious, irreparable, or immediate harm or damage to life, property, any mineral

deposit, or the marine, coastal, or human environment. The Secretary of the Interior delegated the authority to assess civil penalties to BOEMRE.

OCSLA directs the Secretary of the Interior to adjust the maximum civil penalty amount at least once every 3 years to reflect any increase in the CPI prepared by the U.S. Department of Labor (43 U.S.C. 1350). The purpose of this adjustment is to ensure that punitive assessments keep up with inflation. If an adjustment is necessary, BOEMRE informs the public through the **Federal Register** of the new maximum civil penalty amount. BOEMRE uses Office of Management and Budget (OMB) guidelines for determining how penalty amounts should be rounded and when an adjustment is necessary.

In August 2009, BOEMRE performed computations to determine if it should increase the current maximum civil penalty amount of $35,000 per violation per day. After running the computations, BOEMRE determined that the CPI did not increase enough to warrant raising the maximum civil penalty amount at that time. BOEMRE has been monitoring the CPI, and the computations now justify raising the maximum civil penalty amount.

In computing the new maximum civil penalty amount, BOEMRE divided the October 2010 CPI of 218.9 by the previously used August 2006 CPI of 203.7. This resulted in a multiplying factor of 1.075. The previous maximum amount of $35,000 per violation per day was multiplied by the 1.075 factor and resulted in a new maximum penalty amount of $37,625. This amount is rounded to $40,000 as per OMB guidelines. The new maximum civil penalty amount is now $40,000 per violation per day.

BOEMRE is also authorized to impose civil penalties for failure to comply with financial responsibility regulations that implement OPA. OPA sets the maximum civil penalty amount per day per violation at $25,000. However, the Federal Civil Penalties Inflation Adjustment Act, as amended, established a 4-year cycle for review and adjustment of federally imposed civil monetary penalties to maintain the deterrent effect of such penalties and promote compliance with the law (28 U.S.C. 2461 note). The CPI adjustment for these penalties is calculated in the same manner as the CPI adjustment for the OCSLA penalties.

The OPA maximum civil penalty amount was last raised in 2006 to $27,500. In computing the new OPA maximum civil penalty amount, BOEMRE divided the June 2010 CPI of 216.9 by the previously used August 2006 CPI of 203.7. This resulted in a multiplying factor of 1.065. The previous maximum amount of $27,500 per violation per day was multiplied by the 1.065 factor and resulted in a new maximum penalty amount of $29,287. This amount is rounded to $30,000 as directed by the Federal Civil Penalties Inflation Adjustment Act. The new maximum civil penalty amount is now $30,000 per violation per day.

BOEMRE finds that good cause exists under the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to implement this final rule without prior notice and comment for these mandatory adjustments. The periodic adjustments to the maximum penalty amount reflected in this final rule are required by statute and OMB guidelines. Similarly, the calculation of these adjustments follows the mathematical formulas set forth in OCSLA and the requirements of the Federal Civil Penalties Inflation Adjustment Act, as amended, so that the amount of the adjustment is not within BOEMRE's discretion. Accordingly, notice and comment procedures are unnecessary and contrary to the public interest.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

OMB has not designated this final rule as significant under Executive Order 12866.

(1) These amendments are administrative and procedural. This rule would not have an effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. A cost-benefit and economic analysis is not required.

(2) This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The changes in the rule will affect lessees and operators of leases and pipeline right-of-way holders in the OCS. This could include about 130 active Federal oil and gas lessees. Small lessees that operate under this rule fall under the Small Business Administration's (SBA) North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 65 percent of these companies are considered small. This final rule, therefore, will affect a substantial number of small entities, but it will not have a significant economic effect on those entities.

This rule will have no impact on the oil and gas industry operators that comply with Federal OCS regulations. For those operators whose noncompliance results in a civil penalty, the increase resulting from the inflation factor of 1.075 amounts to an increase of less than $241,000 spread over an average of 32 cases per year or slightly over $15,500 additional per case. This is using data over the past 10 years and averaging civil penalties paid and number of cases paid per year. This dollar amount is relatively insignificant as compared to the considerable operational costs and liability risks associated with activities on the OCS. This is true for even the smallest of OCS operators.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BOEMRE, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements will apply to all entities operating on the OCS.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant takings implications. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in E.O. 13132, this final rule does not have federalism implications. This final rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this final rule will not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

Under the criteria in E.O. 13175, we evaluated this final rule and determined that it has no substantial effects on federally recognized Indian tribes.

Paperwork Reduction Act (PRA) of 1995

This final rule does not contain new information collection requirements, and a submission under the PRA is not required. Therefore, an information collection request is not being submitted to OMB for review and approval under the PRA (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act of 1969

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. BOEMRE has analyzed this proposed rule under the criteria of the National Environmental Policy Act (NEPA) and the Department's regulations implementing NEPA. This proposed rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental Categorical Exclusion in that this proposed rule is ''* * * of an administrative, financial, legal, technical, or procedural nature * * *'' Further, BOEMRE has analyzed this proposed rule to determine if it meets any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement as set forth in 43 CFR 46.215 and concluded that this proposed rule, being purely procedural, does not meet any of the criteria for extraordinary circumstances.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Nation's Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

List of Subjects

30 CFR Part 250

Continental shelf, Investigations, Penalties, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production.

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulfur.

30 CFR Part 253

Continental shelf, Environmental protection, Intergovernmental relations, Oil and gas exploration, Oil pollution, Penalties, Pipelines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: June 22, 2011.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) amends 30 CFR parts 250 and 253 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 2. Revise § 250.1403 to read as follows:

§ 250.1403 What is the maximum civil penalty?

The maximum civil penalty is $40,000 per day per violation.

PART 253—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

■ 3. The authority citation for part 253 is revised to read as follows:

Authority: 28 U.S.C. 2461 note, 33 U.S.C. 2716.

■ 4. In § 253.51, revise paragraph (a) to read as follows:

§ 253.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to $30,000 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

* * * * *

[FR Doc. 2011–16288 Filed 6–29–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0542]

RIN 1625–AA00

Safety Zone; Marine Events Requiring Safety Zones in the Captain of the Port Sault Sainte Marie Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: This rule will establish safety zones that will restrict vessels from certain portions of water areas within the Sector Sault Sainte Marie Captain of the Port zone. These safety zones are necessary to protect spectators, participants, and vessels from the hazards associated with various maritime events.

DATES: This rule is effective in the CFR on June 30, 2011 through 11:59 p.m. on July 4, 2011. This rule is effective with actual notice for purposes of enforcement at 2 p.m. on June 18, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0542 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0542 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail The U.S. Coast Guard Sector Sault Sainte Marie Marine Event Coordinator; telephone 906–635–3222, e-mail *SMBSECSaultFI@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Delaying this rule to wait for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with various, organized maritime events.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, delaying this rule to wait for a 30 day effective period to run would be impracticable and contrary to the public interest.

Background and Purpose

This spring and summer a number of firework displays and festivals will occur on the water in the Sector Sault Sainte Marie Captain of the Port zone. These events are expected to draw a number of spectators. The Captain of the Port Sault Sainte Marie has determined that these types of maritime events and the expected gathering of vessels create hazards for the participants and spectators. Such hazards include obstructions to navigable channels, explosive dangers associated with fireworks, debris falling into the water, and general congestion of waterways.

Discussion of Rule

To minimize the aforementioned hazards, this temporary rule will establish fifteen safety zones, each one for a particular maritime event. This rule and its associated safety zones are necessary to ensure the safety of vessels and people during each of the marine events discussed herein. The Captain of the Port Sault Sainte Marie will notify the public when these safety zones will be enforced. In keeping with 33 CFR 165.7(a), the Captain of the Port Sault Sainte Marie will use all appropriate means to notify the affected segments of the public. This will include, as practicable, Broadcast Notice to Mariners, and Local Notice to Mariners. The Captain of the Port will, as practicable, issue a Broadcast Notice to Mariners notifying the public when any enforcement period is cancelled.

Entry into, transiting, or anchoring within each of the below safety zones is prohibited unless authorized by the Captain of the Port Sault Sainte Marie or his or her designated representative. All persons and vessels permitted to enter one of the safety zones established by this rule shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative. The Captain of the Port or his or her designated representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones created by this rule will be relatively small and enforced for a relatively short time. Also, each safety zone is designed to minimize its impact on navigable waters. Furthermore, each safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movement within any particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through each safety zone when permitted by the Captain of the Port. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in any one of the below established safety zones while the safety zone is being enforced. Each safety zone will be in effect for only a short time. Furthermore, each safety zone has been designed to allow traffic to pass safely around it. Moreover, vessels will be allowed to pass through each zone at the discretion of the Captain of the Port.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0542 to read as follows:

§ 165.T090542 Safety Zone; Marine Events requiring safety zones in the Captain of the Port Sault Sainte Marie zone.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) Marquette Fourth of July Celebration Fireworks; Marquette, MI:

(i) *Location.* All U.S. navigable waters of Marquette Harbor within a 1000-foot radius of the fireworks launch site, centered approximately 1250 feet south of the Mattson Park Bulkhead Dock and 450 feet east of Ripley Rock, at position 46°32′21.7″ N, 087°23′07.60″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced on July 4, 2011 from 9 p.m. until 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5, 2011 from 9 p.m. until 11 p.m.

(2) Munising Fourth of July Celebration Fireworks; Munising, MI:

(i) *Location.* All U.S. navigable waters of South Bay within a 600-foot radius from the fireworks launch site at the end of the Munising City Dock, centered in position: 46°24′50.08″ N, 086°39′08.52″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced on July 4, 2011 from 9 p.m. until 12:30 a.m. on July 5, 2011. If the July 4, 2011 fireworks are cancelled due to inclement weather, then this safety zone will be enforced on July 5, 2011 from 9 p.m. until 12:30 a.m. on July 6, 2011.

(3) Grand Marais Splash-In; Grand Marais, MI:

(i) *Location.* All U.S. navigable waters within the southern portion of West Bay bound to the north by a line beginning approximately 175 feet south-southeast of the Lake Street Boat Launch, extending 5280 feet to the east on a true bearing of 079 degrees. The eastern boundary will then be formed by a line drawn to the shoreline on a true bearing of 170 degrees. The western and southern boundaries of the zone will be bound by the shoreline of West Bay. The coordinates for this zone are as follows: 46°40′22.98″ N, 085°59′00.78″ W, 46°40′32.04″ N, 085°57′46.14″ W, and 46°40′19.68″ N, 085°57′43.08″ W [DATUM: NAD 83], with the West Bay shoreline forming the South and West boundaries of the zone.

(ii) *Enforcement Period.* This safety zone will be enforced on June 18, 2011 from 2 p.m. until 5 p.m.

(4) Sault Sainte Marie Fourth of July Celebration Fireworks; Sault Sainte Marie, MI:

(i) *Location.* All U.S. navigable waters of the St. Marys River within a 750-foot radius around the eastern portion of the U.S. Army Corp of Engineers Soo Locks North East Pier, centered in position: 46°30′19.66″ N, 084°20′31.61″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced on July 4, 2011 from 9 p.m. until 11:30 p.m. If the July 4, 2011 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5, 2011 from 9 p.m. until 11:30 p.m.

(5) St. Ignace Fourth of July Celebration Fireworks; St. Ignace, MI:

(i) *Location.* All U.S. navigable waters of East Moran Bay within a 700-foot radius from the fireworks launch site at the end of the Arnold Transit Mill Slip, centered in position: 45°52′16.92″ N, 084°43′18.48″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced on July 4, 2011 from 9 p.m. until 11:30 p.m. If the July 4, 2011 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5, 2011 from 9 p.m. until 11:30 p.m.

(6) Mackinac Island Fourth of July Celebration Fireworks; Mackinac Island, MI:

(i) *Location.* All U.S. navigable waters of Lake Huron within a 500-foot radius of the fireworks launch site, centered approximately 1000 yards west of Round Island Passage Light, at position 45°50′34.92″ N, 084°37′38.16″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced on July 4, 2011 from 9 p.m. until 11 p.m. If the July 4, 2011 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5, 2011 from 9 p.m. until 11 p.m.

(7) Canada Day Celebration Fireworks; Sault Sainte Marie, MI:

(i) *Location.* All U.S. navigable waters of the St. Marys River within a 1200-foot radius from the fireworks launch site, centered approximately 160 yards north of the U.S. Army Corp of Engineers Soo Locks North East Pier, at position 46°30′20.40″ N, 084°20′17.64″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced on July 1, 2011 from 9 p.m. until 11 p.m. If the July 1, 2011 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 2, 2011 from 9 p.m. until 11 p.m.

(8) Jordan Valley Freedom Festival Fireworks; East Jordan, MI:

(i) *Location.* All U.S. navigable waters of Lake Charlevoix, near the City of East Jordan, within the arc of a circle with a 1000-foot radius from the fireworks launch site in position 45°09′18″ N, 085°07′48″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced on June 18, 2011 from 9 p.m. until 11 p.m.

(9) National Cherry Festival Fourth of July Celebration Fireworks; Traverse City, MI:

(i) *Location.* All U.S. navigable waters of the West Arm of Grand Traverse Bay within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 44°46′12″ N, 085°37′06″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced on July 4, 2011 from 9 p.m. until 11 p.m. If the July 4, 2011 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5, 2011 from 9 p.m. until 11 p.m.

(10) Harbor Springs Fourth of July Celebration Fireworks; Harbor Springs, MI:

(i) *Location.* All U.S. navigable waters of Lake Michigan and Harbor Springs Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 45°25′26.64″ N, 084°58′49.8″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced on July 4, 2011 from 9 p.m. until 11 p.m. If the July 4, 2011 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5, 2011 from 9 p.m. until 11 p.m.

(11) Bay Harbor Yacht Club Fourth of July Celebration Fireworks; Petoskey, MI:

(i) *Location.* All U.S. navigable waters of Lake Michigan and Little Traverse Bay within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 45°22′07″ N, 085°01′40″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced on July 3, 2011 from 9 p.m. until 11 p.m. If the July 3, 2011 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 4, 2011 from 9 p.m. until 11 p.m.

(12) Petoskey Fourth of July Celebration Fireworks; Petoskey, MI:

(i) *Location.* All U.S. navigable waters of Lake Michigan and Petoskey Harbor, in the vicinity of Bay Front Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 45°22′50.4″ N, 084°57′01.6″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced on July 4, 2011 from 9 p.m. until 11 p.m. If the July 4, 2011 fireworks are cancelled due to inclement weather, then this safety zone

will be enforced July 5, 2011 from 9 p.m. until 11 p.m.

(13) Boyne City Fourth of July Celebration Fireworks; Boyne City, MI:

(i) *Location.* All U.S. navigable waters of Lake Charlevoix, in the vicinity of Veterans Park, within the arc of a circle with a 1400-foot radius from the fireworks launch site located in position 45°13′30″ N, 085°01′40″ W [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced on July 4, 2011 from 9 p.m. until 11 p.m. If the July 4, 2011 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5, 2011 from 9 p.m. until 11 p.m.

(14) National Cherry Festival Air Show; Traverse City, MI:

(i) *Location.* All U.S. navigable waters of the West Arm of Grand Traverse Bay bounded by a line drawn from 44°46′48″ N, 085°38′18″ W, then southeast to 44°46′30″ N, 085°35′30″ W, then southwest to 44°46′00″ N, 085°35′48″ W, then northwest to 44°46′18″ N, 085°38′18″ W, then back to the point of origin [DATUM: NAD 83].

(ii) *Enforcement Period.* This safety zone will be enforced from July 1, 2011 thru July 3, 2011, from noon until 4 p.m. each day.

(15) Alpena Fourth of July Celebration Fireworks, Alpena, MI:

(i) *Location.* All U.S. navigable waters of Lake Huron within an 800-foot radius of the fireworks launch site located near the end of Mason Street, South of State Avenue, at position 45°02′42″ N, 083°26′48″ W (NAD 83).

(ii) *Enforcement Period.* This safety zone will be enforced on July 4, 2011 from 9 p.m. until 11 p.m. If the July 4, 2011 fireworks are cancelled due to inclement weather, then this safety zone will be enforced July 5, 2011 from 9 p.m. until 11 p.m.

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Sault Sainte Marie to monitor these safety zones, permit entry into these safety zones, give legally enforceable orders to persons or vessels within these safety zones, or take other actions authorized by the Captain of the Port Sault Sainte Marie.

(2) *Public vessel* means a vessel owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within any of the safety zones listed in this section is prohibited unless authorized by the Captain of the Port Sault Sainte Marie, or a designated representative.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Sault Sainte Marie or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) When a safety zone established by this section is being enforced, all vessels must obtain permission from the Captain of the Port Sault Sainte Marie or a designated representative to enter, move within, or exit that safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Sault Sainte Marie or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(d) *Suspension of Enforcement.* If an event concludes earlier than scheduled, the Captain of the Port Sault Sainte Marie will issue a Broadcast Notice to Mariners notifying the public that enforcement of the respective safety zone is suspended.

(e) *Exemption.* Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Sault Sainte Marie or a designated representative may, at his or her discretion, waive any of the requirements of this section, upon finding that circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: June 17, 2011.

G.J. Paitl,

Commander, U.S. Coast Guard, Acting Captain of the Port, Sault Sainte Marie.

[FR Doc. 2011–16339 Filed 6–29–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0303]

RIN 1625–AA00

Safety Zone; Shore Thing and Independence Day Fireworks, Chesapeake Bay, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Chesapeake Bay in the vicinity of Ocean View Beach Park, Norfolk, VA in support of the Shore Thing and Independence Day Fireworks event. This action is necessary to provide for the safety of life on navigable waters during the Shore Thing and Independence Day Fireworks show. This action is intended to restrict vessel traffic movement on the Chesapeake Bay to protect mariners from the hazards associated with fireworks displays.

DATES: This regulation is effective from 9 p.m. through 10 p.m. on July 1, 2011, with a rain date from 9 p.m. through 10 p.m. on July 2, 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–2011–0303 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0303 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LCDR Christopher O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, e-mail *Christopher.A.ONeal@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 13, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Shore Thing and

Independence Day Fireworks, Chesapeake Bay, Norfolk, VA in the **Federal Register** (76 FR 093). We received 00 comments on the proposed rule. No public meeting was requested, and none was held.

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

Background and Purpose

On July 1, 2011, Norfolk Festevents Ltd. will sponsor a fireworks display on the Chesapeake Bay at position 36°57′17″ N/076°15′00″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to the Chesapeake Bay within 210 feet of the fireworks display will be temporarily restricted.

Discussion of Comments and Changes

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

Regulatory Analyses

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

Regulatory Planning and Review

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

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

Small Entities

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

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a safety zone around a fireworks display and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0303 to read as follows:

§ 165.T05–0303 Safety Zone; Shore Thing and Independence Day Fireworks, Chesapeake Bay, Norfolk, VA.

(a) *Regulated Area:* The following area is a safety zone: specified waters of the Chesapeake Bay located within a 210 foot radius of the fireworks display at approximate position 36°57′17″ N/076°15′00″ W (NAD 1983) in the vicinity of Ocean View Beach Park, Norfolk, VA.

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

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

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

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

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

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

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

(d) *Enforcement Period:* This regulation will be enforced from 9 p.m. through 10 p.m. on July 1, 2011, with a rain date from 9 p.m. through 10 p.m. on July 2, 2011.

Dated: June 20, 2011.

Mark S. Ogle,

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

[FR Doc. 2011–16357 Filed 6–29–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0304]

RIN 1625–AA00

Safety Zone; Cape Charles Fireworks, Cape Charles Harbor, Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of Cape Charles City Harbor in Cape Charles, VA in support of the Fourth of July Fireworks event. This action is necessary to provide for the safety of life on navigable waters during the Cape Charles Fireworks show. This action is intended to restrict vessel traffic movement to protect mariners and spectators from the hazards associated with aerial fireworks displays.

DATES: This rule is effective from 9 p.m. until 10 p.m. on July 3, 2011, with a rain date of July 4, 2011 from 9 p.m. until 10 p.m.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0303 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0303 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LCDR Christopher O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, e-mail *Christopher.A.ONeal@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program

Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 13, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Shore Thing and Independence Day Fireworks, Chesapeake Bay, Norfolk, VA in the **Federal Register** (76 FR 093). We received 00 comments on the proposed rule. No public meeting was requested, and none was held.

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

Background and Purpose

On July 03, 2011 the Town of Cape Charles will sponsor a fireworks display on the shoreline of the navigable waters of Cape Charles City Harbor centered on position 37°15′46.5″ N/076°01′30″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted within 420 feet of the fireworks launch site.

Discussion of Comments and Changes

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

Regulatory Analyses

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

Regulatory Planning and Review

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

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

Small Entities

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

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a safety zone around a fireworks display and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0304 to read as follows:

§ 165.T05–0304 Safety Zone; Cape Charles Fireworks, Cape Charles Harbor, Cape Charles, VA.

(a) *Regulated Area.* The following area is a safety zone: Specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, in the vicinity of Cape Charles Harbor in Cape Charles, VA and within 420 feet of position 37°15′46.5″ N/076°01′30″ W (NAD 1983).

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

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

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

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

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

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

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

(d) *Enforcement Period.* This regulation will be enforced from 9 p.m. until 10 p.m. on July 3, 2011, with a rain date of July 4, 2011 from 9 p.m. until 10 p.m.

Dated: June 20, 2011.

Mark S. Ogle,

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

[FR Doc. 2011–16353 Filed 6–29–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0585]

Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce two safety zones for annual fireworks events in the Captain of the Port Detroit zone at various times from 10 p.m. on July 3, 2011 through 9 p.m. on July 5, 2011. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. This rule will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During an enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port.

DATES: The regulations in 33 CFR 165.941 will be enforced from 10 p.m. until 11 p.m. on July 3, 2011 and then again from 8:30 p.m. until 9 p.m. on July 4, 2011. In the event of inclement weather, each enforcement period will be postponed 24 hours.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail LT Katie Stanko, Prevention, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit MI, 48207; telephone (313) 568–9508, e-mail *katie.r.stanko@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the following safety zones published in the **Federal Register** on August 8, 2008 (73 FR 46197) and on June 9, 2010 (75 FR 32666):

Section 165.941(a)(39) Port Sanilac 4th of July Fireworks, Port Sanilac, MI

This regulation will be enforced from 10 p.m. to 11 p.m. on July 3, 2011. In the case of inclement weather on July 3, 2011, this regulation will be enforced from 10 p.m. to 11 p.m. on July 4, 2011.

Section 165.941(a)(48) Tawas Area 4th of July Fireworks, Tawas City, MI

This regulation will be enforced from 8:30 p.m. to 9 p.m. on July 4, 2011. In the case of inclement weather on July 4, 2011, this regulation will be enforced from 8:30 p.m. to 9 p.m. on July 5, 2011.

Under the provisions of 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones while they are being enforced is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. Vessels that wish to transit through any of the safety zones may request permission from the Captain of the Port Detroit. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF–FM. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

This notice is issued under authority of 33 CFR 165.941 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via the Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, or his authorized representative, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zones established by this section are suspended. If the Captain of the Port Detroit determines that the safety zones need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone.

Dated: June 21, 2011.

E.J. Marohn,

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

[FR Doc. 2011–16408 Filed 6–29–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG 2011–0402]

Safety Zone; San Francisco Chronicle Fireworks Display, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zones for the annual San Francisco Chronicle Fireworks Display (Independence Day Celebration for the City of San Francisco Fireworks). This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191 will be enforced for Location 1 from 9 a.m. on July 3, 2011 through 10 p.m. on July 4, 2011; and for Location 2 from 9 p.m. to 10 p.m. on July 4, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Lieutenant Junior Grade Liezl Nicholas, U.S. Coast Guard, Waterways Safety Division; telephone 415–399–7443, e-mail *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Independence Day Celebration for the City of San Francisco Fireworks safety zone for Location 1 from 9 a.m. on July 3, 2011 through 10 p.m. on July 4, 2011; and for Location 2 from 9 p.m. to 10 p.m. on July 4, 2011. The fireworks will be fired simultaneously from two separate locations: Location 1 will be held 1,000 feet from Pier 39 in position 37° 48.710′ N and 122° 24.464′ W (NAD83) and Location 2 will be fired from the Municipal Pier in Aquatic Park in position 37° 48.611′ N and 122° 25.532′ W (NAD83) on July 4, 2011.

For Location 1, during the loading of the fireworks barge, while the barge is being towed to the display location, and until the start of the fireworks display, the safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet. During the twenty-five minute fireworks display, the area to which this safety zone applies to will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on July 3, 2011, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place on July 4, 2011 at 8 p.m. During the fireworks display, scheduled to start at approximately 9:30 p.m., the fireworks barge will be located 1,000 feet off of Pier 39 in approximate position 37° 48.710′ N, 122° 24.464′ W (NAD 83).

For Location 2, the fireworks will be launched from the Municipal Pier in approximate position 37° 48.611′ N, 122° 25.532′ W (NAD 83). The safety zone will apply to the navigable waters around and under the fireworks site within a radius of 1,000 feet. The fireworks display is scheduled to launch at 9:30 p.m. and will last approximately twenty-five minutes. This safety zone will be enforced from 9 p.m. to 10 p.m. on July 4, 2011.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: June 16, 2011.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2011–16115 Filed 6–29–11; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2009–5]

Fees for Special Handling of Registration Claims

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of temporary rule.

SUMMARY: The Copyright Office is extending for one year the interim rule relating to fees for special handling of registration claims that have been pending for at least six months. Currently, the interim rule is set to expire on July 1, 2011, and this extension will change the expiration date to July 1, 2012.

DATES: The effective period of 37 CFR 201.15, published August 10, 2009 (74 FR 39900) is extended through July 1, 2012.

FOR FURTHER INFORMATION CONTRACT: David O. Carson, General Counsel, or Kent Dunlap, Assistant General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On August 10, 2009, the Copyright Office published a notice of an interim rule relating to fees for special handling of registration claims that have been pending for at least six months. 74 FR 39900 (August 10, 2009). Under this interim rule, the Copyright Office waived the normal special handling charges for conversion of a pending copyright application that had been pending for more than six months without any action by the Copyright Office in instances where the applicant satisfied the Office that special handling of the registration was needed because the applicant was about to file a suit for copyright infringement. The interim rule § 201.15, was set to expire on July 1, 2011.

As was noted in the **Federal Register** notice announcing this interim rule, at that time the pendency rates for applications for registration had risen to unacceptably high levels due to issues relating to the transition to the Office's new electronic filing system, especially with respect to paper applications. Since that time, much progress has been made in reducing the pendency rates. The average time to complete claims that are submitted electronically is now 3 months, but for paper applications the average is now 13 months, with 30% of paper applications being processed within 6 months. Therefore, the Office has concluded that there remains a need to permit special handling without an additional fee in cases where applications have been pending for more than 6 months, without any action by the Copyright Office, and prompt registration is needed to permit the filing of a copyright infringement suit.

The Office will reevaluate whether there is a continuing need for this interim rule to remain in place as the new expiration date approaches next year.

Persons wishing to take advantage of this accommodation must continue to comply with the requirements set forth in section 201.15 of the Copyright Office regulations, including the requirement to submit an affidavit or declaration under penalty of perjury providing the information and documents required by that section of the regulations.

Dated: June 22, 2011.

Maria A. Pallante,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 2011–16432 Filed 6–29–11; 8:45 am]

BILLING CODE 1410–30–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[ET Docket No. 06–94; FCC 10–195]

Digital Television Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004

AGENCY: Federal Communications Commission.

ACTION: Final rules; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements contained in the regulations in the Satellite Home Viewer Extension Act of 2004. The information collection requirements were approved on June 14, 2011 by OMB.

DATES: The amendments to 47 CFR 73.686(e), published at 75 FR 81491, December 28, 2010, are effective on June 30, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams on (202) 418–2918 or via e-mail to: *cathy.williams@fcc.gov mailto:cathy.williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that on June 14, 2011, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 73.686(e). The Commission publishes this document to announce the effective date of this rule section. See, In the Matter of Measurement Standards for Digital Television Signals pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004, ET Docket No. 06–94; FCC 10–195, 75 FR 81491, December 28, 2010.

Synopsis

As required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on June 14, 2011, for the information collection requirement contained in 47 CFR 73.686(e). Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

The OMB Control Number is 3060–0863 and the total annual reporting burdens for respondents for this information collection are as follows:

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

OMB Control Number: 3060–0863.

OMB Approval Date: 06/14/2011.

OMB Expiration Date: 06/30/2014.

Respondents: Business or other for-profit entities.

Number of Respondents: Responses 848 respondents; 250,000 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is the Satellite Home Viewer Act, 17 U.S.C. 119.

Total Annual Burden: 125,000 hours.

Annual Cost Burden: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Needs and Uses: On November 23, 2010, the Commission's Office of Engineering and Technology, released a

Report and Order, Measurement Standards for Digital Television Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004, ET Docket No. 06–94; FCC 10–195. The Report and Order adopted rules establishing measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures will be used for determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers, pursuant to the provisions of the Satellite Television Extension and Localism Act of 2010 (STELA). The Report and Order implements DTV signal measurement procedures proposed in the Commission's Notice of Proposed Rulemaking (SHERVA NPRM) and Further Notice of Proposed Rulemaking (STELA FNPRM) in this proceeding with minor modifications.

47 CFR 73.686 describes a method for measuring signal strength at a household so that the satellite and broadcast industries and consumers would have a uniform method for making an actual determination of the signal strength that a household received. The information gathered as part of the Grade B signal strength tests will be used to indicate whether consumers are ''unserved'' by over-the-air network signals. The written records of test results will be made after testing and predicting the strength of a television station's signal. Parties impacted by the test results will be consumers; parties using the written test results will primarily be the satellite and broadcasting industries.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–16440 Filed 6–29–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110222150–1280–02]

RIN 0648–BA92

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; 2011 Scup Specifications; Fishing Year 2011

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

ACTION: Final rule.

SUMMARY: NMFS implements an increase to the scup commercial and recreational landing allowances for 2011 (specifications) and management measures for the 2011 summer flounder, scup, and black sea bass recreational fisheries in Federal waters. These actions are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intent of the scup increase is to enable greater commercial and recreational harvest opportunities while preventing overfishing on the scup stock. Recreational management measures are similarly intended to ensure that overfishing the summer flounder, scup, and black sea bass resources in 2011 is unlikely to occur.

DATES: Effective August 1, 2011.

ADDRESSES: Copies of the scup harvest level increase Supplement Environmental Assessment (SEA) to the 2011 specifications and the recreational management measures document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for both the scup specifications increase and the recreational management measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION:

General Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The FMP and its implementing regulations, which are found at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational management measures that apply in the Exclusive Economic Zone (EEZ). The states from North Carolina to Maine manage these fisheries within 3 nautical miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern fishing activity in the EEZ, as well as vessels possessing Federal permits for summer flounder, scup, and/or black sea bass, regardless of where they fish.

A proposed rule to implement the 2011 scup specifications increase and Federal recreational measures for the 2011 summer flounder, scup, and black sea bass fisheries was published on April 21, 2011 (76 FR 22350). Additional background and information is provided in that rule and is not repeated here.

2011 Scup Specifications Increase

This rule implements the scup increase proposed by NMFS in the April 21, 2011, proposed rule: A Total Allowable Catch (TAC) of 31.92 million lb (14,479 mt), increased from the current TAC of 24.10 million lb (10,932 mt); a Total Allowable Landings (TAL) of 26.50 million lb (12,020 mt), increased from 20.0 million lb (9,072 mt); a commercial quota of 20.36 million lb (9,235 mt), increased from 15.29 million lb (6,936 mt); and a recreational harvest limit of 5.74 million lb (2,604 mt), increased from 4.30 million lb (1,956 mt). Because the 2011 research set-aside (RSA) of 396,500 lb (180 mt) has already been awarded for scup, no change to the RSA level will occur as a result of the increased scup specifications.

Table 1 contains the scup commercial quota period information that results from the scup specification increase. Information on the amount of unused Winter I quota to be rolled over to Winter II, including any change to Winter II possession limits that results from the transfer, will be published in the **Federal Register** in July 2011.

TABLE 1—FINAL REVISED COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2011 BY QUOTA PERIOD

Quota period	Percent share	Total allowable catch		Estimated discards		Initial quota		Adjusted quota less RSA	
		lb	mt	lb	mt	lb	mt	lb	mt
Winter I	45.11	11,231,307	5,094	1,907,070	865	9,324,237	4,229	9,184,725	4,166
Summer	38.95	9,697,615	4,399	1,646,650	747	8,050,965	3,652	7,930,504	3,597
Winter II	15.94	3,968,677	1,800	673,879	306	3,294,798	1,494	3,245,500	1,472
Total ..	100.0	24,897,600	11,293	4,227,600	1,918	20,670,000	9,376	20,360,730	9,235

2011 Recreational Management Measures

Background

Additional discussion on the development of the recreational management measures appeared in the preamble of the proposed rule and is not repeated here.

The 2011 coastwide recreational harvest limits were previously established by rulemaking conducted in late 2010 (75 FR 81498; December 28, 2010). The 2011 recreational harvest limits established by the December 28, 2010, final rule are as follows: Summer flounder, 11.58 million lb (5,254 mt); scup, 4.3 million lb (1,956 mt); and black sea bass, 1.84 million lb (835 mt). However, this rule implements an increase to the scup specifications, which increases the recreational harvest limit to 5.74 million lb (2,604 mt). Recreational harvest limits are the target objectives or ''quotas'' established for the summer flounder, scup, and black sea bass recreational fisheries. The management measures (*i.e.,* minimum fish size requirements, angler possession limits, and fishing seasons) established by this rule are all designed to ensure that recreational landings do not exceed the recreational harvest limits.

NMFS is implementing, through this rule, management measures to apply in the Federal waters of the EEZ and to all federally permitted party/charter vessels with applicable summer flounder, scup, and/or black sea bass permits regardless of where they fish during the 2011 fishing year. The management measures (*i.e.,* minimum fish size requirements, angler possession limits, and fishing seasons) established by this rule are all designed to ensure that recreational landings do not exceed the recreational harvest limits. The management measures established by this rule are as follows: For summer flounder, use of state-by-state conservation equivalency measures, which is the status quo management system; for scup, a 10.5-inch (26.67-cm) minimum fish size, a 10-fish per person possession limit, and an open season of June 6 through September 26, which are the status quo measures; and, for black sea bass, a 12.5-in (31.75-cm) minimum fish size, a 25-fish per person possession limit and fishing seasons from May 22–October 11 and November 1–December 31, which are also the status quo measures. More detail on these proposed measures is provided in the following sections.

Federal permit holders are reminded that, as a condition of their Federal permit, they must abide by the Federal measures, even if fishing in state waters. In addition, in instances where the state-implemented measures are different than the Federal measures, federally permitted vessels must adhere to the more restrictive of the two measures. This will be applicable for both the 2011 scup and black sea bass recreational fisheries.

All minimum fish sizes discussed below are total length measurements of the fish, *i.e.,* the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. For black sea bass, total length measurement does not include the caudal fin tendril. All possession limits discussed below are per person.

Summer Flounder Recreational Management Measures

NMFS is implementing, through this rule, conservation equivalency as the management approach for use in the 2011 summer flounder recreational fishery. NMFS implemented Framework Adjustment 2 to the FMP on July 29, 2001 (66 FR 36208), to permit the use of conservation equivalency to manage the recreational summer flounder fishery. Conservation equivalency allows each state to establish its own recreational management measures to achieve its state harvest limit partitioned from the coastwide recreational harvest limit by the Commission. The combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures, hence the term conservation equivalency. This means that minimum fish sizes, possession limits, and fishing seasons developed and adopted by the individual states from MA to NC will be utilized as the Federal water measures for 2011.

The Commission notified the NMFS Northeast Regional Administrator by letter dated May 19, 2011, that the 2011 summer flounder recreational fishery management programs (*i.e.,* minimum fish size, possession limit, and fishing seasons) implemented by the states from MA to NC have been reviewed by the Commission's Technical Committee (TC) and approved by the Commission's Summer Flounder Management Board (SF Board). The correspondence indicates that the Commission-approved management programs are projected to restrict 2011 recreational summer flounder coastwide landings consistent with the state-specific requirements established by the Technical Committee and SF Board through the Commission process.

Based on the recommendation of the Commission, the NMFS Northeast Regional Administrator finds that the recreational summer flounder fishing measures proposed to be implemented by the individual states for 2011 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. According to § 648.107(a)(1), vessels subject to the recreational fishing measures of this part and landing summer flounder in a state with an approved conservation equivalency program shall not be subject to Federal measures, and shall instead be subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) has been amended to recognize state-implemented measures as conservation equivalent of the coastwide recreational management measures for 2011. For clarity, the 2011 summer flounder management measures adopted by the individual states vary according to the state of landing, as specified in Table 2.

TABLE 2—2011 COMMISSION APPROVED STATE-BY-STATE CONSERVATION EQUIVALENT RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

State	Minimum fish size		Possession limit (number of fish)	Fishing season
	inches	cm		
Massachusetts	17.5	44.45	5	May 22–September 30.
Rhode Island	18.5	46.99	7	May 1–December 31.
Connecticut	18.5	46.99	3	May 15–September 5.
New York	20.5	52.07	3	May 1–September 30.
New Jersey	18.0	45.72	8	May 7–September 25.
Delaware	18.0	45.72	4	January 1–October 23.
Maryland	18.0	45.72	3	April 16–November 30.
Virginia	17.5	44.45	4	January 1–December 31.
North Carolina	15.0	38.10	6	January 1–December 31.

Note: At 40 designated shore sites in CT, anglers may keep 1 fish at 17.0 inches (43.18 cm), May 15–September 5.

Scup Recreational Management Measures

As outlined in the April 21, 2011, proposed rule, NMFS is retaining the currently codified scup recreational management measures for the 2011 fishing year. These are the status quo measures of a 10.5-in (26.67-cm) minimum fish size, a 10-fish per person possession limit, and an open season of June 6 through September 26 (*i.e.,* closed seasons from January 1–June 5 and again from September 27–December 31).

These measures, in conjunction with the regional approach being applied to state waters through the Commission, are expected to constrain landings to the 5.74-million-lb (2,604 mt) recreational harvest limit being concurrently implemented by this rule.

NMFS acknowledges that the Commission will continue managing the recreational scup fishery through a Commission-based conservation equivalency program that has no comparable measures in the Federal FMP. Thus, recreational management measures will differ between state and Federal waters in 2011. Historically, very little of the scup recreational harvest comes from Federal waters; the scup recreational harvest from Federal waters for 2009 was approximately 2 percent of the total coastwide landings.

Black Sea Bass Recreational Management Measures

NMFS is retaining the currently codified black sea bass measures for use in Federal waters during the 2011 fishery (*i.e.,* the status quo). These measures are a 12.5-in (31.75-cm) minimum fish size, 25-fish per person possession limit, and May 22–October 11 and November 1–December 31 fishing seasons. Measures for state waters will vary by state, as described later in this section. NMFS had proposed additional, more restrictive measures for the 2011 fishing year (*i.e.,* a 13.0-inch (33.02-cm) minimum fish size, a 25-fish per person possession limit, and open seasons of July 1 through October 1 and November 1 through December 31); however, these measures are no longer necessary as the Commission has developed, approved, and implemented measures for state waters that, when paired with the status quo measures in Federal waters, achieve the required management objectives for 2011. NMFS described in the April 21, 2011, proposed rule the circumstances that might lead to either set of black sea bass measures being approved for 2011. That information is not repeated here.

The Commission notified the NMFS Northeast Regional Administrator by letter dated May 19, 2011, that the 2011 black sea bass recreational fishery management programs (*i.e.,* minimum fish size, possession limit, and fishing seasons) implemented by the states from MA to NC have been reviewed by the TC and approved for use by the Commission's Black Sea Bass Management Board under Addendum XXI to the Commission's black sea bass management plan. The correspondence indicates that the Commission-approved management programs, when paired with status quo measures in Federal waters, are projected to restrict 2011 recreational black sea bass coastwide landings to the 1.84-million-lb (835 mt) recreational harvest limit. Recreational management measures between state and Federal waters may differ as a result of the Commission's Addendum XXI measures, depending on the measures implemented by the individual states as outlined in Table 3.

TABLE 3—BLACK SEA BASS MANAGEMENT MEASURES IMPLEMENTED BY NMFS FOR FEDERAL WATERS AND THE COMMISSION FOR STATE WATERS, 2011

	Minimum fish size		Possession limit (number of fish)	Fishing season
	inches	cm		
Federal Measures Implemented by NMFS for Federal Waters				
EEZ	12.5	31.75	25	May 22–October 11 and November 1–December 31.
State Measures Implemented by the Commission for State Waters				
State:				
Massachusetts	14.0	35.36	10	May 22–October 11.
Rhode Island	13.0	33.02	12	July 11–December 31.

TABLE 3—BLACK SEA BASS MANAGEMENT MEASURES IMPLEMENTED BY NMFS FOR FEDERAL WATERS AND THE COMMISSION FOR STATE WATERS, 2011—Continued

	Minimum fish size		Possession limit (number of fish)	Fishing season
	inches	cm		
Connecticut	13.0	33.02	25	July 1–October 11 and November 1–December 31.
New York	13.0	33.02	10	June 13–October 1 and November 1–December 31.
New Jersey	12.5	31.75	25	May 28–September 11 and November 1–December 31.
Delaware	12.5	31.75	25	May 22–October 11 and November 1–December 31.
Maryland	12.5	31.75	25	May 22–October 11 and November 1–December 31.
Virginia	12.5	31.75	25	May 22–October 11 and November 1–December 31.
North Carolina	12.5	31.75	25	July 1–September 25 and November 1–December 31.

Because the Commission-based measures implemented by the states are different than the Federal water measures, Federal permit holders are required to adhere to the more restrictive set of measures irrespective of if fishing in state or Federal waters. Similarly, private anglers must adhere to the recreational measures implemented by the state in which the fish will be landed as all the state-implemented measures place restrictions on possession as opposed to landings.

For additional information on state-implemented management measures, please contact the marine fisheries management agency for the state in question or the Commission (*http://www.asmfc.org;* (703) 842–0740).

Comments and Responses

Three comment letters were received regarding the proposed scup quota increase and recreational management measures. Two of these comments pertained to measures being proposed by the South Atlantic Fishery Management Council for managing the black sea bass stock south of Cape Hatteras, NC, and thus are not applicable to this rulemaking. The other comment letter raised concerns about the scup allocation between the recreational and commercial sector, as well as the black sea bass measures proposed for 2011. Comments that require responses are addressed, as follows:

Comment: One commenter stated that the increased scup quota would only permit greater opportunity for the commercial fishery sector, as the increase in quota would only permit the use of status quo scup recreational management measures. The commenter further stated that the allocation between the two sectors should be shifted to provide more opportunity for the recreational fishery sector.

The same commenter also stated that the required reduction in black sea bass landings in 2011 from 2010 levels should be dispersed over an unspecified period of time. The commenter also expressed a preference for reducing the black sea bass possession limit presumably in lieu of changing either the fishing season or increasing the minimum fish size from 2010 levels.

Response: The increased scup quota implemented by this rule enables the use of status quo state and Federal recreational management measures for 2011. Had the increase in quota not been implemented for 2011, a reduction in scup recreational landings would have been required because the 2010 recreational fishery substantially exceeded the recreational harvest limit in place. The statement that harvest opportunity is increased for both sectors is not in reference to the potential change from 2010 to 2011, but rather, is applicable relative to the opportunity that would have been available had the quota increase not been implemented. The preliminary analyses conducted by the Council in November 2010 indicated that a 12-percent reduction in recreational landings for 2011 from 2010 levels would have been required, had the recreational harvest limit not been increased from 4.3 million lb (1,956 mt) to 5.74 million lb (2,604 mt). Thus, had the recreational harvest limit not been made available for 2011, scup recreational management measures would have been more restrictive than the measures implemented by this rule. Those restrictions would have decreased recreational harvest opportunity.

With respect to the allocation of scup between the recreational and commercial fishing sectors, the current allocation split of 78 percent to the commercial fishery, and 22 percent to the recreational fishery, is specified in the FMP. This allocation cannot be changed through either the Council's annual specification or recreational management measures processes, nor is it possible to modify the allocation structure through a FMP framework adjustment process. An amendment to the FMP would be required to enact any allocation change. To date, the Council has not developed or recommended to NMFS any changes to the scup allocation.

This rule retains the status quo black sea bass measures of a 25-fish per person possession limit, and open season of July 1–October 1 and November 1–December 31 for Federal waters in 2011. State measures implemented through the Commission's process for 2011 vary (see Table 3 for more information). Substantial discussion occurred during the December 2010 joint Council and Commission meeting about reducing the per angler possession limit from 25 fish to reduce landings in 2011 from 2010 levels. Because the available landings data for black sea bass indicate that most anglers retain far fewer than 25 fish (slightly over 90 percent of all anglers land 6 or fewer black sea bass), any reduction in possession limit would need to be substantial to have any effective reduction in landings. For example, if the possession limit were reduced by 15 fish from 25 to 10, the net reduction in projected 2011 landings from 2010 levels would be less than 3

percent, because most anglers do not keep more than 5–6 fish.

Classification

The Administrator, Northeast Region, NMFS, determined that this final rule implementing the increased 2011 scup specifications and 2011 summer flounder, scup, and black sea bass recreational management measures is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts described in the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. Copies of the EA/RIR/IRFA and SEA are available from the Council and NMFS (see **ADDRESSES**). A FRFA was previously completed in conjunction with the final rule that implemented the initial scup specifications for 2011 (75 FR 81498; December 28, 2010). This FRFA supplements the necessary information pertaining to the increases in the scup specifications implemented by this rule and provides the necessary information with respect to the summer flounder, scup, and black sea bass recreational management measures.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why the scup specifications are being increased, why the 2011 recreational management measures for summer flounder, scup, and black sea bass are being implemented, and the objectives of and legal basis for this final rule implementing both actions are explained in the preambles to the proposed rule and this final rule, and are not repeated here.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

A summary of the comments received and NMFS's responses thereto are contained in the preamble of this rule. None of those comments addressed specific information contained in the IRFA economic analysis or the economic impacts of the increased scup specifications or recreational management measures more generally. As described in the preamble, the black sea bass measures implemented by this rule were changed from those previously proposed.

Description and Estimate of Number of Small Entities to Which This Rule Will Apply

The scup specifications increase could affect any of the 398 vessels possessing a Federal moratorium or party/charter permit in 2009, the most recent year for which complete permit data are available. The recreational management measures could affect any of the 980 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2009. However, only 348 vessels reported active participation in the 2009 recreational summer flounder, scup, and/or black sea bass fisheries.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Scup Specifications

A FRFA was previously prepared in conjunction with the action that implemented the initial scup 2011 specifications (75 FR 81498; December 28, 2010). Information from that FRFA remains applicable here with respect to the scup specification increase: The economic impact analyses on the various specification levels proposed by the Council for implementation by NMFS were evaluated solely on the different levels of quota specified in the alternatives. The ability of NMFS to minimize economic impacts when implementing specifications is constrained to approving quota levels (*i.e.,* TAC and TAL) that provide the maximum availability of fish while still ensuring that the required objectives and directives of the FMP, its implementing regulations, and the Magnuson-Stevens Act are met. To aid in this process, the Council's Scientific and Statistical Committee (SSC) made recommendations for the 2011 Acceptable Biological Catch (ABC) level for all three stocks, including scup. The ABC is a catch level of a stock's annual catch that accounts for the scientific uncertainty in the estimate of the overfishing level (OFL) and any other scientific uncertainty and, as such, is designed to provide a low probability of overfishing a stock in a given year for which ABC is recommended.

The economic analysis for the 2011 specifications, including the increased scup specifications, assessed the impacts for quota alternatives that achieve the aforementioned objectives. The no action alternative, wherein no quotas are established for 2011, was excluded from analysis because it is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. Alternative 2 from the Council's analysis contained the most restrictive TAL options (*i.e.,* the lowest catch levels; a TAL of 14.11 million lb (6,400 mt)) and was not preferred by the Council or implemented by NMFS because other alternatives had lower impacts on small entities while achieving the stated objectives of the 2011 specification process. Alternative 3 contained the least restrictive quotas (a TAL of 28.96 million lb (13,136 mt)) and produced the smallest impact on small entities. However, the respective quotas under Alternative 3 were inconsistent with the SSC's catch level recommendations, as they exceeded the ABC recommendations provided by the SSC. Because the Alternative 3 measures were inconsistent with the Magnuson-Stevens Act requirements, they could not be implemented for 2011, despite having the lowest associated impact on small entities.

In December 2010, NMFS implemented TALs contained in the Council's Alternative 1 (summer flounder, 29.48 million lb (13,372 mt); scup, 20.0 million lb (9,072 mt); and black sea bass, 3.6 million lb (1,633 mt)), the Council's preferred alternatives at the time, which consisted of the quota alternatives that paired the lowest economic impacts to small entities and meet the required objectives of the FMP and the Magnuson-Stevens Act. However, in the interim since that action, the Council supplemented its preferred scup specification measures as previously described. This new preferred alternative, designated Alternative 1B and implemented by this rule, provides an increase in the scup TAC from 29.4 million lb (13,372 million lb) to 31.92 million lb (14,479 mt). This TAC increase would be 8 percent below the maximum sustainable yield (MSY) level for scup, and considerably below the 2011 ABC of 51.70 million lb (23,451 mt) recommended by the Council's SSC. Thus, it is both consistent with the Magnuson-Stevens Act requirements,

the FMP, the SSC's recommendation, and provides the lowest impacts on small entities by providing the maximum opportunity to harvest scup among the various specification alternatives considered for 2011. The increased opportunity afforded by the increased scup specifications is expected to produce positive socioeconomic impacts relative to the previously implemented specification level.

Recreational Management Measures

In seeking to minimize the impact of recreational management measures (minimum fish size, possession limit, and fishing season) on small entities (*i.e.,* Federal party/charter permit holders), NMFS is constrained to implementing measures that meet the conservation objectives of the FMP and Magnuson-Stevens Act. Management measures must provide sufficient constraints on recreational landings, such that the established recreational harvest limits have a low likelihood of being exceeded, which might lead to overfishing the stock. This rule maintains the status quo recreational management measures for all three species in Federal waters.

Summer flounder alternatives. The alternatives examined by the Council and forwarded for consideration by NMFS consisted of the preferred alternative of state-by-state conservation equivalency (see Table 2 for measures) with a precautionary default backstop (status quo), and the non-preferred alternative of coastwide measures (an 18.5-inch (46.99-cm) minimum fish size, a 2-fish per person possession limit, and open season from May 1 through September 30). These were alternatives 1 and 2, respectively, in the Council's EA/RIR/IRFA. Analysis of these two alternatives were determined by the Council to provide a high probability of constraining recreational landings to levels at or below the 2011 recreational harvest limit. Therefore, either alternative recreational management system could be considered for implementation by NMFS, as the critical metric of satisfying the regulatory and statutory requirements would likely be met by either.

Next, NMFS considered the recommendation of both the Council and Commission. Both groups recommended implementation of state-by-state conservation equivalency, with a precautionary default backstop. The recommendations of both groups were not unanimous: Some Council and Commission members objected to the use of conservation equivalency, stating a preference for coastwide measures.

For NMFS to disapprove the Council's recommendation for conservation equivalency and substitute coastwide management measures, NMFS must reasonably demonstrate that the recommended measures are either inconsistent with applicable law or that the conservation objectives of the FMP will not be achieved by implementing conservation equivalency. NMFS does not find the Council and Commission's recommendation to be inconsistent with the implementing regulations of the FMP at § 648.100 or the Magnuson-Stevens Act, including the 10 National Standards.

The additional metric for consideration by NMFS, applicable to the FRFA, is examination of the economic impacts of the alternatives on small entities consistent with the stated objectives of applicable statutes. As previously stated, both conservation equivalency (alternative 1) and coastwide measures (alternative 2) are projected to achieve the conservation objectives for the 2011 summer flounder recreational fishery. However, the economic impacts of the two alternatives are not projected to be equal in the Council's analyses: The economic impacts on small entities under the coastwide measures management system would vary in comparison to the conservation equivalency system, dependent on the specific state wherein the small entities operate.

Quantitative analyses of the economic impacts associated with conservation equivalency measures are not available. This is because the development of the individual state measures occurs concurrent to the NMFS rulemaking process to ensure timely implementation of final measures for the 2011 recreational fishery; thus, the specific measures implemented by states are not available for economic impact analyses. Instead, qualitative methods were utilized by the Council to assess the relative impact of conservation equivalency (alternative 1) to coastwide measures (alternative 2). The Council analysis concluded, and NMFS agrees, that conservation equivalency is expected to minimize impacts on small entities because individual states can develop specific summer flounder management measures that allow the fishery to operate during each state's critical fishing periods while still achieving conservation goals. To be clear, there are individual states whose conservation equivalency measures may have a more adverse impact to some small entities, depending on the restrictions imposed by the Commission, than would coastwide measures. However, the one-size-fits-all approach of coastwide measures would negatively impact a broader distribution of states and the small entities that fish from those states.

NMFS is implementing the Council and Commission's recommended state-by-state conservation equivalency measures because: (1) NMFS finds no compelling reason to disapprove the Council and Commission's recommended 2011 management system, as the management measures contained in conservation equivalency are projected to provide the necessary restriction on recreational landings to prevent the recreational harvest limit from being exceeded; and (2) the net economic impact to small entities on a coastwide basis are expected to be mitigated, to the extent practicable, for a much larger percentage of small entities.

Scup alternatives. As outlined in the preamble, the individual states have elected to implement a state-waters conservation equivalency system for the 2011 scup recreational fishery that has no comparable regulations for use in Federal waters. NMFS is retaining the measures currently codified as the Federal water measures for the 2011 fishing year: A 10.5-inch (26.67-cm) minimum fish size; a 10-fish per person possession limit; and an open season of June 6–September 26. Similar to the summer flounder discussion, this suite of scup measures (alternative 1) provides the minimum impact on small entities from the alternatives available by providing the maximum fishing opportunity in Federal waters and meets the requirements of the Magnuson-Stevens Act, the FMP, and achieves the conservation objectives for 2011. Alternative 1 for a 10.5-inch (26.67-cm) minimum fish size, 15-fish per person possession limit, and open seasons of January 1 through February 28 and October 1 through October 31, and Alternative 3 for an 11.0-inch (27.94-cm) minimum fish size, 10-fish per person possession limit, and open season of May 24 through September 26 contained measures that had higher impacts on small entities fishing in Federal waters, as both contained more restrictive measures than would be necessary to satisfy the management objectives.

Black sea bass alternatives. This final rule is implementing measures that differ from those originally proposed. As previously stated in the preamble, individual states have developed and implemented measures for use in state waters. This rule retains the status quo measures of alternative 2 contained in the Council's EA/RIR/IRFA: A 12.5-inch (31.75-cm) minimum fish size; a 25-fish

possession limit; and May 22–October 11 and November 1–December 31 fishing seasons for Federal waters. This alternative provides the lowest associated economic impacts to small entities of the measures considered for Federal waters that also meets the statutory and regulatory requirements for the 2011 fishery. Alternative 1 (a 13.0-inch (33.02-cm) minimum fish size, a 25-fish per person possession limit, and open season of July 1 through October 1 and November 1 through December 31), originally proposed by NMFS for 2011, was projected to achieve the conservation objectives for the 2011 black sea bass fishery; however, the landings level reduction imposed by the alternative's measures is more restrictive than necessary. The Alternative 3 measures proposed (12.5-inch (31.75-cm) minimum fish size, a 25-fish per person possession limit, and open seasons of January 1 through December 31) were not projected to achieve the necessary reduction in landings for 2011 and, as such, could not be implemented by NMFS.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as the small entity compliance guide was prepared and will be sent to all holders of Federal party/charter permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and the small entity compliance guide are available from NMFS (see **ADDRESSES**) and at the following Web site: *http://www.nero.noaa.gov.*

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 27, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 18.5 inches (46.99 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

* * * * *

■ 3. In § 648.107, paragraph (a) introductory text and paragraph (b) are revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2011 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season—May 1 through September 30; minimum size—20.0 inches (50.80 cm); and possession limit—two fish.

[FR Doc. 2011–16517 Filed 6–29–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

Docket No. 100804324–1265–02]

RIN 0648–BB21

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) July 1, 2011. Comments on this final rule must be received no later than 5 p.m., local time on August 1, 2011.

ADDRESSES: You may submit comments, identified by RIN 0648–BB21 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* 206–526–6736, Attn: Gretchen Hanshew.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Gretchen Hanshew.

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.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit

attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew (Northwest Region, NMFS), 206–526–6147, fax: 206–526–6736, *gretchen.hanshew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register**'s Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. On November 3, 2011, NMFS published a proposed rule to implement the 2011–2012 harvest specifications and management measures for the Pacific Coast groundfish fishery (75 FR 67810). The final rule to implement the 2011–2012 harvest specifications and management measures for the Pacific Coast Groundfish Fishery was published on May 11, 2011 (76 FR 27508). These specifications and management measures are codified in the CFR (50 CFR part 660, subparts C through G).

Changes to current groundfish management measures implemented by this action were recommended by the Council at its June 6–13, 2011 meeting in Spokane, Washington. The Council recommended adjustments to current groundfish management measures to respond to updated fishery information and other inseason management needs. The projected impacts to two of the eight overfished species (canary rockfish and yelloweye rockfish) will increase slightly with the adjustments to the deeper nearshore rockfish limits in the limited entry fixed gear and open access fisheries south of 40°10.00′ N. lat. However, these impacts, when combined with the impacts from all other fisheries, are not projected to exceed the 2011 rebuilding annual catch limits (ACLs) for these species. All other adjustments to fishery management measures are not expected to result in greater impacts to overfished species than originally projected through the end of 2011. Estimated mortality of overfished and target species are the result of management measures designed to achieve, to the extent possible, but not exceed, ACLs of target species while fostering the rebuilding of overfished stocks by remaining within their rebuilding ACLs.

Trawl Rockfish Conservation Area

The Council recommended and NMFS is implementing a shift in the seaward boundary of the trawl Rockfish Conservation Area (RCA) for the area from 48°10′ N. lat. (Cape Alava) to 45°46′ N. lat. (Cape Falcon) by shifting the seaward boundary of the trawl RCA boundary from the boundary line approximating the 200-fm (366-m) depth contour to the boundary line approximating the 150-fm (274-m) depth contour.

In June 2010, the Council recommended that the trawl RCA boundaries that were scheduled for the 2010 calendar year, as of June 2010, be in place for the 2011 start of the rationalized trawl fishery. Boundaries of the trawl RCA were left in place as they existed in 2010 due to the uncertainty in how the rationalized fishery would perform. One of the goals of the trawl rationalization program was to allow individual accountability to drive bycatch rates of overfished species down, and the Council acknowledged that once fishery information was available from the rationalized fishery, adjustments to the trawl RCA boundaries may be made in the future.

At its March 2011 meeting, the Council considered changes to the trawl RCA boundaries after a request from industry. However, the Council did not recommend changes due to the limited amount of fishery information on landings and bycatch at that time.

At its June 2011 meeting, the Council considered a different, more limited, industry request to shift the seaward boundary of the trawl RCA shoreward to open some areas for harvesting Dover sole and sablefish. The Council carefully weighed the potential risks and benefits of opening some deeper areas that are currently closed by the trawl RCA where the fleet may have higher encounters with darkblotched rockfish and Pacific halibut.

The most recent fishery information on total catch, including discards, of darkblotched rockfish in the IFQ fishery indicated that as of June 6, 2011, only 27.3 mt of darkblotched rockfish have been harvested. In light of the low catch levels of darkblotched rockfish to date, opening some deeper areas that are currently closed by the RCA could increase accessibility of some of the more valuable target resources on the slope, such as Dover sole and sablefish. This change to the RCA structure would also give fishers a chance to demonstrate the benefits of individual accountability that they have in the trawl rationalization program.

The Council acknowledged that as of June 6, 2011, there was no information available on catch stratified by the depths that vessels were fishing. This information would help inform the catch levels of overfished species and how they vary by depth, and could be informative for decisions on changes to the RCA. However, the Council noted that this information is being collected and processed, and is anticipated to be available by its September 2011 meeting. The Council also considered that west coast groundfish observer program (WCGOP) data on the trip-limit fishery from 2006–2009 indicated that the requested change to the seaward RCA boundary would open areas where bycatch rates of darkblotched rockfish have been documented to be higher than in some other areas.

If a vessel had a large catch of darkblotched, as seen in WCGOP data where a single tow could catch more than 1 mt of darkblotched rockfish, or of Pacific halibut, fishers may not be able to cover their catch with their available quota pounds, and it may force them to cease fishing until any overage can be covered. If large tows of darkblotched rockfish occur several times and inadequate darkblotched rockfish quota is available, it could even mean that fishing opportunities seaward of the RCA could be in jeopardy for all of the shorebased non-whiting IFQ vessels.

The Council also considered additional factors that supported making the requested changes to the trawl RCA boundaries. First, vessels operating in the IFQ fishery, with full observer coverage, have strong incentives to avoid catch levels of species that they cannot cover with available quota pounds (*e.g.,* darkblotched rockfish or Pacific halibut). In addition, the full observer coverage and increased ability to track catch inseason could allow the Council to make necessary adjustments if excessive catch is observed. Therefore, the risk of several large tows of darkblotched rockfish threatening fishing opportunities for all of the shorebased non-whiting IFQ vessels is minimized. Second, the Council acknowledged that the request was limited to only a specific portion of the coast; from Cape Alava in northern Washington (48°10′ N. lat.) south to

Cape Falcon in northern Oregon (45°46′ N. lat.), just below the Columbia River. The Council also recognized that additional fishery information will become available prior to the September 2011 Council meeting, and further adjustments to RCA boundaries may be considered for the end of 2011 if necessary.

Therefore, the Council ultimately recommended and NMFS is implementing a shift in the seaward boundary of the trawl RCA for the area from 48°10′ N. lat. (Cape Alava) to 45°46′ N. lat. (Cape Falcon): Open fishing area between the boundary line approximating the 150-fm (274-m) depth contour and the boundary line approximating the 200-fm (366-m) depth contour, by shifting the seaward boundary of the trawl RCA boundary from the boundary line approximating the 200-fm (366-m) depth contour to the boundary line approximating the 150-fm (274-m) depth contour beginning on September 1 through the end of the year.

Limited Entry Fixed Gear and Open Access Fishery Management Measures

Minor Nearshore and Black Rockfish Trip Limits Between 42° N. Lat. and 40°10.00′ N. Lat.

The Council recommended and NMFS is implementing an increase to the bi-monthly limit for minor nearshore and black rockfish in the limited entry fixed gear and open access fisheries between 42° N. lat. and 40°10.00′ N. lat. beginning on July 1, through the end of the year. The change allows for increased landings of black rockfish.

Black rockfish is a nearshore rockfish species that was assessed in 2007. The 2011 black rockfish commercial catch target in the California nearshore fishery is 82 mt. At its June meeting, the Council considered the most recent fish ticket data and projected impacts to black rockfish in the nearshore fishery off the California coast through the rest of the year. These estimates indicated that under the current trip limit structure, catch was estimated to be only 68 mt, or 83 percent of the 82 mt catch target. Industry requested an increase to black rockfish trip limits in northern California, between 42° N. lat. and 40°10.00′ N. lat., because they have had limited nearshore fishing opportunities due in part to poor weather conditions and the impacts of the tsunami on infrastructure and fishing vessels. Some vessels have not been able to resume full time operations since the tsunami and other vessels which sustained damage are taking longer to resume operations than previously thought.

The Council considered increases to black rockfish trip limits to allow additional harvest of this healthy stock, and the potential impacts to overfished species. An increase in trip limits is not anticipated to increase projected impacts to overfished species because projected impacts to overfished species are calculated assuming that up to 82 mt of black rockfish are harvested in this fishery.

Therefore, the Council recommended and NMFS is implementing trip limit changes for minor nearshore and black rockfish in the limited entry fixed gear and open access fishery between 42° N. lat. and 40°10.00′ N. lat.: From ''7,000 lb (3,175 kg) per two months, no more than 1,200 lb (544 kg) of which may be species other than black rockfish'' to ''8,500 lb (3,856 kg) per two months, no more than 1,200 lb (544 kg) of which may be species other than black rockfish'' beginning in Period 4, on July 1, through the end of the year.

Deeper Nearshore Rockfish South of 40°10′ N. Lat.

The Council recommended and NMFS is implementing trip limit increases for deeper nearshore rockfish in the limited entry fixed gear and open access fishery south of 40°10′ N. lat.

At its June meeting, the Council considered the most recent fish ticket data indicating that landings of deeper nearshore rockfish south of 40°10′ N. lat. have been lower in 2011 than in previous years. An industry request came forward to increase the deeper nearshore rockfish trip limits to provide more access to black and blue rockfish while keeping their total catch within the state fishery harvest guidelines for these species.

Modest increases to the deeper nearshore rockfish trip limits in the limited entry fixed gear and open access fisheries in Periods 4–6 (July 1 through December 31) are projected to slightly increase impacts to co-occurring overfished rockfish, particularly canary rockfish and yelloweye rockfish. Projected impacts to canary rockfish increase by 0.1 mt and projected impacts to yelloweye rockfish are projected to increase by less than 0.05 mt. These slightly higher projected impacts in the deeper nearshore fishery, when combined with the anticipated impacts to these species in all other fisheries through the end of the year, are not anticipated to exceed the 2011 rebuilding ACLs for canary rockfish or yelloweye rockfish.

Therefore, the Council recommended and NMFS is implementing trip limit changes for deeper nearshore rockfish in the limited entry fixed gear and open access fishery south of 40°10.00′ N. lat.: From ''700 lb (318 kg) per 2 months'' between 40°10′ N. lat. and 34°27′ N. lat. and ''600 lb (272 kg) per 2 months'' south of 34°27′ N. lat. in Period 4 (July-August), and from ''800 lb (363 kg) per 2 months'' south of 40°10.00′ N. lat. in Periods 5–6 (September-December) to ''900 lb (408 kg) per 2 months'' beginning in Period 4, on July 1, through the end of the year.

Open Access Fishery, Minor Shelf Rockfish Trip Limits South of 34°27′ N. Lat.

At its June 2011 meeting, the Council received a request to increase trip limits for minor shelf rockfish south of 34°27′ N. lat. Total mortality of minor shelf rockfish south of 40°10′ N. lat. has been well below the optimum yield for this area in 2006–2009. Beginning in 2011, formal allocations of this species complex were made between the trawl and the non-trawl fisheries, with 87.8 percent of the ACL for this species complex being allocated to the non-trawl fisheries, including both commercial and recreational fisheries. The Council considered total mortality of this species complex in 2006–2009 if that formal non-trawl allocation had been in place in those years. If that formal non-trawl allocation had been in place, no more than 52 percent of what would have been the non-trawl allocation would have been caught in any of those years. The Council also considered anecdotal information that catch of speckled rockfish, a species in the minor shelf rockfish complex south of 40°10′ N. lat., has been high for vessels that are targeting deeper nearshore and vermilion rockfish. Industry is requesting an increase to the minor shelf rockfish trip limits for the area south of 34°27′ N. lat. to turn catch of speckled rockfish, which may have been discarded under lower limits, into landed catch.

There is no formal model to project impacts to co-occurring overfished species in this non-nearshore fishery south of 34°27′ N. lat. However, as included in the transmittal letter from the Director of the Council, dated June 23, 2011, the Groundfish Management Team (GMT), an advisory body to the Council, analyzed data from the west coast groundfish observer program indicate that very few encounters with overfished species occur in this fishery and this area, including encounters with bocaccio. However, if bocaccio catch were to increase as a result of the increase to minor shelf rockfish trip limits, it is anticipated that increased

catch would be accommodated under the current bocaccio trip limits for this fishery. Under the current trip limit structure for minor shelf rockfish species, state fish ticket information indicates that the 100 lb (45 kg) per 2 months trip limit for bocaccio is not being attained by most fishers. The landings of bocaccio being below the bi-monthly trip limit indicates that if higher catch of bocaccio were to occur under a modest increase in shelf rockfish trip limits, the catch could be accommodated by the current bocaccio trip limits and would therefore not increase overall projected impacts of bocaccio in the open access fishery.

Therefore, the Council recommended and NMFS is implementing trip limit changes for minor shelf rockfish in the open access fishery south of 34°27′ N. lat.: From ''750 lb (340 kg) per 2 months'' to ''1,000 lb (454 kg) per 2 months'' beginning in Period 4, on July 1, through the end of the year.

Limited Entry Fixed Gear Sablefish Daily Trip Limit Fishery, North of 36° N. Lat.

The Council recommended and NMFS is implementing decreases in trip limits for the limited entry fixed gear sablefish fishery north of 36° N. lat.

At its March 2011 meeting, the Council took action to reduce limits in the limited entry fixed gear sablefish daily trip limit (DTL) fishery north of 36° N. lat. This recommendation was precautionary, in response to the discovery of an error in the methods that were used to estimate landings of sablefish in the DTL fishery. Since March, staff at NMFS, the Pacific States Marine Fisheries Commission (PSMFC), and the GMT have worked to correct the algorithm that is used in PacFIN to estimate sablefish landings in the DTL fishery. The new, corrected algorithm in PacFIN produced higher than anticipated landings estimates of sablefish in this fishery. Even with the precautionary adjustments to the limited entry fixed gear sablefish DTL fishery limits that were recommended in March, without any additional changes to current management measures, landings of sablefish in the limited entry fixed gear DTL fishery north of 36° N. lat. are projected to be 439 mt, 160 percent of the 273 mt fishery landed catch harvest guideline. Considerable reductions to the bi-monthly cumulative limits are necessary, as quickly as possible, to keep projected catch through the end of the year within the fishery harvest guideline and to prevent exceeding the non-trawl fishery allocation for sablefish in 2011.

Decreases in trip limits to keep catch within the fishery harvest guideline are not anticipated to change projected impacts to overfished species because projected impacts to overfished species are calculated assuming that the entire sablefish allocation is harvested.

Therefore, the Council recommended and NMFS is implementing changes for the limited entry fixed gear fishery north of 36° N. lat. that decrease sablefish DTL fishery limits from ''2,000 lb (907 kg) per week, not to exceed 6,500 lb (2,948 kg) per 2 months'' to ''2,000 lb (907 kg) per week, not to exceed 3,500 lb (1,588 kg) per 2 months'' beginning in period 4, on July 1, through the end of the year.

Open Access Sablefish DTL Fishery North of 36° N. Lat.

The Council recommended and NMFS is implementing a decrease for the open access sablefish fishery trip limits north of 36° N. lat.

The most recent landings projections for the open access sablefish DTL fishery, combined with the addition of anticipated discard mortality, indicate that catches of sablefish in the open access fishery north of 36° N. lat. through the end of the year would exceed the fishery harvest guideline. Without any changes to current management measures, landings are projected to be 436 mt, or 101 percent of the 433 mt landed catch harvest guideline for the directed open access fishery. The Council considered modest decreases to the weekly and bi-monthly limits for sablefish in the open access fishery north of 36° N. lat. in order to approach, but not exceed, the fishery harvest guideline. This modest decrease in trip limits is not anticipated to change projected impacts to overfished species because projected impacts to overfished species are calculated assuming that the entire sablefish allocation is harvested.

Therefore, the Council recommended and NMFS is implementing a decrease for the open access fishery trip limits north of 36° N. lat. from ''300 lb (136 kg) per day, or 1 landing per week of up to 1,200 lb (544 kg), not to exceed 2,250 lb (1,021 kg) per 2 months'' to ''300 lb (136 kg) per day, or 1 landing per week of up to 1,050 lb (476 kg), not to exceed 2,100 lb (953 kg) per 2 months'' beginning in period 4, on July 1, through the end of the year.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is taken pursuant to the regulations implementing the Pacific Coast Groundfish FMP.

These actions are taken under the authority of 50 CFR 660.60(c) and are exempt from review under Executive Order 12866.

These inseason adjustments are taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, subparts C through G, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**), during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to biennial groundfish management measures under 5 U.S.C. 553(b)(B) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as quickly as possible.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its June 6–13, 2011, meeting in Spokane, Washington. The Council recommended that these changes be implemented by July 1, 2011 or as quickly as possible thereafter. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the Agency from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington, Oregon, and California.

Changes to sablefish trip limits in the limited entry fixed gear and open access sablefish DTL fisheries north of 36° N. lat. are needed to prevent the 2011 sablefish ACL for the area north of 36° N. lat. from being exceeded. These changes must be implemented in a timely manner by July 1, 2011 because failure to implement trip limit restrictions by July 1, 2011 could risk

catch of sablefish in the fishery north of 36° N. lat. exceeding the 2011 sablefish non-trawl allocation or even the 2011 sablefish ACL for the area north of 36° N. lat. These revisions are needed to keep the harvest of groundfish species within the harvest levels in place for 2011, while allowing fishermen access to healthy stocks. Delaying these changes beyond July 1, 2011 would allow fishers to access the higher bi-monthly trip limit in Period 4 (July-August) and could require even larger restrictions or closures later in the year. Such a delay would keep management measures in place that are not based on the best available data and that could lead to exceeding ACLs. Such delay could impair achievement of one of the Pacific Coast Groundfish FMP goals to prevent overfishing and to promote year-round fishing opportunities.

Changes to trip limits for black rockfish in the minor nearshore rockfish complex, deeper nearshore rockfish, and minor shelf rockfish in the south will allow fishermen additional harvest opportunities for black rockfish, blue rockfish, spotted rockfish, and other stocks within those complexes. These changes are necessary to relieve a restriction by allowing additional harvest opportunities, while staying within ACLs. These changes must be implemented in a timely manner, as quickly as possible, so that fishermen are allowed increased opportunities to harvest available healthy stocks while preventing stocks from exceeding their ACLs. These changes are intended to meet the goal of the Pacific Coast Groundfish FMP to achieve maximum biological yield while keeping within the constraints of overfished species rebuilding requirements. Changes to trawl RCA boundaries will allow fishermen additional harvest opportunities for Dover sole and sablefish. These changes are necessary to relieve a restriction by allowing additional harvest opportunities, while staying within ACLs. These changes must be implemented in a timely manner, on September 1, so that fishermen are allowed increased opportunities to harvest available healthy stocks while preventing stocks from exceeding their ACLs. It would be contrary to the public interest to wait to implement these changes until after public notice and comment, because that would prevent fishermen from taking these fish at the time they are available, preventing additional harvest in fisheries that are important to coastal communities.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: June 24, 2011.

Margo Schulze-Haugen,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Table 1 (North) to part 660, subpart D, is revised to read as follows:

BILLING CODE 3510–22–P

Table 1 (North) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 07012011

TABLE 1 (North)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 48°10' N. lat.	shore - modified[2/] 200 fm line[1/]	shore - 200 fm line[1/]	shore - 150 fm line[1/]		shore - 200 fm line[1/]	shore - modified[2/] 200 fm line[1/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[1/] - modified[2/] 200 fm line[1/]	75 fm line[1/] - 200 fm line[1/]	75 fm line[1/] - 150 fm line[1/]	100 fm line[1/] - 150 fm line[1/]	75 fm line[1/] - 150 fm line[1/]	
3	45°46' N. lat. - 40°10' N. lat.			75 fm line[1/] - 200 fm line[1/]	100 fm line[1/] - 200 fm line[1/]	75 fm line[1/] - 200 fm line[1/]	75 fm line[1/] - modified[2/] 200

Selective flatfish trawl gear is required shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 1 (North) and 1 (South) to Part 660, Subpart E.**

See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

4	**Minor nearshore rockfish & Black rockfish**	300 lb/ month
5	**Whiting**	
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.
8	**Cabezon**	
9	North of 46°16' N. lat.	Unlimited
10	46°16' N. lat. - 40°10' N. lat.	50 lb/ month
11	**Shortbelly**	Unlimited
12	**Spiny dogfish**	60,000 lb/ month
13	**Longnose skate**	Unlimited
14	**Other Fish** [3/]	Unlimited

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.

3/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. Table 2 (North) and Table 2 (South) to part 660, subpart E, are revised to read as follows:

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 07012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 43°00' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
4	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
5	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
6	**Pacific ocean perch**	1,800 lb/ 2 months					
7	**Sablefish**	1,900 lb per week, not to exceed 6,500 lb/ 2 months[7/]	2,000 lb/ week, not to exceed 7,000 lb/ 2 months		2,000 lb/ week, not to exceed 3,500 lb/ 2 months		
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**	2,000 lb/ 2 months					
10	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	**Arrowtooth flounder**						
12	**Petrale sole**						
13	**English sole**						
14	**Starry flounder**						
15	**Other flatfish[1/]**						
16	**Whiting**	10,000 lb/ trip					
17	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor nearshore rockfish & Black rockfish**						
21	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
22	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	8,500 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish [3/]				
23	**Lingcod[4/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Other fish[5/]**	Unlimited					

TABLE 2 (North)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The trip limit that was in place for sablefish north of 36° N. Lat. in Jan-Feb 2011 was "1,750 lb per week, not to exceed 7,000 lb per 2 months".

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 07012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	1,900 lb per week, not to exceed 6,500 lb/ 2 months[6/]	2,000 lb/ week, not to exceed 7,000 lb/ 2 months		2,000 lb/ week, not to exceed 3,500 lb/ 2 months		
7	South of 36° N. lat.	2,000 lb per week[6/]	2,100 lb/ week				
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 2 (South)

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor nearshore rockfish & Black rockfish**							
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
34	Deeper nearshore							
35	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months			
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	1,200 lb/ 2 months[7/]	CLOSED	1,200 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod[3/]**	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Other fish[4/]**	Unlimited						

TABLE 2 (South)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

6/ The trip limit that was in place for sablefish north of 36° N. Lat. in Jan-Feb 2011 was "1,750 lb per week, not to exceed 7,000 lb per 2 months". The trip limit that was in place for sablefish south of 36° N. Lat. in Jan-Feb 2011 was "400 lb per week, not to exceed 1,500 lb per 2 months".

7/ The trip limit that was in place for California scorpionfish south of 40°10' N. Lat. in Jan-Feb 2011 was "600 lb per 2 months".

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 4. Table 3 (North) and Table 3 (South) to part 660, subpart F, are revised to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 07012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 43°00' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
4	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
5	**Minor slope rockfish[1/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
6	**Pacific ocean perch**	100 lb/ month					
7	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	300lb/ day, or 1 landing per week of up to 950 lb, not to exceed 1,900 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 1,050 lb, not to exceed 2,100 lb/ 2 months		
8	**Thornyheads**	CLOSED					
9	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
10	**Arrowtooth flounder**						
11	**Petrale sole**						
12	**English sole**						
13	**Starry flounder**						
14	**Other flatfish[2/]**						
15	**Whiting**	300 lb/ month					
16	**Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
17	**Canary rockfish**	CLOSED					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor nearshore rockfish & Black rockfish**						
20	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
21	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	8,500 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish [3/]				
22	**Lingcod[4/]**	CLOSED		400 lb/ month			CLOSED
23	**Pacific cod**	1,000 lb/ 2 months					
24	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
25	**Other Fish[5/]**	Unlimited					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
26	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish except for yellowtail rockfish and lingcod, as described below)*							**TABLE 3 (North) con't**
27	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.						
28	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*							
29	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.						

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 07012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[1/] & Darkblotched rockfish**						
4	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	**Splitnose**	200 lb/ month					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	300lb/ day, or 1 landing per week of up to 950 lb, not to exceed 1,900 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 1,050 lb, not to exceed 2,100 lb/ 2 months		
9	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 6,000 lb/ 2 months[6/]	300 lb/ day, or 1 landing per week of up to 1,200 lb, not to exceed 2,400 lb/ 2 months				
10	**Thornyheads**						
11	40°10' - 34°27' N. lat.	CLOSED					
12	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
13	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	**Arrowtooth flounder**						
15	**Petrale sole**						
16	**English sole**						
17	**Starry flounder**						
18	**Other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
21	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
22	South of 34°27' N. lat.	750 lb/ 2 months		750 lb/ 2 months	1,000 lb/ 2 months		
23	**Canary rockfish**	CLOSED					
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bronzespotted rockfish**	CLOSED					
27	**Bocaccio**						
28	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
29	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			

TABLE 3 (South)

Table 3 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
30	**Minor nearshore rockfish & Black rockfish**						
31	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months
32	Deeper nearshore						
33	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		
34	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
35	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
36	**Lingcod[3/]**	CLOSED		400 lb/ month			CLOSED
37	**Pacific cod**	1,000 lb/ 2 months					
38	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
39	**Other Fish[4/]**	Unlimited					
40	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
42	*40° 10' - 38° N. lat.*	*100 fm line - 200 fm line [6/]*	*100 fm line [5/] - 150 fm line [5/]*				*100 fm line [5/] - 200 fm line [5/ 6/]*
43	*38° - 34° 27' N. lat.*	*100 fm line [5/] - 150 fm line [5/]*					
44	*South of 34° 27' N. lat.*	*100 fm line [5/] - 150 fm line [5/] along the mainland coast; shoreline - 150 fm line [5/] around islands*					
45		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
46	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
47	South	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) con't

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish. POP is included in the trip limits for minor slope rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
6/ The trip limit that was in place for sablefish south of 36° N. Lat. in Jan-Feb 2011 was "400 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 8,000 lb/ 2 months".

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2011–16512 Filed 6–29–11; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 76, No. 126
Thursday, June 30, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 338

RIN 3206–AL15

Qualification Requirements (General)

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is proposing to revise the regulations governing qualification requirements for appointment to a Federal position in the competitive service. The purpose of these proposed regulations is to update and clarify information regarding citizenship and age requirements, add new information concerning appealing an agency's qualification determination, retitle the *Operating Manual: Qualification Standards for General Schedule Positions* to include other pay plans or systems, and replace the *Operating Manual* with a Web site address for OPM's qualification requirements. These regulations also delete obsolete information regarding purchasing the *Operating Manual* from the Government Printing Office.

DATES: Submit comments on or before August 29, 2011.

ADDRESSES: You may submit your comments through the Federal eRulemaking Portal at: *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

You may also send, fax, or deliver written comments to Angela Bailey, Deputy Associate Director, Recruitment and Hiring, Employee Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6566, Washington, DC 20415–9700; by e-mail to *employ@opm.gov;* or by fax to (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: Brenda B. Cook by telephone (202) 606–0830, by fax (202) 606–2329, or by TTY (202) 418–3134.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is proposing to revise part 338 of title 5, Code of Federal Regulations (CFR), Qualification Requirements (General). Part 338 governs qualification requirements for appointment to a Federal position in the competitive service. These proposed regulations update and clarify information regarding citizenship and age requirements, add the Web site address for qualification requirements, add a new paragraph under subpart C of this part requiring agencies to establish an appeal procedure for applicants who want to appeal their qualification determinations, and delete obsolete information regarding the purchase of the *Operating Manual* from the Government Printing Office.

Under Executive Order 11935, only U.S. citizens or persons who owe permanent allegiance to the United States are eligible for appointment to competitive service positions. To eliminate redundancy, OPM proposes to revise section 338.101 by eliminating paragraph (c) and incorporating information from paragraph (c) concerning the applicability of citizenship and permanent allegiance requirements to all competitive service appointments, into paragraph (a) of the same section. In addition, OPM is proposing to revise paragraph (a) to include a reference to title 8, United States Code, which describes individuals who qualify as U.S. citizens and persons who owe permanent allegiance to the United States.

OPM is proposing to revise paragraph (b) of section 338.101 by citing section 213.3102(bb) as the authority for appointing non-citizens. The reference to section 316.601 as the basis for such appointments will be deleted. Section 213.3102(bb) was established to cover the appointment of non-citizens and is a more appropriate citation than section 316.601. Specifically, section 213.3102(bb) gives OPM the authority to approve an excepted service appointment of a non-citizen to a competitive service position when no qualified U.S. citizens or persons who owe permanent allegiance to the United States are available. Revised paragraph (b) of section 338.101 also clarifies restrictions against moving an appointed non-citizen to any other position without prior OPM approval.

OPM is proposing to revise section 338.301 to change the title of the *Operating Manual: Qualification Standards for General Schedule Positions to Operating Manual for Qualification Standards for General Schedule (or Equivalent) Positions.* This title change is necessary to include white-collar positions that may be subject to the requirements of the *Operating Manual* even though these positions are not under the General Schedule (GS) pay plan or system. As of September 30, 2008, the Civilian Personnel Data File indicates approximately 353,195 white-collar employees work under non-GS pay plans, Government-wide.

Because the OPM Web site is the sole source for current information about qualification requirements and a Web address is necessary to give agencies access to the qualification standards and other requirements, OPM is proposing to add a new paragraph (a) to section 338.301 to include the Web site address for *Operating Manual for Qualification Standards for General Schedule (or Equivalent) Positions* and the *Job Qualification System for Trades and Labor Occupations.*

Because hard copies of the *Operating Manual* are no longer printed, OPM is proposing to remove the reference to the Government Printing Office as a source for purchasing copies of the ''Operating Manual'' from section 338.301.

OPM is proposing to add two new paragraphs (b) and (c) to section 338.301. Proposed paragraph (b) establishes the agency's responsibility for ensuring applicants meet all qualification requirements before appointments or placements in any position in the competitive service. Proposed paragraph (c) refers agencies to 5 CFR part 339 of this subchapter for information about physical and medical qualifications. This cross-reference will ensure that agencies are aware of all qualification requirements, including medical or physical standards, where applicable.

OPM is proposing to add section 338.302, a provision requiring agencies to prescribe a procedure for applicants who wish to appeal their qualification determination for a particular position under 5 CFR 300.104(b) if OPM has

delegated examining authority to the agency.

OPM is proposing to retitle section 338.601, from ''Prohibitions of maximum age-requirement'' to ''Maximum Age Requirements'' and include an exception to the maximum-entry-age requirement for veterans' preference eligibles. The Government has decided to acquiesce in a decision of the Merit Systems Protection Board (MSPB) in *Isabella* v. *Department of State and Office of Personnel Management,* 109 MSPR, 453 (2008) (*Isabella II*); *Isabella* v. *Department of State,* 106 M.S.P.R. 333 (2007) (*Isabella I*). In *Isabella,* the MSPB found that an agency violated the Veteran Employment Opportunities Act of 1998 (VEOA) because there was no demonstration that a maximum entry age was essential to the performance of the duties of the position to which the preference eligible applied. Having considered this decision, OPM has determined to adopt the view that when a qualified veterans' preference eligible applies for a position that imposes a maximum age requirement authorized by 5 U.S.C. 3307, the provisions of 5 U.S.C. 3312(a) require that the hiring authority must waive the maximum age requirement unless it has determined that such a requirement is essential to performance of the duties of the position.

There are several steps an agency must follow when accepting applicants for a position with a maximum-entry-age requirement established by the agency under 5 U.S.C. 3307. The agency must first analyze the affected position to determine whether age is essential to the performance of duties of the position. If the agency decides that age is not essential to the duties of the position, then it must waive the maximum-entry-age requirement for veterans' preference eligible applicants. If the agency decides that age is essential to the duties of the position, the veterans' preference eligible applicants must meet the maximum-entry-age requirement. Applicants who are not preference eligibles must meet any maximum-entry-age requirement established by the agency under 5 U.S.C. 3307, in order to be eligible for appointment.

OPM is proposing to add a new section 338.602 titled ''Minimum age requirements.'' This new section refers to section 551.601 of this chapter on minimum age requirements for Federal employment. This information will better inform agencies about this provision.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 338

Government employees, Veterans.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM proposes to revise title 5, Code of Federal Regulations, part 338 as follows:

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

1. The authority citation for part 338 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3304, 3307, 3312, and 5105; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, E.O. 11935, 3 CFR, 1976 Comp., p. 146.

Subpart A—Citizenship Requirements

2. Revise § 338.101 to read as follows:

§ 338.101 Citizenship.

(a)(1) Except as noted in paragraph (b) of this section, only a United States (U.S.) citizen or a person who owes permanent allegiance to the U.S. may compete for an appointment and be appointed to a position in the competitive service. U.S. citizens and persons who owe permanent allegiance to the U.S. are described in subchapters I and III of chapter 12, title 8, U.S. Code.

(2) Paragraph (a)(1) of this section applies to all appointments in the competitive service, including career; career-conditional; term and temporary appointments; reinstatements; transfers; as well as to other noncompetitive appointments; and conversions to career and career conditional appointments from other appointment types.

(b) Unless the appointment is prohibited by statute, OPM may authorize an agency to appoint an individual who neither is a citizen nor owes permanent allegiance to the U.S. in rare cases under § 213.3102(bb) of this chapter when a qualified U.S. citizen or person who owes permanent allegiance to the U.S. is not available for the position. Once such individual is appointed pursuant to § 213.3102(bb), the agency is then precluded from using any other authority to place that individual in a different position in the competitive service, unless the agency, once again, obtains prior OPM approval.

Subpart C—Consideration for Appointment

3. Revise subpart C to read as follows:

§ 338.301 Competitive service appointments.

(a) Applicants who meet all qualification requirements for competitive service positions in accordance with the *Operating Manual for Qualification Standards for General Schedule (or Equivalent) Positions,* the *Job Qualification System for Trades and Labor Occupations,* and other applicable provisions as appropriate may be considered for competitive service appointments. These manuals are available on OPM's Web site at *http://www.opm.gov/qualifications/.*

(b) Agencies must ensure that applicants meet all applicable eligibility and qualification requirements for consideration and appointment to a competitive service position.

(c) When applicable, applicants must meet the medical and physical requirements of the position in accordance with part 339 of this chapter.

§ 338.302 Appeal of qualification determinations.

When OPM has delegated examining authority to an agency, the agency must establish a procedure for applicants to appeal their qualification determination when they apply for a position pursuant to a job opportunity announcement as set forth in 5 CFR 300.104(b). When OPM has delegated examining authority to an agency, applicants may not appeal to OPM.

Subpart F—Age Requirements

4. Revise § 338.601 to read as follows:

§ 338.601 Maximum age requirements.

(a) Agencies may not set maximum-entry-age requirements for positions in the competitive service except as permitted by 5 U.S.C. 3307(b)–(g).

(b) All qualified applicants must meet the maximum-entry-age requirement established by the agency pursuant to 5 U.S.C. 3307(b)–(g) to be eligible for appointment to such positions.

(c) *Exception to maximum-entry-age requirements.*

(1) Preference eligibles. In order to determine whether to waive a maximum-entry-age requirement, an agency must first analyze the affected position to determine whether age is essential to the performance of the position.

(i) Non-essential—If the agency determines that a maximum-entry-age is not essential to the performance of the duties of the position, then the agency must waive the age requirement for qualified veterans' preference eligible applicants as prescribed by 5 U.S.C. 3312.

(ii) Essential—If the agency determines that a maximum-entry-age is essential to the performance of the duties of the position, the veterans' preference eligible applicant must meet the maximum-entry-age requirement established by the agency under 5 U.S.C. 3307.

5. Add § 338.602 to read as follows:

§ 338.602 Minimum-entry-age requirements.

Minimum-entry-age requirements for all Federal positions are prescribed in § 551.601 of this chapter.

[FR Doc. 2011–16272 Filed 6–29–11; 8:45 am]

BILLING CODE 6325–38–P

COMMODITY FUTURES TRADING COMMISSION

5 CFR Chapter XLI

17 CFR Chapter I

Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for information.

SUMMARY: In accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' the Commodity Futures Trading Commission (''CFTC'' or ''Commission'') intends to review its existing regulations to evaluate their continued effectiveness in achieving the objectives for which they were adopted. In this regard, the Commission has developed a plan to identify and evaluate its regulations periodically to determine whether any such regulations should be modified, expanded, streamlined or repealed in order to make the agency's regulatory program more effective (the ''Plan'').

DATES: Interested parties are encouraged to submit their views on the Plan on or before August 29, 2011.

ADDRESSES: You may make your submission, identified by ''Plan for Retrospective Review,'' by any of the following methods:

- The agency's Web site, at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please make your submission using only one method. All submissions must be in English, or if not, accompanied by an English translation. Your submission may be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language.

FOR FURTHER INFORMATION CONTACT: Maria D. Godel, Assistant General Counsel, Office of General Counsel, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* 202–418–5120 and *electronic mail: mgodel@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. The Executive Order

On January 18, 2011, President Obama issued Executive Order 13563 entitled ''Improving Regulation and Regulatory Review.'' The Executive Order emphasizes several guiding principles, including that: agencies consider the costs and benefits of their regulations and choose the least burdensome path; the regulatory process must be transparent and include public participation; and agencies must attempt to coordinate, simplify and harmonize regulations to reduce costs and promote certainty for businesses and the public. Section 6 of the Executive Order focuses on the importance of maintaining a consistent culture of retrospective review and analysis by agencies of their regulatory programs. To that end, section 6 includes a ''look-back'' provision for agencies to develop a preliminary plan under which the agency will periodically review its existing significant regulations to determine whether any should be modified, streamlined, expanded or repealed in order to make the agency's regulatory program more effective and less burdensome.

In a memorandum dated February 2, 2011, the administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs (''OIRA'') provided guidance to the heads of executive departments and agencies and independent regulatory agencies regarding the principles and requirements of Executive Order 13563 (the ''OIRA Memorandum''). While Executive Order 13563 does not apply to independent agencies, such as the Commission, the OIRA Memorandum encourages independent agencies to give consideration to its provisions, consistent with their legal authority, and to consider undertaking voluntarily retrospective analysis of existing rules.

The OIRA Memorandum emphasizes that in formulating its plan for retrospective review, ''each agency should exercise its discretion to develop a plan tailored to its specific mission, resources, organizational structure and rulemaking history and volume.''

II. The Commission's Plan

As part of the implementation of the Dodd-Frank Wall Street Transparency and Accountability Act (''Dodd-Frank Act''), the Commission already has reviewed many of its existing regulations. In determining the extent to which these existing regulations have needed to be modified to conform to the Dodd-Frank Act's new requirements, the Commission already has subjected many of its rules to scrutiny.[2] As such, ''Phase

[1] 17 CFR 145.9.

[2] For example, the Commission has published notices of proposed rulemakings addressing conforming amendments to its regulations regarding the registration of intermediaries under 17 CFR part 3, 76 FR 12888, Mar. 9, 2011; to conform the requirements under 17 CFR part 4 governing the operations and activities of commodity pool operators and commodity trading advisors consistent with title VII of the Dodd-Frank Act, 76 FR 11701, Mar. 3, 2011; and to make consistent with title VII of the Dodd-Frank Act part 40's provisions common to all registered entities, 75 FR 67282, Nov. 2, 2010. Further, the Commission has published notices of proposed rulemaking to implement changes to core principles for designated contract markets (''DCMs'') and derivatives clearing organizations (''DCOs'') under title VII of the Dodd-Frank Act by revising part 38, applicable to DCMs, and part 39, applicable to DCOs, 75 FR 80572, Dec. 22, 2010; 75 FR 63113, Oct. 14, 2010; 75 FR 77576, Dec. 13, 2010; 75 FR 78185, Dec. 15, 2010; 76 FR 3698, Jan. 20, 2010; and 76 FR 13101, Mar. 10, 2011. The Commission also is engaged in a proposed rulemaking to adapt all applicable CFTC regulations to the Dodd-Frank Act: proposed revisions to part 1 of the Commission's regulations would amend certain fundamental

One'' of the Commission's retrospective review of its existing regulations is (and has been) well underway as a significant effort prior to the issuance of Executive Order 13563 and the OIRA Memorandum.

Accordingly, the Commission's Plan is as follows. After the substantial completion of the promulgation of final rules under the Dodd-Frank rulemaking process, including the revision of various existing Commission regulations to conform to the requirements of the Dodd-Frank legislation, the Commission intends to begin the process of the periodic, retrospective examination of the remainder of its regulations (*i.e.,* those regulations that were not reviewed as part of the Dodd-Frank effort). This process will constitute ''Phase Two'' of the Commission's retrospective review. A Regulatory Review Group (''Group''), consisting of senior agency staff, will be formed to implement the CFTC Plan.

In accordance with the OIRA Memorandum, the Group will solicit public input on which rules should be reviewed. Subsequently, the Group will recommend to the Commission a list of candidate rules for review. To aid the Commission in its consideration, the Group will prioritize the rules recommended for review according to the Commission's statutory mission and resources. The Commission then will determine which rules will be reviewed.

If, as a result of the retrospective review, the Commission determines to propose a revision to an existing regulation, the Commission will provide the public with notice and opportunity for comment as required by the Administrative Procedure Act. Additionally, section 15(a) of the Commodity Exchange Act (''CEA'') provides that before promulgating a regulation under the CEA, the Commission shall consider the costs and benefits of such an action. The CFTC publishes a list of proposed rules that becomes part of the ''Unified Agenda of Federal Regulatory and Deregulatory Actions.'' [3] The Unified Agenda provides uniform reporting of data on regulatory and deregulatory activities under development throughout the federal government. The results of the foregoing process for developing the list of regulations for retrospective review will be integrated into the Unified Agenda.

The Commission encourages interested parties to submit their views on the Plan. Specifically, the Commission seeks submissions that address the following:

1. As stated above, as ''Phase Two'' of its retrospective review, the Commission intends to examine those regulations that were not reviewed as part of the Dodd-Frank rulemaking process (including the revision of various existing Commission regulations to conform to the requirements of the Dodd-Frank legislation). Are there any of the Commission's other regulations, presently intended for potential examination under ''Phase Two'' that should, instead, be reviewed before the substantial completion of the Dodd-Frank rulemaking and conformation process?

2. What criteria should the Commission use to prioritize the review of existing regulations?

3. As the Executive Order and OIRA Memorandum indicate, the Executive Order does not apply to independent agencies. Which of the principles and guidelines with respect to retrospective review should the Commission voluntarily adopt? Are there any principles or guidelines that are not appropriate for the Commission to voluntarily adopt?

Issued in Washington, DC, on June 23, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Retrospective Review of Agency Rules—Concurring Statement of Commissioner Jill E. Sommers

I am pleased the Commission has expressed its intent to periodically engage in a retrospective review of its regulations to determine whether any should be modified, streamlined, expanded or repealed in accordance with Executive Order 13563. Executive Order 13563, which reaffirms and builds upon Executive Order 12866 of September 30, 1993, sets forth a blueprint for promulgating regulations in a manner that is transparent and designed to achieve regulatory goals in the least burdensome, most cost-effective way. Taken together, the orders emphasize the importance of public participation in rulemaking, adopting rules only upon a reasoned determination that the benefits justify the costs, and maintaining flexibility by specifying performance objectives rather than prescriptive rules, where possible. I wholeheartedly agree with the regulatory philosophy embodied in the Executive Orders and support the Commission's determination to seek comment on which of the principles and guidelines with respect to retrospective review the Commission should voluntarily adopt. I write separately to express my concern, based upon the record of the Dodd-Frank rulemaking process thus far, that the Commission is not complying with either the letter or the spirit of the Executive Orders.

The Commission states that ''Phase One'' of a retrospective analysis is already well underway through its review of its pre-Dodd-Frank rulebook and various proposed conforming amendments. While I agree that amendments to the existing rules will be necessary to conform with new Dodd-Frank definitions and requirements, I objected to the timing of some of the proposals, which in my view were premature because final rules establishing certain definitions and requirements had not yet been adopted. We will inevitably have to engage in a round of conforming amendments to the conforming amendments once the rules upon which they are based are finalized. Rushing conforming amendment proposals in the guise of complying with Executive Order 13563 is, in my opinion, disingenuous and an inefficient use of both the Commission's and the public's resources.

The Commission also cites its proposed rulemakings to implement new requirements for complying with the core principles for designated contract markets and derivatives clearing organizations as a ''Phase One'' retrospective analysis initiative. Again, changes to the Commission's guidance and acceptable practices for complying with core principles are in order given the Dodd-Frank amendments. My objection here is that, contrary to the Executive Orders, the Commission has proposed detailed prescriptive rules for complying with the core principles rather than preserving the flexibility that was intended by Congress and encouraged by the President.

I have objected in the past to the Commission's failure to conduct a robust cost-benefit analysis in connection with its Dodd-Frank proposals. And I have yet to see evidence at the proposal stage that we are truly looking for the least burdensome, most cost-effective way to meet regulatory goals. I believe that a

definitions and recordkeeping rules; conforming changes to parts 5 (off-exchange foreign currency transactions); 7 (registered entity rules altered or supplemented by the Commission); 41 (Security futures products); 15 (general reports); 18 (reports by traders); 21 (special calls); 36 (exempt markets); 140 (organization, functions and procedures); 145 (Commission records and information); 155 (trading standards) and 166 (customer protection) also have been proposed, 76 FR 33066, Jun. 7, 2011.

[3] *See* the CFTC's Unified Agenda at: *http://www.refinfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agecyCd=3038&Image58.x=39&Image58.y=7.*

retrospective review of rules is an important part of the regulatory process as long as it does not impose additional burdens to the agency and to the public. I urge the Commission as we move forward with finalizing rules to consider the goals of the Executive Orders.

[FR Doc. 2011–16430 Filed 6–29–11; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 357

[Docket No. APHIS–2010–0129]

RIN 0579–AD44

Implementation of Revised Lacey Act Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food, Conservation and Energy Act of 2008 amended the Lacey Act to provide, among other things, that importers submit a declaration at the time of importation for certain plants and plant products. The declaration requirements of the Lacey Act became effective on December 15, 2008, and enforcement of those requirements is being phased in. We are soliciting public comment on regulatory options that could address certain issues that have arisen with the implementation of the declaration requirement. These options include establishing certain exceptions to the declaration requirement and modifying the Declaration Form PPQ 505 to simplify the collection of information.

DATES: We will consider all comments that we receive on or before August 29, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2010-0129-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2010–0129, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0129* or in our reading room, which 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.

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Staff Officer, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 734–5783.

SUPPLEMENTARY INFORMATION:

Background

The Lacey Act (16 U.S.C. 3371 *et seq.*), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in ''illegal'' wildlife, fish, or plants. The Food, Conservation and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). The Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported, or sold in violation of the laws of the United States, a State, an Indian tribe, or any foreign law that protects plants. The Lacey Act also now makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant.

In addition, Section 3 of the Lacey Act, as amended, makes it unlawful, beginning December 15, 2008, to import certain plants, including plant products, without an import declaration. The declaration must contain the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested.

On October 8, 2008, we published a notice in the **Federal Register** (73 FR 58925–58927, Docket No. APHIS 2008–0119) announcing our plans to begin phased-in enforcement of the declaration requirement on April 1, 2009, and providing dates and products covered for the first three phases of enforcement. We solicited comments on the proposed plan for phasing in enforcement for 60 days ending on December 8, 2008, and received 124 comments by that date. On February 3, 2009, we published a second notice in the **Federal Register** (74 FR 5911–5913, Docket No. APHIS 2008–0119) and provided a revised, more detailed phase-in schedule based on comments we received in response to the October notice. We solicited comment on the revised phase-in plan for 60 days ending on April 6, 2009, and received 41 comments by that date. The comments covered a range of topics, including the scope of the declaration requirement, the specific products covered in each phase, definitions of terms, length of phases, effects on trade and industry, and enforcement issues. On September 2, 2009, we published a third notice in the **Federal Register** (74 FR 45415–45418, Docket No. APHIS–2008–0119) and provided a further revised, more detailed phase-in schedule based on comments we received in response to the April notice as well as our experience with implementation to that date. We solicited comment on the revised phase-in plan for 60 days ending on November 2, 2009, and received 67 comments by that date.

We are publishing this advance notice of proposed rulemaking in order to seek information and develop regulatory options on the following issues:

1. Whether an exception from the declaration requirement for products containing minimal amounts of plant material could be developed that would be less burdensome while still carrying out the intent of the Lacey Act amendments;
2. How importers may comply with the declaration requirement when importing composite plant products whose genus, species, and country of harvest of some or all of the plant material may be extremely difficult or prohibitively expensive to determine;
3. How to accommodate products made of re-used plant materials, or plant materials harvested or manufactured prior to the 2008 Lacey Act amendments, and for which identifying country of harvest, and possibly species, would be difficult if not impossible; and
4. Whether groups of species commonly used in commercial production, could be given a separate name that could be entered on the declaration form as a type of shorthand identification of genus and species, such as the currently recognized ''SPF'' acronym for ''spruce, pine, and fir.''

Declaration Requirement for Shipments Containing Minimal Plant Materials

The Lacey Act does not explicitly address whether the declaration requirement is intended to apply to imported products that contain only minimal amounts of plant material. It is not ideal to apply this requirement to minimal amounts of non-listed (i.e., not

of conservation concern) plant materials contained in an otherwise non-plant product, such as wooden buttons on a shirt. Instead this issue might be efficiently addressed by describing a level at which the declaration requirement does not apply. Some commenters on our previous notices referred to this as a de minimis exception from the declaration requirement. Such a de minimis exception would be designed to ensure that the declaration requirement fulfills the purposes of the Lacey Act without unduly burdening commerce. Therefore, the exception would not apply to products containing plant material from species of conservation concern that are listed in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 27 UST 1087; TIAS 8249); as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

We are considering the feasibility of defining a de minimis exception for products containing minimal amounts of plant material. We invite comment on defining a threshold in terms of the volume, weight, or value of plant material in each item being imported, or using some combination of all three measures. We also invite comment on whether the threshold of the plant material should be set at 2 percent, 5 percent, or 10 percent of a product, and whether that percentage of the plant content should be based on volume, weight, or value of the item being imported. We also seek public comment on whether the de minimis exception should be based on a certain percentage of just one of these characteristics (volume, weight, or value) of the entry, or whether it should be based on a combination of two or three of these characteristics.

Declaration Requirement for Goods With Composite Plant Materials

The Lacey Act's declaration requirements do not address the issue of how to comply with the declaration requirements when importing goods for which identifying all of the plant material in the product by genus and species is extremely difficult or prohibitively expensive; however, the comments received to date demonstrate that many composite plant products are manufactured in a manner that makes identification of the genus and species of all of the plant content difficult and perhaps prohibitively expensive.

One approach we are considering is to define the term ''composite plant materials'' and then formally recognize a de minimis exception from the declaration requirement for products containing such materials for the purposes of Section 3 of the Lacey Act. Using this approach, we might define ''composite plant materials'' as plant products and plant-based components of products where the original plant material is mechanically or chemically broken down and subsequently re-composed or used as an extract in a manufacturing process. Such a definition would also need to include exceptions for species listed in an appendix to CITES; as an endangered or threatened species under the Endangered Species Act of 1973; or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

We also invite comments on two possible approaches to incorporating such a definition into a de minimis exception from the declaration requirement for composite plant materials. In the first approach, if the plant product being imported is composed in whole or in part of a composite plant material, importers would have to identify the genus, species, and country of harvest of no less than a given percentage of the composite plant material content, measured on the basis of either weight or volume.

In the second approach, where the plant product being imported is composed in whole or in part of a composite plant material, the declaration would have to contain the average percent composite plant content, measured on the basis of either weight or volume, without regard for the species or country of harvest of the plant, in addition to information as to genus, species, and country of harvest for any non-composite plant content.

We invite comment on the possibility of defining composite plant products and implementing either of the approaches described above. We particularly invite comment on the possibility of using the *Genus* spp. format (for example, *Acer* spp.) for certain composite plant materials in limited circumstances both as to the scope of composite plant materials covered and the scope of the circumstances in which the format may be used for those limited materials. We also invite comment on possible percentages that could be used as a threshold for a de minimis exception from the declaration requirement for composite plant materials.

Declaration Requirement for Dated Products

We recognize that it may be difficult to determine and report the scientific name and/or country of harvest of plants in some products made of re-used plant materials, or harvested or manufactured prior to the passage of the Lacey Act Amendments of 2008. We do not believe that it was the intention of the amendments to prevent all such products from entering the United States. However, the Act as amended, including the plant import declaration requirement, applies to all imports of plants, plant parts, and products thereof as of the effective date of the amendments. We currently allow an importer to declare that the product being imported was manufactured prior to May 22, 2008, and that in the exercise of due care the genus, species, and/or country of harvest is unknown. The importer must still provide on the declaration form all known or reasonably knowable genus, species, and country of harvest information, and, as explained below, the person completing the declaration must certify that the declaration is correct to the best of his or her knowledge. An Animal and Plant Health Inspection Service-designated Special Use Code is provided to streamline the declaration of materials manufactured prior to the amendment. We anticipate that this approach would allow for trade in existing inventories and would diminish in use rapidly, ultimately applying largely to antique products, or those being re-sold. We invite comments on this practice.

Declaration Revision

Public comments and our experience implementing the declaration to date have drawn attention to the need to revise the declaration form to improve its effectiveness and remove unnecessary burdens associated with providing the required information. Comments on previous notices have drawn particular attention to the burden associated with providing scientific name, country of harvest, and plant quantity information for each plant component of products in a shipment, especially when the declaration is required for complex products, such as furniture. In response to these comments, we simplified the declaration so that the scientific name and country of harvest information need not be reported for each article or component of an article in an entry but can instead be provided for the entry as a whole. That is, the amount of each species, by country of harvest, is

required only in total for each Harmonized Tariff Schedule code. Importers are still permitted to report the scientific name information by article or component of article if that organizational structure is preferable. This has significantly reduced the lines of data entry required while causing little reduction in the enforcement utility of the information. However, the importer of record is still required to maintain records documenting the information used to calculate these total amounts for 5 years, should it be needed to facilitate an inspection or substantiate the totals provided.

The declaration could also be revised to substitute a new term in place of the term ''country of harvest,'' which experience has indicated is so similar to the Customs term ''country of origin'' as to be confusing. We are considering using the phrase ''harvest location (by country)'' to attempt to more clearly distinguish this information from the Customs concept of country of origin of the merchandise.

The declaration form could be further revised to accommodate the changes and proposals described above. These changes could include revision of the form to collect information required for composite materials (the percent composite material in the shipment, for which it is not possible to identify species and/or country of harvest). In addition, the revised form could have a box that would have to be checked when an importer needs to report goods manufactured prior to May 22, 2008, for which the importer cannot determine, in the exercise of due care, the genus, species and/or country of harvest of those plant products. The box would state that the plant products were manufactured prior to May 22, 2008, and that in the exercise of due care, the importer has been unable to determine the genus, species, and/or country of harvest information that is lacking on the declaration form.

We are soliciting comments on these possible changes to the declaration form.

Declaration of Genus and Species Using Species Groupings

We also recognize that the declaration requirement to identify the genus and species of all plants that may be contained in covered products may frequently require declarations to contain long lists of species. A number of commenters requested that recognized groups of common species often traded in combination in similar percentages in particular industries be allowed to be declared under a single shorthand definition. In a previous notice we specifically invited comments on the use of species groups, such as ''SPF'' for spruce, pine and fir, when such groups accurately describe the species that may be contained in the product(s) covered by the declaration. We received a number of comments supporting this approach and no comments in opposition. Therefore, we have begun to provide reference codes for such groups, along with the lists of species included in each group, on the APHIS Web site at *http://www.aphis.usda.gov/plant_health/lacey_act/.*

In addition, we invite proposals for additional groupings to be considered. Any proposal for a species group should contain the complete list of species to be included and additional information with which we can evaluate the extent to which the proposed group is currently represented in goods in international trade. Only those species group codes posted on the APHIS Web site can be used to meet the requirement to provide genus and species information on the plant import declaration.

The Web site also contains the text of the Lacey Act, as amended, the declaration form and enforcement schedule, guidance on compliance with the provisions of the Act, and links to previous **Federal Register** publications. The Web site will be updated as new materials become available.

Persons interested in receiving updates on APHIS's Lacey Act efforts should register for our stakeholder registry at *https://web01.aphis.usda.gov/PPQStakeWeb2.nsf* and select ''Lacey Act Declaration'' as a topic of interest.

This action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Authority: 16 U.S.C. 3371 *et seq.;* 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 24th day of June 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–16406 Filed 6–29–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0649; Directorate Identifier 2011–NM–076–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require replacing the rub strips of the tail fuel tank access door with new rub strips. This proposed AD was prompted by a report that the rub strips of the tail fuel tank access door were manufactured improperly. We are proposing this AD to prevent inadequate electrical bonding between the rub strips and the fuel access door, which can contribute to possible ignition of flammable fuel vapor in the tail fuel tank as a result of a lightning strike.

DATES: We must receive comments on this proposed AD by August 15, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5263; fax: 562–627–5210; e-mail: *philip.kush@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0649; Directorate Identifier 2011–NM–076–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received a report that the rub strips of the tail fuel tank access door were manufactured improperly. These rub strips were inadvertently anodized (electrically non-conductive) instead of alodined (electrically conductive) as prescribed in design drawings. Anodization of the rub strips may prevent adequate electrical bonding between the rub strips and the doors. Inadequate electrical bonding can contribute to possible ignition of flammable fuel vapor in the tail fuel tank as a result of a lightning strike.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin MD11–55–027, dated March 17, 2011. The service information describes procedures for replacing the rub strips of the tail fuel tank access door with new rub strips. Replacing anodized rub strips with alodined rub strips will provide adequate electrical bonding between the rub strips and the fuel access doors.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 120 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace rub strips	32 work-hours × $85 per hour = $2,720	$0	$2,720	$326,400

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–0649; Directorate Identifier 2011–NM–076–AD.

Comments Due Date

(a) We must receive comments by August 15, 2011.

Affected ADs

(b) None.

Applicability

(c) The Boeing Company Model MD–11 and MD–11F airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin MD11–55–027, dated March 17, 2011.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 5510: Tail Fuel Tank Access Door.

Unsafe Condition

(e) This AD was prompted by a report that the rub strips of the tail fuel tank access door were manufactured improperly. We are issuing this AD to prevent inadequate electrical bonding between the rub strips and the fuel access door, which can contribute to possible ignition of flammable fuel vapor in the tail fuel tank as a result of a lightning strike.

Compliance

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

Installation

(g) Within 60 months after the effective date of this AD, replace the rub strips of the tail fuel tank access door with new rub strips, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin MD11–55–027, dated March 17, 2011.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) For more information about this AD, contact Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5263; fax: 562–627–5210; e-mail: *philip.kush@faa.gov.*

(j) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 22, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–16479 Filed 6–29–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA–R03–OAR–2010–0475; FRL–9426–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; 2002 Base Year Emission Inventory, Reasonable Further Progress Plan, Contingency Measures, Reasonably Available Control Measures, and Transportation Conformity Budgets for the Washington, DC Area 1997 8-Hour Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia (the States). These revisions pertain to the 2002 base year emissions inventory, the reasonable further progress (RFP) plan, RFP contingency measure, and reasonably available control measure (RACM) requirements of the Clean Air Act (CAA) for the Washington, DC area moderate 1997 8-hour ozone nonattainment area (Washington Area). EPA is also proposing to approve the transportation conformity motor vehicle emissions budgets (MVEBs) associated with this revision. EPA is proposing to approve the SIP revisions because they satisfy the emission inventory, RFP, RACM, RFP contingency measures, and transportation conformity requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and demonstrate further progress in reducing ozone precursors. This action is being taken under the CAA.

DATES: Written comments must be received on or before August 1, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0475 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0475, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0475. 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 electronic docket are listed in the *http://www.regulations.gov* index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 51 N Street, NE., Fifth Floor, Washington, DC 20002; the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: The following is provided to aid in locating information in this document.

Table of Contents

I. What is the background of this action?
II. What is EPA's evaluation of the revision?
III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia
IV. What action is EPA proposing?
V. Statutory and Executive Order Reviews

I. What is the background of this action?

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the Washington Area. The Washington Area includes the District of Columbia (the District); Arlington, Fairfax, Loudoun, and Prince William Counties and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia (the Northern Virginia area) and Calvert, Charles, Frederick, Montgomery, and Prince George's Counties in Maryland. Pursuant to Phase 1 of the 1997 8-hour ozone implementation rule (Phase 1 rule), published on April 30, 2004 (69 FR 23951), an area was classified under Subpart 2 of the CAA based on its 8-hour design value if that area had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of Subpart 2). Based on this criterion, the Washington Area was classified under Subpart 2 as a moderate nonattainment area. See 40 CFR 81.309, 81.321, and 81.347.

These designations triggered the CAA's section 110(a)(1) requirement that states must submit attainment demonstrations for their nonattainment areas to EPA by no later than three years after the promulgation of a NAAQS. Accordingly, EPA's Phase 1 specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007.

On November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727), EPA published the Phase 2 final rule for implementation of the 1997 8-hour standard (Phase 2 rule). The Phase 2 rule addressed the RFP control and planning obligations as they apply to areas designated nonattainment for the 1997 8-hour ozone NAAQS.

Among other things, the Phase 1 and 2 rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. The rules further require that modeling and attainment demonstrations, reasonable further progress plans, reasonably available control measures, projection year emission inventories, motor vehicle emissions budgets, and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a), (c)).

Section 182(b)(1) of the CAA and EPA's 1997 8-hour ozone implementation rule (40 CFR 51.910) require each 8-hour ozone nonattainment area designated moderate and above to submit an emissions inventory and RFP Plan for review and approval into its SIP.

II. What is EPA's evaluation of the revision?

The District of Columbia Department of the Environment (DDOE), the Maryland Department of the Environment (MDE), and the Virginia Department of Environmental Quality (VADEQ) worked together to develop a joint plan for the Washington Area to address the attainment demonstration, 2002 base year emissions inventory, the RFP plan, RFP contingency measure, and RACM requirements. This plan, entitled ''Plan to Improve Air Quality in the Washington, DC–MD–VA Region, State Implementation Plan (SIP) for 8-Hour Ozone Standard, Moderate Area SIP,'' will be referred to as ''the Washington Area 8-hour ozone plan'' throughout this document. The Washington Area 8-hour ozone plan was submitted to the EPA as a SIP revision by DDOE on June 12, 2007, by MDE on June 4, 2007, and by VADEQ on June 12, 2007. These SIP revisions also establish a MVEB for 2008 for the Washington Area. These SIP revisions were subject to notice and comment by the public and the States addressed the comments received on the proposed SIPs. All sections of these SIP submittals, with the exception of the attainment demonstration, will be discussed in this rulemaking. The attainment demonstration sections of the SIP submittals will be discussed in a separate rulemaking.

A. Base Year Emissions Inventory

An emissions inventory, required by section 172(c)(3) of the CAA, is a comprehensive, accurate, current inventory of actual emissions from all sources. For ozone nonattainment areas, the emissions inventory needs to contain volatile organic compound (VOC) and oxides of nitrogen (NO_X) emissions because these pollutants are precursors to ozone formation. EPA recommended 2002 as the base year emissions inventory, and is therefore the starting point for calculating RFP. A summary of the Washington Area 2002 base year VOC and NO_X emissions inventories is included in Table 1, below.

TABLE 1—WASHINGTON AREA 2002 BASE-YEAR VOC EMISSIONS IN TONS PER DAY (TPD)

Emission source category	VOC	NO_X
Point	12.91	220.6
Stationary Area	192.64	24.25
Non-Road Mobile	125.79	85.72
On-Road Mobile	116.94	266.65

TABLE 1—WASHINGTON AREA 2002 BASE-YEAR VOC EMISSIONS IN TONS PER DAY (TPD)—Continued

Emission source category	VOC	NO_X
Total (excluding Biogenics)	448.28	597.22
Biogenics	314.74	3.07

EPA reviewed the 2002 base year inventory for the Washington Area and determined that the procedures, methodologies, and results used to develop the Washington Area 2002 base year inventory are approvable.

B. Adjusted Base Year Inventory, 2008 RFP Target Levels

The process for determining the emissions baseline from which the RFP reductions are calculated is described in section 182(b)(1) of the CAA and 40 CFR 51.910. This baseline value has been determined to be the 2002 adjusted base year inventory. Sections 182(b)(1)(B) and (D) require the exclusion from the base year inventory of emissions benefits resulting from the Federal Motor Vehicle Control Program (FMVCP) regulations promulgated by January 1, 1990 and the Reid Vapor Pressure (RVP) regulations promulgated June 11, 1990 (55 FR 23666). The FMVCP and RVP emissions reductions are determined by the state using EPA's on-road mobile source emissions modeling software, MOBILE6. The FMVCP and RVP emission reductions are then removed from the base year inventory by the state, resulting in an adjusted base year inventory. The emission reductions needed to satisfy the RFP requirement are then calculated from the adjusted base year inventory. These reductions are then subtracted from the adjusted base year inventory to establish the emissions target for the RFP milestone year (2008).

For moderate areas like the Washington Area, the CAA specifies a 15 percent reduction in ozone precursor emissions over an initial 6-year period. In the Phase 2 Rule (70 FR 71612), EPA interpreted this requirement for areas that were also designated nonattainment and classified as moderate or higher for the 1-hour ozone standard. In the Phase 2 Rule, EPA provided that an area classified as moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which EPA fully approved a 15 percent plan for the 1-hour NAAQS, is considered to have met the requirements of section 182(b)(1) of the CAA for the 8-hour NAAQS. In this situation, a moderate nonattainment area is subject to RFP under section 172(c)(2) of the CAA and shall submit, no later than 3 years after designation for the 8-hour NAAQS, a SIP revision that meets the requirements of 40 CFR 51.910(b)(2). The RFP SIP revision must provide for a 15 percent emission reduction (either NO_X and/or VOC) accounting for any growth that occurs during the 6-year period following the baseline emissions inventory year, that is, 2002–2008.

The Washington nonattainment area under the 1-hour ozone standard was classified as severe. For the 1-hour ozone NAAQS, EPA fully approved the 15 percent ROP plans for the Washington, DC 1-hour severe ozone nonattainment area on August 5, 1999 (64 FR 42600), July 44686), and October 6, 2000 (65 FR 59727). Therefore, according to the Phase 2 Rule, the RFP plan for the Washington Area may use either NO_X or VOC emissions reductions (or both) to achieve the 15 percent emission reduction requirement.

According to section 182(b)(1)(D) of the CAA, emission reductions that resulted from the FMVCP and RVP rules promulgated prior to 1990 are not creditable for achieving RFP emission reductions. Therefore, the 2002 base year inventory must be adjusted by subtracting the VOC and NO_X emission reductions that are expected to occur between 2002 and the future milestone years due to the FMVCP and RVP rules.

The States set out the calculations for the adjusted base year inventory and 2008 RFP target levels. The Washington Area 2002 anthropogenic base year inventory is shown in Table 2, below.

TABLE 2—WASHINGTON AREA 2002 ANTHROPOGENIC BASE YEAR INVENTORY

[Ozone season tpd]

Source category	VOC	NO_X
Point	12.91	220.6
Area	192.64	24.25
Nonroad	125.79	85.72
On-Road	116.94	266.65
Total	448.28	597.22

The States calculated the non-creditable emission reductions between 2002 and 2008 by modeling its 2002 and 2008 motor vehicle emissions with all post-1990 CAA measures turned off, and calculating the difference, as shown below in Table 3.

TABLE 3—WASHINGTON AREA NON-CREDITABLE EMISSION REDUCTIONS

[Ozone season tpd]

Source category	VOC	NO_X
(i) 2002 On-Road	166.55	308.24
(ii) 2008 On-Road	154.10	276.63
Non-creditable Reductions (i)–(ii)	12.45	31.61

The State's calculations of the Washington Area 2002 VOC inventory adjusted to 2008 and the VOC target level for 2008 are summarized in Table 4, below.

TABLE 4—WASHINGTON AREA 2008 RFP TARGET LEVEL CALCULATIONS

[Ozone season tpd]

Description	Formula	VOC
A—2002 Rate-Of Progress Base Year Inventory	.....	448.28
B—FMVCP/RVP Reductions Between 2002 And 2008	.....	12.45
C—2002 Adjusted Base Year Inventory Relative To 2008	A–B	435.83
D—RFP Ratio	.....	15%
E—Emissions Reductions Required Between 2002 & 2008	C * D	65.37
F—Target Level for 2008	C – E ..	370.45

The States elected to meet RFP in the Washington Area using only VOC reductions. A moderate 8-hour ozone nonattainment area with an approved 15 percent ROP plan under the 1-hour standard can use reductions from VOC or NO_X or a combination of either.

C. Projected Inventories and Determination of RFP

The States described the methods used for developing its 2008 projected

VOC and NO_X inventories and developed projected uncontrolled and controlled 2008 VOC and NO_X emissions. EPA reviewed the procedures used to develop the projected inventories and found them to be reasonable.

Projected controlled 2008 emissions for the Washington Area are summarized in Table 5, below.

TABLE 5—WASHINGTON AREA 2008 PROJECTED CONTROLLED VOC & NO_X EMISSIONS (TPD)

Emission source category	VOC emissions (tpd)	NO_X emissions (tpd)
Point	13.98	229.36
Area	181.59	26.93
Nonroad	92.48	76.91
Mobile	70.98	160.30
Total	358.84	493.22

To determine if 2008 RFP is met in the Washington Area, the total projected controlled emissions must be compared to the target levels calculated in Section B of this notice. As shown below in Table 6, the total VOC emission projections meet the 2008 RFP emission target. Therefore, the 2008 RFP in the Washington Area is demonstrated.

TABLE 6—DETERMINATION OF WHETHER RFP IS MET IN 2008 IN THE WASHINGTON AREA

Description	VOC emissions (tpd)
A—Total 2008 Projected Controlled Emissions	358.84
B—Target Level for 2008	370.45
RFP met if A < B	Yes

D. Control Measures and Emission Reductions for RFP

To meet the RFP requirement for the Washington Area, the States used a combination of area source control, nonroad mobile, and on-road mobile measures.

The area source measures the States used to meet 2008 RFP in the Washington Area include the mobile repair and refinishing rule, phase I of the portable fuel containers rule, the architectural and industrial maintenance (AIM) coatings rule, phase I of the reformulated consumer products rule, and the solvent cleaning operations rule. Area source 2008 emission reductions are 30.98 tpd VOC and 0 tpd NO_X.

Nonroad measures include phase I and II emissions standards for gasoline-powered nonroad utility engines, the Federal non-road diesel engines rule, Federal emissions standards for spark ignition marine engines, Federal emissions standards for large spark ignition engines, and Federal reformulated gasoline use in nonroad motor vehicles and equipment. Using EPA's NONROAD model, the States calculated emission reductions from these measures to be 36.91 tpd VOC and 11.68 tpd NO_X. EPA reviewed the procedures that the State's used to develop its projected inventories, including the use of the NONROAD model, and found them to be reasonable.

On-road mobile measures include high-tech vehicle inspection and maintenance (enhanced I/M), Federal tier I vehicle emission standards and new Federal evaporative test procedures, the national low emission vehicle (NLEV) program, tier 2 vehicle standards, and the heavy duty diesel engine (HDDE) rule. On-road 2008 emission reductions that the States calculated using EPA's MOBILE model are 6.19 tpd VOC and 29.67 tpd NO_X. EPA reviewed the procedures that the States used to develop the projected inventories, including the use of the MOBILE model, and found them to be reasonable.

Additional measures include national standards for locomotives, transportation control measures (TCMs) and vehicle technology, fuel, or maintenance measures, and a voluntary bundle. Table 7 summarizes the VOC emission reductions that the States claimed in the Washington Area 8-hour ozone plan to meet RFP in the Washington Area. While many of the emission control measures used to meet RFP also resulted in NO_X emission reductions, the States elected to meet RFP in the Washington Area using only VOC reductions.

TABLE 7—VOC CONTROL MEASURES AND 2008 EMISSION REDUCTIONS IN THE WASHINGTON AREA

Control measure	VOC (tpd)
Area Sources Measures	30.98
Nonroad Measures (NONROAD Model)	36.91
Onroad Measures (MOBILE Model)	6.19
Locomotive Standards	0.05
Transportation Control Measures	0.19
Voluntary Bundle	0.19
Total	74.51

E. Contingency Measures for Failure To Meet RFP

Section 172(c)(9) of the CAA requires a state with a moderate or above ozone nonattainment area to include sufficient additional contingency measures in its RFP plan in case the area fails to meet RFP. The same provision of the CAA also requires that the contingency measures must be fully adopted control measures or rules. Upon failure to meet an RFP milestone requirement, the state must be able to implement the contingency measures without any further rulemaking activities. Upon implementation of such measures, additional emission reductions of at least 3 percent of the adjusted 2002 baseline emissions must be achieved. For more information on contingency measures, see the April 16, 1992 General Preamble (57 FR 13512) and the November 29, 2005 Phase 2 8-hour ozone implementation rule (70 FR 71612).

To meet the requirements for contingency emission reductions, EPA allows states to use NO_X emission reductions to substitute for VOC emission reductions in their contingency plans. However, the States chose to use only VOC reductions to meet the contingency measure requirement in the Washington Area. The States calculated the contingency VOC reduction for the Washington Area as shown in Table 8, below. The RFP contingency requirement may be met by including in the RFP plan a demonstration of 18 percent VOC & NO_X RFP. The additional 3 percent reduction above the 15 percent requirement must be attributed to specific measures.

TABLE 8—WASHINGTON AREA 2008 RFP CONTINGENCY MEASURE TARGET LEVEL CALCULATIONS

Description	Formula	VOC	NO_X
A—2002 Rate-Of Progress Base Year Inventory		448.28	597.22
B—FMVCP/RVP Reductions Between 2002 and 2008		12.45	31.61

TABLE 8—WASHINGTON AREA 2008 RFP CONTINGENCY MEASURE TARGET LEVEL CALCULATIONS—Continued

Description	Formula	VOC	NO_X
C—2002 Adjusted Base Year Inventory Relative To 2008	A − B	435.83	565.61
D—RFP Ratio		15%	0
E—RFP Emissions Reductions Required Between 2002 & 2008	C * D	65.37	0
F—Contingency Percentage		0.3%	2.7%
G—Contingency Emission Reduction Requirements	C * F	1.31	15.27
H—Contingency Measure Target Level for 2008	C − E − G	369.15	550.34

To determine if the States meet the three percent contingency measure requirement for the Washington Area, the total projected controlled emissions must be compared to the contingency measure target levels calculated above. As shown below in Table 9, the total VOC and NO_X emission projections meet the 2008 contingency measure targets. Therefore, the States have met the contingency measure requirement for the Washington Area.

TABLE 9—EVALUATION OF THE WASHINGTON AREA 2008 RFP CONTINGENCY MEASURE REQUIREMENT

Description	VOC (tpd)	NO_X (tpd)
A—Total 2008 Projected Controlled Emissions	358.84	493.22
B—Contingency Measure Target Level for 2008	369.15	550.34
Contingency measure requirement met if A < B	Yes	Yes

F. RACM Analysis and Determination

Pursuant to section 172(c)(1) of the CAA, states are required to implement all RACM as expeditiously as practicable for each nonattainment area. Specifically, section 172(c)(1) states the following: ''In general—Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.'' Furthermore, in EPA's Phase 2 Rule, EPA describes how states must include a RACM analysis with their attainment demonstration (70 FR 71659). The purpose of the RACM analysis is to determine whether or not reasonably available control measures exist that would advance the attainment date for nonattainment areas. Control measures that would advance the attainment date are considered RACM and must be included in the SIP. RACM are necessary to ensure that the attainment date is achieved ''as expeditious as practicable.'' RACM is defined by the EPA as any potential control measure for application to point, area, on-road and nonroad emission source categories that meets the following criteria:

- The control measure is technologically feasible;
- The control measure is economically feasible;
- The control measure does not cause ''substantial widespread and long-term adverse impacts;''
- The control measure is not ''absurd, unenforceable, or impracticable;'' and
- The control measure can advance the attainment date by at least one year.

The States evaluated 322 potential stationary, area, nonroad, and mobile source control measures against the RACM criteria. Several measures would have provided some emission reductions. However, the States determined that none of the mandatory measures would achieve reductions in the 2008 ozone season. Therefore, the States concluded that there are no RACM appropriate to advance the Washington Area's attainment date.

EPA has reviewed the States' analysis. To meet the RACM requirement, the States must demonstrate that it has adopted all RACM necessary to move the Washington Area toward attainment as expeditiously as practicable and to meet all RFP requirements. As demonstrated above in section IV of this document, the States have met the RFP requirements for the Washington Area.

The States evaluated all source categories that could contribute meaningful emission reductions, and compiled an extensive list of potential control measures. Furthermore, the States considered the time needed to develop and adopt regulations and the time it would take to see the benefit from these measures. While the States found that the measures could not be used to advance the Washington Area's attainment date, the State's determined that many of the measures were useful and would be considered for future SIPs for the Washington Area. Therefore, EPA concurs with the States' conclusion that there are no RACM that would have advanced the 2010 attainment date for the Washington Area.

G. Transportation Conformity Budgets

Transportation conformity is required by CAA section 176(c). EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedure for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which EPA determines whether a SIP's MVEBs are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). The process for determining the adequacy of submitted SIP budgets is described in 40 CFR 93.118(f).

States must establish VOC and NO_X MVEBs for each of the milestone years up to the attainment year and submit the mobile budgets to EPA for approval. Upon adequacy determination or approval by EPA, states must conduct transportation conformity analysis for their Transportation Improvement Programs (TIPs) and long range transportation plans to ensure highway vehicle emissions will not exceed relevant MVEBs. Failure to demonstrate such transportation conformity lapses results in freezing of Federal highway funds and all Federal highway projects in the lapsed area.

The States discuss transportation conformity in Section 8.0 of the Washington Area 8-hour ozone plan. The States describe their methods and provide detailed input parameters used in modeling the inventories in Appendices E1 and E2 of the Washington Area 8-hour ozone plan. In the Washington Area, the Metropolitan Washington Air Quality Committee (MWAQC) consults with the Transportation Planning Board (TPB) to establish mobile source emissions

budgets. The Washington Area MVEB for the 2008 RFP is based on the projected 2008 mobile source emissions, accounting for all mobile control measures. The budgets are equal to the projected 2008 on-road mobile source emission inventories minus reductions from transportation control measures. The MVEBs for the 2008 RFP are shown in Table 10, below.

TABLE 10—WASHINGTON AREA 2008 RFP MVEBS

	VOC (tpd)	NO_X (tpd)
(A) Projected Controlled Mobile Emissions	70.98	160.30
(B) Transportation Control Measures	0.19	0.49
(A)–(B)	70.79	159.81
MVEB (rounded to nearest 0.1 tpd)	70.8	159.8

For budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). In a September 4, 2009 **Federal Register** notice, EPA notified the public that EPA found that the 2008 RFP MVEBs in the Washington Area 8-hour ozone plan are adequate for transportation conformity purposes (74 FR 45853). As a result of EPA's finding, the States must use the MVEBs from the Washington Area 8-hour ozone plan for future conformity determinations for the 1997 8-hour ozone standard.

In addition to the budgets being adequate for transportation conformity purposes, EPA found the procedures the States used to develop the MVEBs to be reasonable. Because the 2008 RFP MVEBs are adequate for transportation conformity purposes and the methods the States used to develop them are correct, the 2008 RFP budgets are approvable.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. What action is EPA proposing?

EPA has reviewed the 2002 base year emissions inventory; the 2008 ozone projected emission inventory; the 2008 RFP plan; RFP contingency measures; RACM analysis; and 2008 transportation conformity budgets contained in the Washington Area 8-hour ozone plan, and found that those elements fully addressed the CAA's requirements. Therefore, EPA is proposing approval of those elements, which were submitted to EPA as a SIP revision by DDOE on June 12, 2007, by MDE on June 4, 2007, and by VADEQ on June 12, 2007. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule pertaining to the 2002 base year emissions inventory, the 2008 ozone projected emission inventory, the 2008 RFP plan; RFP contingency measures, RACM analysis, and 2008 transportation conformity budgets for the Washington Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 15, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–16376 Filed 6–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0463; FRL–9427–3]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the SJVUAPCD portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) and particulate matter (PM) emissions from commercial charbroiling. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by August 1, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0463, by one of the following methods:

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

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: David Grounds, EPA Region IX, (415) 972–3019, *grounds.david@epa.gov.*

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4692	Commercial Charbroiling	09/17/09	05/17/10

On June 8, 2010, EPA determined that the submittal for SJVUAPCD Rule 4692 met the completeness criteria in 40 CFR Part 51, Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 4692 into the SIP on June 3, 2003 (68 FR 33005).

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

VOCs help produce ground-level ozone and smog, which harm human health and the environment. PM emissions also harm human health and the environment by causing, among other things, premature mortality, aggravation of respiratory and cardiovascular disease, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control VOC and PM emissions. SJVUAPCD Rule 4692, Commercial Charbroiling, is designed to limit VOC and PM emissions from commercial charbroiling. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in ozone nonattainment areas classified as moderate or above (see sections 182(b)(2) and (f), and must not relax existing requirements (see sections 110(l) and 193). Section 172(c)(1) of the Act also requires implementation of all reasonably available control measures (RACM) as expeditiously as practicable in nonattainment areas. Because the San Joaquin Valley (SJV) area is designated nonattainment for the fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) and designated and classified as extreme nonattainment for the ozone NAAQS (see 40 CFR 81.305), the RACM requirement in CAA section 172(c)(1) applies to this area. The specific ozone RACT requirement in CAA section 182(b)(2), however, does not apply to Rule 4692 because there are no CTG documents for this source category and no major sources of ozone precursors subject to this rule in the SJV area.

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

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

3. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

4. Preamble, ''Clean Air Fine Particle Implementation Rule for the 1997 $PM_{2.5}$ NAAQS,'' 72 FR 20586 (April 25, 2007).

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the applicable CAA requirements and guidance regarding enforceability, RACM, and SIP revisions. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

III. Proposed Action

Under section 110(k)(3) of the Act, we are proposing to fully approve Rule 4692 based on our conclusion that it satisfies all applicable CAA requirements. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

IV. 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 proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 9, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–16500 Filed 6–29–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 410

[CMS–1436–P]

RIN 0938–AR06

Medicare Program; Clinical Laboratory Fee Schedule: Signature on Requisition

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would retract the policy adopted in the calendar year 2011 Physician Fee Schedule final rule with comment period that requires the signature of a physician or qualified non-physician practitioner on a requisition for clinical diagnostic laboratory tests paid under the Clinical Laboratory Fee Schedule (CLFS). In addition, this proposed rule would reinstate the prior policy that the signature of a physician or qualified non-physician practitioner is not required on a requisition for Medicare purposes for a clinical diagnostic laboratory test paid under the CLFS.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. eastern daylight time (e.d.t.) on August 29, 2011.

ADDRESSES: In commenting, please refer to file code CMS–1436–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. Electronically. You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions for ''submitting a comment.''

2. By regular mail. You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1436–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. By express or overnight mail. You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1436–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–8013

4. By hand or courier. Alternatively, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–1066 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Glenn McGuirk, (410) 786–5723.

SUPPLEMENTARY INFORMATION:

I. Background

A. History and Overview

In the March 10, 2000 **Federal Register** (65 FR 13082), we published a proposed rule entitled ''Medicare Program; Negotiated Rulemaking: Coverage and Administrative Policies for Clinical Diagnostic Laboratory Services,'' to announce and solicit comments on the results of our negotiated rulemaking committee tasked to establish national coverage and administrative policies for clinical diagnostic laboratory services payable under Part B of Medicare.

In the November 23, 2001 **Federal Register** (66 FR 58788), we published a final rule, which established these national coverage and administrative policies. In that final rule, we explained our policy on ordering clinical diagnostic laboratory services and revised regulatory language in § 410.32. Our regulation at § 410.32(a) includes a requirement that states ''[a]ll diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests must be ordered by the physician who is treating the beneficiary.'' In the November 23, 2001 final rule (66 FR 58809), we added paragraph (d)(2) to § 410.32 to require that the physician or qualified nonphysician practitioner (NPP) (that is, clinical nurse specialists, clinical psychologists, clinical social workers, nurse-midwives, nurse practitioners, and physician assistants) who orders the service must maintain documentation of medical necessity in the beneficiary's medical record. In both the March 10, 2000 proposed rule (65 FR 13089) and the November 23, 2001 final rule (66 FR 58802), we noted that ''[w]hile the signature of a physician on a requisition is one way of documenting that the treating physician ordered the test, it is not the only permissible way of documenting that the test has been ordered.'' In the preamble of these rules, we described the policy of not requiring physician signatures on requisitions for clinical diagnostic laboratory tests, but implicitly left in place the existing requirements for a written order to be signed by the ordering physician or NPP for clinical diagnostic laboratory tests, as well as other types of diagnostic tests. We further stated, in the March 10, 2000 proposed rule (65 FR 13089) and the November 23, 2001 final rule (66 FR 58802), that we would publish instructions to Medicare contractors clarifying that the signature of the ordering physician or NPP on a requisition for a clinical diagnostic laboratory test, is not required for Medicare purposes.

On March 5, 2002, we issued a program memorandum (Transmittal AB–02–030, Change Request 1998) implementing the administrative policies set forth in the November 23, 2001 final rule, including the following instruction:

> Medicare does not require the signature of the ordering physician on a laboratory service requisition. While the signature of a physician on a requisition is one way of documenting that the treating physician ordered the service, it is not the only permissible way of documenting that the service has been ordered. For example, the physician may document the ordering of specific services in the patient's medical record.

On January 24, 2003, we issued a program transmittal (Transmittal 1787, Change Request 2410) to manualize the March 5, 2002 program memorandum. The transmittal page stated, ''Section 15021, Ordering Diagnostic Tests, manualizes Transmittal AB–02–030, dated March 5, 2002. In accordance

with negotiated rulemaking for outpatient clinical diagnostic laboratory services, no signature is required for the ordering of such services or for physician pathology services.'' In the manual instructions in that transmittal (that is, Transmittal 1787), we stated in a note: ''No signature is required on orders for clinical diagnostic tests paid on the basis of the physician fee schedule or for physician pathology services.'' The manual instructions inadvertently omitted the reference to clinical diagnostic laboratory tests. Thus, the transmittal seemed to extend the policy set forth in the November 23, 2001 final rule (that no signature is required on requisitions for clinical diagnostic laboratory tests paid under the clinical laboratory fee schedule (CLFS)) to also apply to clinical diagnostic tests paid on the basis of the physician fee schedule (PFS) and physician pathology services. In addition, the manual instructions used the term ''order'' instead of ''requisition,'' which some members of the industry have asserted caused confusion. When we transitioned from paper manuals to the current electronic Internet Only Manual (IOM) system, these manual instructions were inadvertently omitted from the new Benefit Policy Manual (BPM).

On August 28, 2008, we issued a program transmittal (Transmittal 94, Change Request 6100) to update the BPM to incorporate language that was previously contained in section 15021 of the Medicare Carriers Manual. The reissued language stated, ''No signature is required on orders for clinical diagnostic tests paid on the basis of the clinical laboratory fee schedule, the physician fee schedule, or for physician pathology services.'' After the publication of the August 2008 Program Transmittal (Transmittal 94), we received numerous inquiries from laboratories, diagnostic testing facilities, and hospital representatives who had questions about whether the provision applied to all diagnostic services, including x-rays, magnetic resonance imaging (MRIs), and other nonclinical laboratory fee schedule diagnostic services.

To resolve any existing confusion surrounding the implementation of the CLFS policy in 2001 and subsequent transmittals, we restated and solicited public comments on our policy in the July 13, 2009 proposed rule (74 FR 33641 and 33642), entitled ''Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010'' (hereinafter referred to as the CY 2010 PFS proposed rule). At that time, our policy was that the signature of a physician or NPP was not required on a requisition for clinical diagnostic laboratory tests paid on the basis of the CLFS. However, we were clear that we would still require that it must be evident, in accordance with our regulations at § 410.31(d)(2) and (3), that the physician or NPP had ordered the services.

We clarified that this policy regarding requisitions for clinical diagnostic laboratory tests would not supersede other applicable Medicare requirements (such as those related to hospital conditions of participation (CoPs)), which require the medical record to include an order signed by the physician or NPP who is treating the beneficiary. In addition, we stated that we did not believe that our policy regarding signatures on requisitions for clinical diagnostic laboratory tests supersedes other requirements mandated by professional standards of practice or obligations regarding orders and medical records promulgated by Medicare, the Joint Commission, or State law; nor did we believe the policy would require providers to change their business practices.

In the CY 2010 PFS proposed rule (74 FR 33641 and 33642), we also restated and solicited public comment on our longstanding policy, consistent with the principle in § 410.32(a) that a written order for diagnostic tests including those paid under the CLFS and those that are not paid under the CLFS (for example, that are paid under the PFS or under the OPPS), such as X-rays, MRIs, and the technical component (TC) of physician pathology services, must be signed by the ordering physician or NPP. We were clear that the policy that signatures are not required on requisitions for clinical diagnostic laboratory tests paid based on the CLFS applied only to requisitions (as opposed to written orders).

Additionally, in the CY 2010 PFS proposed rule (74 FR 33642) we solicited public comments about the distinction between an order and a requisition. We noted that an ''order'' as defined in our Internet Only Manual (IOM), 100–02, Chapter 15, Section 80.6.1, is a communication from the treating physician or NPP requesting that a diagnostic test be performed for a beneficiary. The order may conditionally request an additional diagnostic test for a particular beneficiary if the result of the initial diagnostic test ordered yields a certain value determined by the treating physician or NPP (for example, if test X is negative, then perform test Y). We further clarified in the CY 2010 PFS final rule with comment period (74 FR 61930) that an order may be delivered via any of the following forms of communication:

- A written document signed by the treating physician or NPP, which is hand-delivered, mailed, or faxed to the testing facility.
- A telephone call by the treating physician or NPP or his or her office to the testing facility.
- An electronic mail, or other electronic means, by the treating physician or NPP or his or her office to the testing facility.

If the order is communicated via telephone, both the treating physician or NPP, or his or her office, and the testing facility must document the telephone call in their respective copies of the beneficiary's medical records.

In the CY 2010 PFS proposed rule (74 FR 33642), we defined a ''requisition'' as the actual paperwork, such as a form, which is furnished to a clinical diagnostic laboratory that identifies the test or tests to be performed for a patient. The requisition may contain patient information, ordering physician information, referring institution information, information on where to send reports, billing information, specimen information, shipping addresses for specimens or tissue samples, and checkboxes for test selection. We believed the requisition was ministerial in nature, assisting laboratories with the billing and handling of results, and serves as an administrative convenience to providers and patients. We believed that a written order, which may be part of the medical record, and the requisition, were two different documents, although a requisition that is signed may serve as an order.

During the public comment period for the CY 2010 PFS proposed rule, we received numerous comments on these issues. Subsequently, in the CY 2010 PFS final rule with comment period (74 FR 61931), we stated that we would continue to carefully consider the issue of physician signatures on requisitions and orders and that we planned to revisit these issues in the future.

In the CY 2011 PFS proposed rule (75 FR 40162 through 40163), we proposed to require a physician's or NPP's signature on requisitions for clinical diagnostic laboratory tests paid on the basis of the CLFS. We stated that we believed this policy would result in a less confusing process because a physician's signature would be required for all requisitions and orders, eliminating the uncertainty over whether the documentation is a requisition or an order, whether the type

of test being ordered requires a signature, or which payment system does or does not require a physician's or NPP's signature. We also stated that we believed the requirement would not increase the burden on physicians and would be easier for the reference laboratory technicians to know whether a test is appropriately requested, which would minimize potential compliance problems for laboratories during the course of a subsequent Medicare audit because a signature would be consistently required. We solicited public comments on the CY 2011 PFS proposed rule.

After careful consideration of all the comments received, we finalized our proposed policy without modification to require a physician's or NPP's signature on requisitions for clinical diagnostic laboratory tests paid under the CLFS in the CY 2011 PFS final rule with comment period (75 FR 73483), which became effective on January 1, 2011. This policy did not affect physicians or NPPs who chose not to use requisitions to request clinical diagnostic laboratory tests paid under the CLFS. Such physicians or NPPs could continue to request such tests by other means, such as by using the annotated medical records, documented telephonic requests, or electronic requests.

II. Provisions of the Proposed Rule

In this proposed rule, we would retract the policy we finalized in the CY 2011 PFS final rule with comment period (75 FR 73483) and reinstate the prior policy that the signature of the physician or NPP is not required on a requisition for Medicare purposes for a clinical diagnostic laboratory test paid under the CLFS. We are proposing this policy based on continued and new concerns noted by stakeholders regarding the practical effect of the finalized policy on beneficiaries, physicians, and NPPs.

While we did not solicit further comments on the signature on requisition issue in the CY 2011 PFS final rule with comment period, we did receive additional feedback from industry stakeholders on the issue after its publication in the **Federal Register**. Industry stakeholders identified many scenarios where it would be difficult to obtain the physician's or NPP's signature on the requisition for clinical diagnostic laboratory tests under the CLFS. Industry stakeholders asserted that there are many different situations where the physician or NPP would direct staff to prepare requisitions for laboratory tests, but then would be unavailable to provide his or her signature on the requisition. As an example, and one that was raised by commenters to the CY 2011 PFS proposed rule, in the long-term care setting, the physician is typically not available in person on a daily basis. In these cases, the physician may keep abreast of the patient's condition by calling the nursing staff. If a patient's condition indicates that a clinical diagnostic laboratory test is required, the nursing staff typically transcribes the order from the physician over the telephone onto a requisition. The information has to be transmitted to the laboratory and, in this scenario, there is no physician's or NPP's signature on the requisition. Another example that occurs in many settings, including nursing homes, all types of hospitals (inpatient as well as outpatient), and physician offices, involves specimens that are packaged for transmission to the laboratory with a requisition by nursing staff. Because the specimen often is transferred directly from the patient to the nursing staff without, in most cases, a physician's or NPP's intervention, the requisition that accompanies the specimen does not bear the signature of the physician or NPP.

Even in cases where the physician or NPP sees the patient in his/her offices for an appointment and recommends that clinical diagnostic laboratory testing be performed, we now better understand that, typically, the information is transcribed from the medical record onto a paper requisition by office staff after the physician or NPP and the patient have concluded their interaction. In practice, we can see how requiring the physician or NPP to sign the paper requisition could, in some cases, be very inconvenient and disruptive to the physician, NPP, the beneficiary, and other patients. The physician or NPP may need to take time either during appointments with subsequent patients or between patient appointments to make sure that the requisition is signed for a particular patient prior to his/her departure from the office. In addition, a beneficiary might have to wait for a physician or NPP to complete the requisition signature process before the beneficiary could depart from the office.

Another situation identified by industry stakeholders that we did not previously consider concerns physicians or NPPs who maintain several practice locations. A patient may see his or her physician or NPP only at one particular practice location. If that patient presents to the practice location with a medical issue that the physician or NPP believes warrants immediate laboratory testing, but the physician or NPP is physically at a different location that day, the physician or NPP may be able to direct his or her nursing staff to prepare a requisition for the laboratory test. But, if the physician or NPP must sign the requisition, there could be a delay of several days or longer, before the physician or NPP is able to do so, which means the patient would have to wait to have the laboratory test performed.

The aforementioned scenarios have detrimental implications for expeditious patient care that were not evident to us until the new policy was effectuated and we started hearing from stakeholders in the industry that would be negatively impacted by the policy. In response to a comment suggesting that physicians be educated about this new requirement to alleviate problems of non-compliance, we stated, in the CY 2011 PFS final rule with comment period (75 FR 73482), that we would update our manuals and direct the Medicare contractors to educate physicians and NPPs on this policy. After publication of the CY 2011 PFS final rule with comment period, it became even clearer to us that some physicians, NPPs, and clinical diagnostic laboratories were not aware of, or did not understand, the policy. Therefore, in the first calendar quarter of 2011, we focused on developing educational and outreach materials to educate those affected by this policy. Further, we issued a statement that, once the first quarter of 2011 educational campaign is fully underway, we would expect requisitions to be signed. While developing educational and outreach materials, we realized how difficult and burdensome the actual implementation of this policy was for physicians and NPPs and that, in some cases, the implementation of this policy could have a negative impact on patient care. At that point, we decided that the better course of action was to re-examine the policy.

We re-examined our policy and our reasons for adopting this policy in light of industry stakeholders' comments received after publication of the CY 2011 PFS final rule with comment period and comments received on the CY 2011 PFS proposed rule. We reviewed our beliefs and assumptions regarding the effect of our policy on access to care and with respect to administrative burden on physicians and NPPs, the effect on innovation, and the impact on laboratories. We believed that the policy would not have a negative impact on beneficiary access to care. However, we now believe that we underestimated the potential impact on beneficiary health and safety. As

discussed previously, care may be delayed under this policy in situations where the physician or NPP orders the test but is not available onsite to sign the requisition. For example, we understand there are concerns that certain populations of patients, such as nursing home patients and patients confined to their homes, may have laboratory tests ordered urgently by a distant physician or NPP to obtain information that is imminently needed in order to assess a need for immediate referral to a hospital, emergency department or other facility. If the ordering physician or NPP is not onsite, it is unlikely that he or she would be able to receive, sign, and return a requisition in the timeframe needed to respond to the patient's urgent clinical status. We had not anticipated this impact on care when we finalized our policy.

We also believed that the administrative burden on physicians and NPPs would be minimal and would result in a less confusing process. Physicians and NPPs must document their orders, in some form, in one or more of the medical records of the patient. We still believe that signing a laboratory requisition at the time of the order, if the requisition is ready for signature, imposes little burden on the physician or NPP, while significantly increasing our ability to minimize improper payments due to fraud and abuse. However, we believe we may have underestimated the number of occasions in which the physician or NPP cannot perform both steps concurrently. We now understand that it is not always the case that a physician or NPP can perform both steps concurrently. For instance, a physician may sign an order at the time of delivering care, but the requisition may not be available for signature until sometime later. In that situation, the physician may need to interrupt a subsequent examination in order to sign a completed requisition so that the patient may leave with the requisition. Given recently released estimates of physician shortfalls in primary care (as referenced in remarks by the Health Resources and Services Administration (HRSA) Administrator to the Bureau of Health Professions Advisory Committee on April 21, 2009), the cost of lost physician time must also be revalued upwards. Alternatively, the beneficiary may have to wait for the physician or NPP to conclude his/her subsequent appointment, which could be as long as 30 minutes or more. Neither of these situations—interrupting the physician or NPP in a subsequent appointment or making the beneficiary wait for an inconvenient period of time—is acceptable. Further, we believed that the policy resulted in a less confusing process because a physician or NPP signature would be required for all requisitions and orders, eliminating uncertainty over whether the documentation is a requisition or an order, whether the type of test being ordered requires a signature, or which payment system does nor does not require a physician or NPP signature. However, based on industry stakeholder comments subsequent to the publication of the CY 2011 PFS final rule with comment period, we now believe this process may not be less confusing. Further, industry stakeholders assured us that they had not been confused about the former physician signature policy and that they never intended for us to interpret their call for consistency in the signature process to mean that they should be burdened with an additional requirement when they were already signing the medical record.

In addition, we believed that many stakeholders either had converted or were in the process of converting to an electronic health records process that would negate the need for a requisition. Electronic health records and electronic transmission of health information are key pieces of this Administration's economic recovery plan and, moreover, are key elements of our plan to improve healthcare quality and efficiency. From the additional stakeholder concerns subsequent to our CY 2011 PFS final rule with comment period, we are sensitive to the increasing migration of information transfer away from paper forms, such as requisitions, to the direct electronic submission of requests for services. After we adopted the new policy, stakeholders expressed their concerns that the requirement for a signature would increase paperwork, in direct opposition to our promotion of time-saving electronic communications. We believe that the requirement for a signature on the requisition does not impact stakeholders who utilize an electronic process for ordering clinical diagnostic laboratory tests because the policy only applies to requisitions, which are paper forms. Our intent was not to suggest that a requisition was necessary in those cases. However, we recognize that members of the provider and supplier community believe that this regulation could inhibit their use of innovative technology and investment in healthcare IT resources even after we explained the issue. Therefore, we underestimated the potential for paperwork burden.

Finally, we believed that the policy would make it easier for a reference laboratory to know whether a test is appropriately requested and to minimize potential compliance problems. Specifically, we believe that the policy improves a laboratory's ability to authenticate requisitions. While we still believe this is true, based on industry stakeholder concerns received after the CY 2011 PFS final rule with comment period, which elaborated on comments submitted in response to the CY 2011 PFS proposed rule (75 FR 40161 through 40163), we now believe our estimate of the financial benefit of this aspect of the policy is less than we originally believed, because the percentage of laboratory requests actually covered by this policy may be smaller than we originally predicted and may continue to shrink as new technology is adopted. We also believed the policy provided a mechanism for laboratories to fulfill their responsibility to ensure that they only provide and bill for services on the direct order of a physician or NPP as the signature on the requisition would provide documentation and evidence that the physician or NPP had ordered the service. However, industry stakeholders expanded on comments to the CY 2011 PFS proposed rule and informed us that there was a cost to adopting a rigid mechanism of establishing authenticity. Laboratories believe that it is more efficient for them to use internal procedures and controls to ensure that they do not provide and bill for services in the absence of a physician authorization rather than through a Federal policy. We believe that the benefits expected may be lower than we originally estimated.

In summary, there were many situations that we could not recognize as problematic until we finalized the new policy and stakeholders began to implement. Upon review of the concerns that industry stakeholders raised after we finalized our policy in the CY 2011 PFS final rule with comment period, and in reconsideration of comments to the CY 2011 PFS proposed rule, we propose to retract the policy that was finalized in the CY 2011 PFS final rule with comment period, which required a physician's or NPP's signature on a requisition for clinical diagnostic laboratory tests paid under the CLFS (75 FR 73483) and we propose to reinstate our prior policy that the signature of the physician or NPP is not required on a requisition for a clinical diagnostic laboratory test paid under the CLFS for Medicare purposes.

We remain concerned about the costs and impact of fraud and abuse on the

Medicare program. The requirement that the treating physician or NPP must document the ordering of the test remains, as does our longstanding policy that requires orders, including those for clinical diagnostic laboratory tests, to be signed by the ordering physician or NPP. We believe that all parties share in the responsibility of ensuring that Medicare services are provided only in accordance with all applicable statutes and regulations, such as the requirement for a physician or NPP order. In many instances, such as in the case of orders originating in hospitals, we believe that retaining all the other requirements previously discussed, especially requiring the physician or NPP who orders the service to maintain documentation of medical necessity in the beneficiary's medical record according to § 410.32(d)(2)(i), as well as the hospital CoPs on medical record services at § 482.24, are sufficient. However, we note that hospital CoPs do not apply to other settings, such as private offices.

We believe that it is the responsibility of the clinical diagnostic laboratory, as it is for the provider of any service, to have sufficient processes and safeguards in place to ensure that all services are delivered only when ordered by the physician or NPP. This proposed rule does not preclude an individual laboratory from requiring a physician's or NPP's signature on the requisition. The laboratory may develop its own compliance procedures to ensure that it only furnishes services in response to a physician or NPP order. Such procedures could include internal audits, agreements with ordering physicians or NPPs to provide medical record evidence of the order in the event of an internal or external audit, steps to confirm the existence of an order under certain circumstances, or any other measures including the acceptance of risk by the clinical laboratory. We believe that this financial and compliance responsibility was implicit in the 2001 final rule (66 FR 58788), was reiterated in the March 5, 2002 transmittal (Change Request 2410, Transmittal AB–02–030), and has remained a consistent element of the subsequent instructions.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impact of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year) or that adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities. There are no expenditures or fiscal impact on the Medicare program associated with the policy discussed in this proposed rule. While the policy that is proposed for reinstatement in this proposed rule may have an effect on beneficiaries, we believe that any effect would be positive as we are changing a requirement that might have impeded access to care in some cases. There are no proposed policies in this proposed rule that impact payment rates under the clinical laboratory fee schedule, or any other part of the Medicare program. Therefore, for the change in policy regarding the physician's or NPP's signature on requisitions for clinical diagnostic laboratory tests paid under the CLFS, this proposed rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Many hospitals and many other providers and suppliers are small entities, either by nonprofit status or by meeting the Small Business Administration (SBA) definition of a small business. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because the Secretary has determined that this proposed rule, if finalized, would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of an urban area and has fewer than 100 beds. Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent urban areas. Thus, for our purposes, we continue to classify these hospitals as urban hospitals. We are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that this proposed rule, if finalized, would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This proposed rule, if finalized, would have no consequential effect on State, local, or tribal governments or the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a

proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this proposed regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this proposed rule was not reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplemental Medical Insurance Program)

Dated: June 2, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 24, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2011–16366 Filed 6–29–11; 8:45 am]

BILLING CODE 4120–01–P

Notices

Federal Register

Vol. 76, No. 126

Thursday, June 30, 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

Agricultural Research Service

Notice of Appointment of Committee Members to the Advisory Committee on Biotechnology and 21st Century Agriculture

AGENCY: Office of the Under Secretary, Research, Education, and Economics, USDA.

ACTION: Notice of Appointment of Committee Members to the Advisory Committee on Biotechnology and 21st Century Agriculture.

SUMMARY: The Office of the Under Secretary, Research, Education, and Economics of the Department of Agriculture, in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, announces the appointment of members to the Advisory Committee on Biotechnology and 21st Century Agriculture (''AC21'').

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Telephone: 202–720–3817, Fax: 202–690–4265, or e-mail *AC21@ars.usda.gov*.

SUPPLEMENTARY INFORMATION: Twenty-two members were appointed from nominations of more than 150 well-qualified individuals, representing the biotechnology industry, the organic food industry, farming communities, the seed industry, food manufacturers, State government, consumer and community development groups, the medical profession, and academic researchers. Equal opportunity practices were followed in appointing committee members. To assure that recommendations of the advisory committee take into account the needs of diverse groups served by the Department, membership includes, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The following appointments to the AC21 have been made:

Russell C. Redding, Interim Dean of Agriculture and Environmental Sciences, Delaware Valley College, in Aspers, Pennsylvania, who will serve as Chair of the AC21;

Isaura Andaluz, Executive Director, Cuatro Puertas, of Albuquerque, New Mexico;

Paul C. Anderson, Executive Director, International Programs, Donald Danforth Plant Science Center, in St. Louis, Missouri;

Laura L. Batcha, Chief of Policy and External Relations, Organic Trade Association, in Putney, Vermont;

Charles M. Benbrook, Chief Scientist, The Organic Center, in Enterprise, Oregon;

Barry R. Bushue, Farmer, Vice-President of the American Farm Bureau Federation and President of the Oregon Farm Bureau, in Boring, Oregon;

Daryl D. Buss, Dean, School of Veterinary Medicine, University of Wisconsin in Madison, Wisconsin;

Lynn E. Clarkson, Farmer and President, Clarkson Grain Company, in Cerro Gordo, Illinois;

Leon C. Corzine, Farmer, in Assumption, Illinois;

Michael S. Funk, Chairman, United Natural Foods, Inc., in Nevada City, California;

Douglas C. Goehring, North Dakota Commissioner of Agriculture, in Menoken, North Dakota;

Melissa L. Hughes, Corporate Counsel and Director, Government Affairs, CROPP Cooperative/Organic Valley Family of Farms, in Viroqua, Wisconsin;

Darrin Ihnen, Farmer and Chair, National Corn Growers Association, in Hurley, South Dakota;

Gregory A. Jaffe, Director, Biotechnology Project, Center for Science in the Public Interest, in McLean,Virginia;

David W. Johnson, Assistant Director of Research, Cal/West Seeds, in La Crosse, Wisconsin;

Keith F. Kisling, Farmer and Chairman, Oklahoma Wheat Commission, in Burlington, Oklahoma;

Josephine O. (Josette) Lewis, Director, Agricultural Development, Arcadia Biosciences, in Davis, California;

Mary-Howell R. Martens, Farmer and Manager, Lakeview Organic Grain LLC, in Penn Yan, New York;

Marty D. Matlock, Professor of Ecological Engineering, Department of Biological and Agricultural Engineering, University of Arkansas, in Fayetteville, Arkansas;

Angela M. Olsen, Senior Advisor and Associate General Counsel, DuPont Company and Pioneer Hi-Bred, in Arlington, Virginia;

Jerome B. Slocum, Farmer and President, North Mississippi Grain Company, in Coldwater, Mississippi;

Latresia A. Wilson, Vice-President, Black Farmers and Agriculturalists Association, Florida Chapter, farmer, and physician, in Ocala, Florida.

Committee members will initially serve one- or two-year terms, and may be reappointed to serve up to six consecutive years. In the event of a vacancy, the Secretary will appoint a new member as appropriate and subject to the provisions of the Federal Advisory Committee Act. The duties of the Committee are solely advisory. Under its Charter, the AC21 is charged with examining the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA, and providing guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture. The immediate task for the committee within the overall charge will be to provide practical recommendations to the Secretary of Agriculture on ways to strengthen coexistence among different agricultural crop production methods.

The Committee will meet in Washington, DC, up to four (4) times per year.

Committee members will serve without pay. Reimbursement of travel expenses and per diem costs shall be made to Committee members who would be unable to attend Committee meetings without such reimbursement.

Dated: June 24, 2011.

Catherine E. Woteki,

Under Secretary, Research, Education, and Economics.

[FR Doc. 2011–16431 Filed 6–29–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0047]

Notice of Availability of Pest Risk Analysis for the Importation of Dragon Fruit From Thailand Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of dragon fruit from Thailand. Based on this analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of dragon fruit from Thailand. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before August 29, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0047-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0047, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0047* or in our reading room, which 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.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Coordinator, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the Government of Thailand to allow the importation of fresh dragon fruit (multiple genera and species) into the continental United States. Currently, fresh dragon fruit is not authorized for entry from Thailand. We have completed a pest risk analysis for the purpose of evaluating the pest risks associated with the importation of fresh dragon fruit into the continental United States. The analysis consists of a pest list identifying pests of quarantine significance that are present in Thailand and could follow the pathway of importation into the United States and a risk management document identifying phytosanitary measures that could be applied to the commodity to mitigate the pest risk.

We have concluded that fresh dragon fruit can be safely imported into the continental United States from Thailand using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). These measures are:

- The dragon fruit may be imported into the continental United States in commercial consignments only.
- The dragon fruit must be irradiated in accordance with 7 CFR part 305 with a minimum absorbed dose of 400 Gy.
- If the irradiation treatment is applied outside the United States, each consignment of fruit must be jointly inspected by APHIS and the national plant protection organization (NPPO) of Thailand and accompanied by a phytosanitary certificate attesting that the fruit received the required irradiation treatment.
- If the irradiation treatment is applied upon arrival in the United States, each consignment of fruit must be inspected by the NPPO of Thailand prior to departure and accompanied by a phytosanitary certificate.
- The commodity is subject to inspection at the U.S. port of entry.

Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh dragon fruit from Thailand in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of fresh dragon fruit from Thailand into the continental United States subject to the requirements specified in the risk management documents.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 24th day of June 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–16405 Filed 6–29–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plan Revision for Colville, and the Okanogan-Wenatchee National Forests, Washington (Collectively Called the Northeast Washington Zone Forest Plan Revision)

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and revised land management plan using the provisions of the National Forest System land and resource management planning rule in effect prior to November 9, 2000 for the Colville, and Okanogan-Wenatchee National Forests, Pend Oreille, Stevens, Ferry, Okanogan, Chelan, Kittitas, and Yakima Counties in Washington.

SUMMARY: As directed by the National Forest Management Act (NFMA), the

USDA Forest Service is preparing the Colville, and Okanogan-Wenatchee National Forests revised land management plans and will also prepare an EIS for these revised plans. A Notice of Intent to revise the Colville, Okanogan, and Wenatchee forest plans was published in the **Federal Register** on March 9, 2004. That Notice also stated our intent to later publish a Notice to prepare an Environmental Impact Statement. This notice briefly describes the purpose and need, the proposed action, the scoping process for the plan revisions (including any scoping meetings), information concerning public participation, estimated dates for filing the EIS and provides the names and addresses of the responsible agency official and the individuals who can provide additional information. This notice also briefly describes the applicable planning rule.

The revised land management plans will replace the land management plans previously approved by the Regional Forester. The Colville National Forest land management plan was signed on December 29, 1989, and has been amended 39 times. The Okanogan National Forest land management plan was signed on December 29, 1989, and has been amended 51 times. The Wenatchee National Forest land management plan was signed on March 2 1990, and has been amended 27 times. Most forest plan amendments are project-specific amendments and apply to that project only. Some amendments incorporated new management direction for specific resource areas, such as invasive weeds. Five amendments were incorporated into all the forest plans by the Regional Forester. The land management plans for the Okanogan National Forest and the Wenatchee National Forest were amended by the 1994 Northwest Forest Plan to incorporate standards and guidelines for management of habitat for late-successional and old-growth associated species within the range of the northern spotted owl and an aquatic conservation strategy to maintain and restore the ecological health of watersheds and aquatic ecosystems. These amendments included direction for managing streams and riparian areas, old growth forests, and treatment of invasive species. These amended plans will remain in effect until the revision takes effect. The Okanogan and Wenatchee National Forests were administratively combined in 2000; they will have a single forest plan.

DATES: Comments concerning the scope of this analysis must be received by August 29, 2011. The agency expects to complete the draft proposed plans and a draft environmental impact statement by June 2012 and the final plans and a final environmental impact statement by June 2013.

See **SUPPLEMENTARY INFORMATION** section for public involvement meeting dates.

ADDRESSES: Send written comments to Forest Plan Revision, Okanogan Valley Office, 1240 Second Avenue South, Okanogan, WA 98840. Comments may also be sent via e-mail to *r6_ewzplanrevision@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Margaret Hartzell, Revision Team Leader, or Deborah Kelly, Revision Public Affairs Officer, Okanogan Valley Office, 1240 Second Avenue South, Okanogan, WA 98840, 509–826–3275. Information is also available at the plan revision *Web site: http://www.fs.fed.us/r6/wenatchee/forest-plan.* 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 Time Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need

The existing forest plans are 20 years old. Economic, social, and ecological conditions changed during the past two decades; new laws, regulations and policies are in place; and new information based on monitoring and scientific research is available. The Colville, and Okanogan-Wenatchee National Forests are revising their 1988, 1989, and 1990 Forest Plans to meet the legal requirements of the National Forest Management Act of 1976; to address changed conditions and provide consistent management direction (as appropriate) across the two national forests; to incorporate changes in law, regulation, and policy; and to utilize new scientific information. In particular, the interdisciplinary planning team is addressing the following areas in the revised forest plans:

1. Improve protection of terrestrial plant and animal species and their habitats. Two objectives in the Strategic Plan for the Forest Service are to ''provide ecological conditions to sustain viable populations of native and desired nonnative species and to achieve objectives for management indicator and focal species.'' The Columbia Basin Strategy (2000) identifies key elements to be addressed in planning efforts, such as source habitats, that are not addressed in the 1988, 1989, and 1990 forest plans. The structural arrangement of vegetation, both vertical and horizontal, and the size and arrangement of trees, grasses, and shrubs are important components of wildlife habitat. Many changes to forest stand structure have occurred due to disturbances such as uncharacteristic fire, timber harvest, and insects and disease. Old multistory, old single story, and stand initiation forest structures have declined with a corresponding increase in area and connectivity of dense, multilayered, intermediate forest structures. Forests are now dominated by shade-tolerant conifers, with elevated fuel loads, severe fire behavior, and increased incidence of certain defoliaters, bark beetles, and root diseases. All of these changes have led to reductions in habitat for some species and increases for others. The 1988, 1989, and 1990 forest plans need to be updated to reflect current science relating to plant and animal species and their habitats. The habitat goals and objectives of the Late Successional Reserve (LSR) system for the northern spotted owl and other terrestrial species would be met through a landscape management approach consistent with current science for the dry forest types. LSRs established through the Northwest Forest Plan amendment would no longer be specific management areas.

2. To address management of fuels and fire risk. Several factors have contributed to an increased susceptibility to disturbances, such as uncharacteristically severe fires, and insects and disease outbreaks. These are the cumulative effects of a periodic and sometimes extended drought, climate change, increasing vegetative density, shifts in forest species composition, and modified landscape patterns. The dry and mesic forest types on the Forests are susceptible to insect and disease outbreaks and large-scale uncharacteristic wildfires. The 1988, 1989, and 1990 forest plans' desired conditions, and standards and guidelines do not adequately address the multiple factors that have created the existing uncharacteristic conditions nor do they adequately address the varied nature of the landscape. Neither do they address the need for management strategies that recognize the unique qualities of various landscapes. An integrated strategy that recognizes multiple risk factors and addresses variability in conditions and site potentials is needed.

3. To more adequately protect watersheds and aquatic habitats. The Columbia Basin Strategy (2000) emphasizes restoring the processes responsible for creating and maintaining aquatic and riparian habitats and

restoring naturally functioning riparian ecosystems. It also outlines specific components to be included in revised forest plans. The 1988, 1989, and 1990 forest plans include by amendment interim direction, *i.e.,* the Inland Native Fish Strategy (INFISH, USDA Forest Service 1994c and 1995) and the Decision Notice for the Continuation of Interim Management Direction Establishing Riparian, Ecosystem and Wildlife Standards for Timber Sales (Eastside Screens, 1994); and the Okanogan-Wenatchee forest plans also include by amendment the Interim Strategies for Managing Anadromous Fish-Producing Watersheds in Eastern Oregon and Washington, Idaho, and portions of California (PACFISH, USDA and USDI 1995), for management of threatened or endangered fish species. However, the 1988, 1989, and 1990 plan language was never changed to integrate this interim direction or resolve conflicts between the existing plan language and the interim direction language. The 1988, 1989, and 1990 forest plans do not adequately provide integrated management strategies for maintenance and restoration of properly functioning watersheds that provide a range of benefits on and off the national forests. These include, but are not limited to, providing habitat for terrestrial, aquatic, and riparian-dependent species; maintaining water quality; providing channel stability; reducing erosion; moderating floods; and maintaining reliable stream flows for downstream users. The combination of interim direction (PACFISH/INFISH) and the Aquatic Conservation Strategy of the Northwest Forest Plan will be adjusted into one consistent aquatic and riparian conservation strategy across the Colville and Okanogan-Wenatchee National Forests.

4. To address climate change. The 1988, 1989, and 1990 forest plans do not consider climate change. Climate change is expected to affect plant species range and composition and alter competitive relationships between plant species. Changes in the composition and structure of plant communities will, in turn, alter the character and distribution of wildlife habitats. Future conditions may be more favorable to some undesired non-native plant and animal species. The full extent of changes in response to climate change on natural resources in the planning area is uncertain, but integrated management direction is needed to maintain or increase the resilience of the national forests in the face of these changes.

5. To recognize the interdependency of social and economic components with national forest management. The revised forest plans will place more emphasis on the relationships among the people who live, work, and play on the national forests. National forests provide a variety of recreation opportunities, work opportunities, and opportunities to practice cultural and spiritual traditions. Local communities provide infrastructure that contributes to the capacity of the national forests to restore and maintain ecological systems. Recognizing the mutual benefits of the relationships between social and economic components and the national forests is important to providing integrated management direction. This forest plan revision will be coordinated with equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

Proposed Action

The proposed action is a revision of the land management plans for the Colville, and Okanogan-Wenatchee National Forests designed to meet the purpose and need. It includes revised goals/desired conditions, objectives, standards, guidelines, suitable uses and activities, management area designations including special areas, and monitoring items. The proposed action can be found at the forest plan revision Web site: *http://www.fs.fed.us/r6/wenatchee/forest-plan.* Error! Hyperlink reference not valid.

Public Involvement

The Colville, and Okanogan-Wenatchee National Forests began this forest plan revision process in 2003. Public participation began in 2004 with community workshops. Workshops were held in Yakima, Cle Elum, North Bend, Wenatchee, Winthrop, Okanogan, Tonasket, Republic, Colville, Ione, Newport, and Spokane, Washington. Workshops were also held from 2005 to 2008. Meetings with representatives of the counties where the forests are located began in 2004 and are continuing. Government-to-government consultation with tribal nations and staff-to-staff consultation with their resource specialists began early in the process and will continue.

Public meeting dates are yet to be determined. At this time meetings are expected to be in the following locations: Yakima, Cle Elum, Seattle area, Wenatchee, Winthrop, Okanogan, Tonasket, Republic, Colville, Ione, and Spokane. Formal consultation with the governments of American Indian tribes is ongoing.

Lead and Cooperating Agencies

The Forest Service, USDA, is the lead agency. Cooperating agencies: State of Washington and its agencies, the Department of Natural Resources, Department of Fish and Wildlife, and Department of Ecology.

Name and Address of the Responsible Official

Kent Connaughton, Regional Forester, Pacific Northwest Region, 333 SW. 1st Street, PO Box 3623, Portland, Oregon 97208.

Nature of the Decision To Be Made

The Colville, and Okanogan-Wenatchee National Forests are preparing an EIS to revise the current forest plans. The EIS process is meant to inform the Regional Forester so that he can decide which alternative best meets the need to achieve quality land management under the sustainable multiple-use management concept to meet the diverse needs of people while protecting the forests' resources, as required by the National Forest Management Act and the Multiple Use Sustained Yield Act.

The revised forest plans provide guidance for all resource management activities on the Colville, and Okanogan-Wenatchee National Forests. Approval of the revised forest plans will result in the following plan components to guide management for the next 10 to 15 years:

- Goals/desired conditions;
- Objectives;
- Forest-wide standards and guidelines;
- Management area desired conditions, standards, and guidelines;
- Suitability of lands for uses and activities;
- Monitoring and evaluation requirements; and
- Recommendations may be made for special areas, such as Research Natural Areas, or areas that can only be designated by statute, such as Wilderness.

Goals/desired conditions provide a description of desired outcomes of forest management. Objectives provide projections of measurable outcomes intended to promote achievement of forest plan goals/desired conditions. Forest-wide standards and guidelines provide management direction and guidance that is applicable across the each national forest. Management Area desired conditions, standards, and guidelines provide direction that applies to specific geographic areas within the national forest. Identification of characteristics of lands for specific

uses and activities provides integration between particular uses and desired conditions and objectives for areas on the national forest. Monitoring and evaluation indicates whether areas are trending toward goals/desired conditions so that needed adjustments can be made in the future. Special areas are places or areas within the National Forest System designated because of their unique or special characteristics. Some can be designated by the responsible official, such as a Botanical Area. Others, such as Wilderness or Wild and Scenic River designations, are recommended for designation by the responsible official, but Congressional act designates.

As important as the decisions to be made is the identification of the types of decisions that will not be made within the revised forest plan. The authorization of project-level activities on the forests is not a decision made in the forest plan but occurs through subsequent project specific decision-making. The designation of routes, trails, and areas for motorized vehicle travel are not considered during plan revision. Some issues (*e.g.,* hunting regulations), although important, are beyond the authority or control of the national forests and will not be considered. In addition, some tasks, such as Wild and Scenic river suitability determinations, may not be undertaken at this time, but addressed later as a future forest plan amendment. Some process requirements of the Northwest Forest Plan would no longer be forest plan direction. Some of these requirements would be retained through administrative direction outside of forest plan revision.

Applicable Planning Rule

On December 18, 2009 the Department reinstated the previous planning rule, commonly known as the 2000 planning rule in the **Federal Register** (**Federal Register**, Volume 74, No. 242, Friday, December 18, 2009, pages 67059 thru 67075). The transition provisions of the reinstated rule (36 CFR 219.35 and appendices A and B) allow use of the provisions of the National Forest System land and resource management planning rule in effect prior to the effective date of the 2000 Rule (November 9, 2000), commonly called the 1982 planning rule, to amend or revise plans. The Colville, and Okanogan-Wenatchee National Forests have elected to use the provisions of the 1982 planning rule including the requirement to prepare an EIS, to complete plan revisions.

Although the 2008 planning rule is no longer in effect, information gathered prior to the court's injunction is useful for completing the plan revisions using the provisions of the 1982 planning rule. The revision team has concluded that the analyses begun or developed during the revision process to date are appropriate for continued use in the revision process.

Roadless Area Management Direction

The proposed action includes management direction for all national forest lands within the planning area, including lands identified as inventoried roadless areas (IRAs) in the Final Environmental Impact Statement for the 2001 Roadless Area Conservation Rule (RACR). There is currently a legal dispute regarding the status of the RACR, with one Federal Court (Wyoming District Federal Court, Judge Brimmer) finding the rule to be in conflict with law and enjoining its implementation and a different Federal Court (Northern California District Federal Court, Judge Laporte) reinstating that rule and prohibiting the Forest Service from taking any action that would have been prohibited under the RACR. The Forest Service is hopeful that current legal proceedings will resolve these conflicting court rulings.

The proposed action includes plan direction that retains the undeveloped character of Colville, and Okanogan-Wenatchee National Forests by including management areas that restrict road construction and timber harvest. This is based on analysis of the resources and management situation that the Forest Service has done in developing the proposed action and on extensive public involvement.

Comments received in the scoping process will help the agency determine the scope of issues related to roadless area management and guide the development of alternatives and analysis of environmental effects. The decision for the final plan will be consistent with the legal status of the RACR at the time the plan is signed.

Description of the Scoping Process

This notice of intent initiates the scoping process, which guides the development of the draft EIS. In scoping, the agency, with the assistance of the public, determines the scope of the issues to be addressed and identifies the significant issues related to the proposed action (see 40 CFR 1501.7).

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the revised plan and the draft EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewers' concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Comments received in response to this solicitation, including the names and addresses of those who comment will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

Authority: 16 U.S.C. 1600–1614; 36 CFR 219.35 (74 FR 67073–67074).

Dated: June 8, 2011.

Kent P. Connaughton,

Regional Forester, Forest Service Pacific Northwest Region.

[FR Doc. 2011–15557 Filed 6–29–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability: Rural Development Voucher Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of Rural Development Voucher Program Availability.

SUMMARY: This notice informs the public that the U.S. Department of Agriculture (USDA) in Fiscal Year 2006 established a demonstration Rural Development Voucher Program, as authorized under Section 542 of the Housing Act of 1949 as amended, (without regard to Section 542(b)). This notice informs the public that funding is available for the Rural Development Voucher Program. The notice also sets forth the general policies and procedures for use of these vouchers for Fiscal Year 2011. Pursuant to the requirements in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010, Public Law 111–80 (October 16, 2009) and the Department of Defense and full-year continuing Appropriations Act, 2011 Public Law 112–10 (April 15, 2011), Rural Development Vouchers are only available to low income tenants of Rural Development-financed multifamily properties where the Section 515 loan has been prepaid, either through prepayment or a foreclosure action, prior to the loan's maturity date and after September 30, 2005.

DATES: June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Stephanie B.M. White, Director, Multi-Family Housing Portfolio Management Division, Rural Development, U.S. Department of Agriculture, 1400

Independence Avenue, SW., STOP 0782, Washington, DC 20250–0782, telephone (202) 720–1615. Persons with hearing or speech impairments may access this number via TDD by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–80 October 16, 2009) (Appropriations Act, 2010) provided that the Secretary of the USDA shall carry out the Rural Development Voucher Program as follows:

> That of the funds made available under this heading, $16,400,000 shall be available for rural housing vouchers to any low-income household (including those not receiving Rental Assistance) residing in a property financed with a Section 515 loan which has been prepaid after September 30, 2005: *Provided further,* that the amount of such voucher shall be the difference between comparable market rent for the Section 515 unit and the tenant paid rent for such unit: *Provided further,* That funds made available for such vouchers shall be subject to the availability of annual appropriations: *Provided further,* that the Secretary shall, to the maximum extent practicable, administer such vouchers with current regulations and administrative guidance applicable to Section 8 housing vouchers administered by the Secretary of the Department of Housing and Urban Development (HUD).
>
> The Department of Defense and full-year continuing Appropriations Act 2011 Public Law 112–10 (April 15, 2011) continued the requirements of the voucher program but changed the funding level to $14,000,000, with a .2 percent rescission which provided total funding of $13,972,000.

This notice outlines the process for providing voucher assistance to the eligible impacted families when an owner prepays a Section 515 loan or USDA action results in a foreclosure after September 30, 2005.

Design Features of the Rural Development Voucher Program

This section sets forth the design features of the Rural Development Voucher Program, including the eligibility of families, the inspection of the units, and the calculation of the subsidy amount.

Rural Development Vouchers under this part are administered by the Rural Housing Service; an Agency under the Rural Development mission area, in accordance with requirements set forth in this Notice of Funds Availability (NOFA) and further explained in, ''The Rural Development Voucher Program Guide,'' which can be obtained by contacting any Rural Development office. Contact information for Rural Development offices can be found at *http://offices.sc.egov.usda.gov/locator/app.* These requirements are generally based on the housing choice voucher program regulations of HUD set forth at 24 CFR Part 982, unless otherwise noted by this NOFA.

The Rural Development Voucher Program is intended to offer protection to eligible multifamily housing tenants in properties financed through Rural Development's Section 515 Rural Rental Housing Program (515 property) who may be subject to economic hardship through prepayment of the Rural Development mortgage. When the owner of a 515 property pays off the loan prior to the loan's maturity date (either through prepayment or foreclosure action), the Rural Development affordable housing requirements and rental assistance subsidies generally cease to exist. Rents may increase, thereby making the housing unaffordable to tenants. When a prepayment occurs, whether or not the rent increases, the tenant may be responsible for the full payment of rent. The Rural Development Voucher Program applies to any 515 property where the mortgage is paid off prior to the maturity date in the promissory note and the payment occurs after September 30, 2005. This includes foreclosed properties. Tenants in foreclosed properties are eligible for a Rural Development Voucher under the same conditions as properties that go through the standard prepayment process.

The Rural Development Voucher will help tenants by providing an annual rental subsidy, renewable on the terms and conditions set forth herein and subject to the availability of funds, that will supplement the tenant's rent payment. This program enables a tenant to make an informed decision about remaining in the property, moving to a new property, or obtaining other financial housing assistance. Low-income tenants in the prepaying property are eligible to receive a voucher to use at their current rental property, or to take to any other rental unit in the United States and its territories.

There are some general limitations on the use of a voucher:

(1) The rental unit must pass a Rural Development health and safety inspection, and the owner must be willing to accept a Rural Development Voucher;

(2) Also, Rural Development Vouchers cannot be used for units in subsidized housing like Section 8 and public housing where two housing subsidies would result. The Rural Development Voucher may be used for rental units in other properties financed by Rural Development, but it will not be used in combination with the Rural Development Rental Assistance program.

(3) The Rural Development Voucher may not be used to purchase a home.

1. Family Eligibility

In order to be eligible for the Rural Development Voucher under this NOFA, a family must (a) be residing in the Section 515 project on the date of the prepayment of the Section 515 loan or upon foreclosure by Rural Development; (b) the date of the prepayment or foreclosure must be after September 30, 2005; (c) as required by Section 214 of the Housing and Community Development Act of 1980 [42 U.S.C. 1436a] the primary tenant and co-tenant, if applicable, must be a United States citizen, United States non-citizen national or qualified alien. (1) For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to Rural Development a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status. (i) For each adult, the declaration must be signed by the adult. (ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child. Each family member, regardless of age, must submit the following evidence to the responsible entity. (1) For citizens, the evidence consists of a signed declaration of U.S. citizenship. Rural Development may request verification of the declaration by requiring presentation of a United States passport, social security card, or other appropriate documentation. (2) For noncitizens who are 62 years of age or older, the evidence consists of: (i) A signed declaration of eligible immigration status; and (ii) Proof of age document. (3) For all other noncitizens, the evidence consists of: (i) A signed declaration of eligible immigration status; (ii) alien registration documentation or other proof of immigration registration from the United States Citizenship and Immigration Services (USCIS) that contains the individual's alien admission number or alien file number; and (iii) a signed verification consent form, which provides that evidence of eligible immigration status may be released to Rural Development and USCIS for purposes of verifying the immigration status of the individual.

Rural Development shall provide a reasonable opportunity, not to exceed 30 days, to submit evidence indicating a satisfactory immigration status, or to appeal to the Immigration and Naturalization Service the verification determination of the Immigration and Naturalization Service; and; (d) the family must be a low-income family on the date of the prepayment or foreclosure. A low-income family is a family whose annual income does not exceed 80 percent of the family median income for the area as defined by HUD. HUD's definition of median income can be found at: *http://www.huduser.org/portal/datasets/il/il10/index_mfi.html.*

During the prepayment or foreclosure process, Rural Development will evaluate every tenant family to determine if it is low income. If Rural Development determines a family is low-income, immediately following the foreclosure or prepayment Rural Development will send the primary tenant a letter offering the family a voucher and will enclose a Voucher Obligation Request Form. If the family wants to participate in the Rural Development Voucher Program, the tenant has 10 months from the date of prepayment or foreclosure to return the Voucher Obligation Request Form and the citizenship declaration to the local Rural Development office. If Rural Development determines that the tenant is ineligible, Rural Development will provide administrative appeal rights pursuant to 7 CFR Part 11.

2. Obtaining a Voucher

Rural Development will monitor the prepayment request process or foreclosure process, as applicable. As part of prepayment or foreclosure Rural Development will obtain a rent comparability study for the property ninety days prior to the date of prepayment or foreclosure. The rent comparability study will be used to calculate the amount of voucher each tenant is entitled to receive. All tenants will be notified if they are eligible and the amount of the voucher within 90 days following the date of prepayment or foreclosure. The tenant notice will include a description of the Rural Development Voucher Program, a Voucher Obligation Request Form, and letter from Rural Development offering the tenant participation in Rural Development Voucher Program. The tenant has ten (10) months from the date of prepayment or foreclosure to return the Voucher Obligation Request Form and the signed citizenship declaration. Failure to submit the Voucher Obligation Request Form and the signed citizenship declaration within the required timeframes will terminate the tenant's the voucher. A tenant's failure to respond within the required timeframes is not appealable. Once the primary tenant returns the Voucher Obligation Request Form and the citizenship declaration to Rural Development, a voucher will be issued within 30 days. All information necessary for a housing search, explanations of unit acceptability, and Rural Development contact information will be provided by Rural Development to the tenant at the time the Voucher Obligation Form and citizenship declaration is received.

The family receiving a Rural Development Voucher has an initial period of 60 calendar days from issuance of the voucher to find a housing unit. At its discretion, Rural Development may grant one or more extensions of the initial period for up to an additional 60 days. The maximum voucher period for any family participating in the Rural Development Voucher Program is 120 days. If the family needs and requests an extension of the initial period as a reasonable accommodation to make the program accessible to a disabled family member, Rural Development will extend the voucher search period. If the Rural Development Voucher remains unused after a period of 150 days from original issuance, the Rural Development Voucher will become void, any funding will be cancelled, and the tenant will no longer be eligible to receive a Rural Development Voucher.

3. Initial Lease Term

The initial lease term for the housing unit where the family wishes to use the Rural Development Voucher must be for one year.

4. Inspection of Units and Unit Approval

Once the family finds a housing unit, Rural Development will inspect and determine if the housing standard is acceptable within 30 days of Rural Development's receipt of the HUD Form 52517 ''Request for Tenancy Approval Housing Choice Voucher Program'' found at *http://www.hud.gov/offices/adm/hudclips/forms/files/52517.pdf* and the Disclosure of Information on Lead-Based Paint Hazards. The inspection standards currently in effect for the Rural Development Section 515 Multi-Family Housing Program apply to the Rural Development Voucher Program. Rural Development must inspect the unit and ensure that the unit meets the housing inspection standards set forth at 7 CFR 3560.103. Under no circumstances may Rural Development make voucher rental payments for any period of time prior to the date that Rural Development physically inspects the unit and determines the unit meets the housing inspection standards. In the case of properties financed by Rural Development under the Section 515 program, Rural Development may accept the results of physical inspections performed no more than one year prior to the date of receipt by Rural Development of Form HUD 52517, in order to make determinations on acceptable housing standards. Before approving a family's assisted tenancy or executing a Housing Assistance Payments contract, Rural Development must determine that the following conditions are met: (1) The unit has been inspected by Rural Development and passes the housing standards inspection or has otherwise been found acceptable as noted previously; and (2) the lease includes the HUD Tenancy Addendum. A copy of the HUD Tenancy Addendum will be provided by Rural Development when the tenant is informed he/she is eligible for a voucher.

Once the conditions in the above paragraph are met, Rural Development will approve the unit for leasing. Rural Development will then execute with the owner a Housing Assistance Payments (HAP) contract, Form HUD–52641. The HAP contract must be executed before Rural Development Voucher payments can be made. Rural Development will use its best efforts to execute the HAP contract on behalf of the family before the beginning of the lease term. In the event that this does not occur, the HAP contract may be executed up to 60 calendar days after the beginning of the lease term. If the HAP contract is executed during this 60-day period, Rural Development will pay retroactive housing assistance payments to cover the portion of the approved lease term before execution of the HAP contract. Any HAP contract executed after the 60-day period is untimely, and Rural Development will not pay any housing assistance payment to the owner for that period. In establishing the effective date of the voucher HAP contracts, Rural Development may not execute a HAP contract that is effective prior to the Section 515 loan prepayment.

5. Subsidy Calculations for Rural Development Vouchers

As stated earlier, if eligible, the tenant will be notified of the maximum voucher amount within 90 days following prepayment or foreclosure. The maximum voucher amount for the Rural Development Voucher Program is the difference between the comparable

market rent for the family's former Section 515 unit and the tenant's rent contribution on the date of the prepayment. The voucher amount will be based on the comparable market rent; the voucher amount will never exceed the comparable market rent at the time of prepayment for the tenant's unit if the tenant chooses to stay in-place. Also, in no event may the Rural Development Voucher payment exceed the actual tenant lease rent. The amount of the voucher does not change either over time or if the tenant chooses to move to a more expensive location.

6. Mobility and Portability of Rural Development Vouchers

An eligible family that is issued a Rural Development Voucher may elect to use the assistance in the same project or may choose to move to another location. The Rural Development Voucher may be used at the prepaid property or any other rental unit in the United States and its territories that passes Rural Development physical inspection standards, and where the owner will accept a Rural Development Voucher and execute a Form HUD 52641. Tenants and landlords must inform Rural Development if the tenant plans to move during the HAP agreement term, even to a new unit in the same complex. All moves (within a complex or to another complex) require a new obligation, a new inspection and a new HAP agreement. In addition, HUD Section 8 and federally assisted public housing is excluded from the Rural Development Voucher Program because these units are already federally subsidized. Tenants with a Rural Development Voucher would have to give up the Rural Development Voucher to accept the assistance at those properties. The Rural Development Voucher may be used in other properties financed by Rural Development, but it cannot be used in combination with the Rural Development Rental Assistance program. Tenants with a Rural Development Voucher that apply for housing in a Rural Development-financed property must choose between using the voucher or Rental Assistance. If the tenant relinquishes the Rural Development Voucher in favor of Rental Assistance, the tenant is not eligible to receive another Rural Development Voucher.

7. Term of Funding and Conditions for Renewal for Rural Development Vouchers

The Rural Development Voucher Program provides voucher assistance for 12 monthly payments. The voucher is issued to the household in the name of the primary tenant. If the primary tenant dies during the term of the voucher, after Rural Development receives notice of the death, the use of the voucher passes to the co-tenant.

The voucher is renewable subject to the availability of appropriations to the USDA. In order to renew a voucher, a tenant must return a signed Voucher Obligation Form which will be sent to the tenant within 60–90 days before the current voucher expires.

In order to ensure continued eligibility to use the Rural Development Voucher, at the time they apply for renewal of the voucher, tenants must certify that the current family income does not exceed 80 percent of family median income. Rural Development will advise the tenant of the maximum income level when the renewal Voucher Obligation Form is sent.

Renewal requests will have no preference and will be processed as a new application as described in this NOFA.

8. Non-Discrimination Statement

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.''

9. Paperwork Reduction Act

The information collection requirements contained in this document are those of the Housing Choice Voucher Program, which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 USC 3501–3520) and assigned OMB control number 2577–0169. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Dated: June 23, 2011.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2011–16458 Filed 6–29–11; 8:45 am]

BILLING CODE 3410–XV–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. ATBCB–2011–0003]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: 30-day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal governmentwide effort to streamline the process to seek feedback from the public on service delivery, the Architectural and Transportation Barriers Compliance Board (Access Board) has submitted a Generic Information Collection Request: ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to the Office of Management and Budget for approval under the Paperwork Reduction Act.

DATES: Comments must be submitted by August 1, 2011.

ADDRESSES: Submit comments by any of the following methods:

- *Federal eRulemaking Portal http://www.regulations.gov.* Follow the instructions for submitting comments. Regulations.gov ID for this docket is ATBCB–2011–0003.
- *E-mail: fairhall@access-board.gov.* Include docket number ATBCB–2011–0003 in the subject line of the message.
- *Fax:* 202–272–0081.
- *Mail or Hand Delivery/Courier:* Office of the General Counsel, U.S. Access Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004–1111.

All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Lisa Fairhall, Office of the General Counsel, Access Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004–1111. Telephone number: 202–272–0046 (voice); 202–272–0064 (TTY); 202–272–0081 (FAX). Electronic mail address: *fairhall@access-board.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: This information collection activity will gather qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Access Board received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide the Access Board's projected average estimates for the next three years: [1]

Current Actions: New collection of information.

Type of Review: New collection.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 7.

Respondents: 1,100.

Annual responses: 1,100.

Frequency of Response: Once per request.

Average minutes per response: 6 minutes.

Burden hours: 103 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

David M. Capozzi,

Executive Director.

[FR Doc. 2011–16510 Filed 6–29–11; 8:45 am]

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[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

Average Expected Annual Number of Activities: 25,000.

Average Number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 2,500,000.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–2011]

Foreign-Trade Zone 124—Gramercy, LA; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Port of South Louisiana, grantee of FTZ 124, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170–1173, 01/12/09 (correction 74 FR 3987, 01/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 24, 2011.

FTZ 124 was approved by the Board on December 20, 1985 (Board Order 319, 50 FR 53351, 12/31/85), and expanded on July 5, 1988 (Board Order 387, 53 FR 27184, 7/19/88). The current zone project includes the following sites: *Site 1* (600 acres)—located at River Mile 121.4, Luling; *Site 2* (335 acres)—within the Globalplex Intermodal Terminal, River Mile 138.5, Reserve; *Site 3* (200 acres)—within Place Riviere, River Mile 150, Vacherie; and, *Site 4* (213 acres)—within the Plantation Business Campus, River Mile 121, Destrehan.

The grantee's proposed service area under the ASF would be St. Charles, St. John the Baptist, St. James, La Fourche and St. Mary Parishes, Louisiana. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Gramercy Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include existing Sites 2, 3 and 4 as ''magnet'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 2 be so exempted. The applicant is also requesting that Site 1 be removed from the zone project. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 124's authorized subzones.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 29, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 13, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary,

Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: June 24, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–16486 Filed 6–29–11; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1772]

Reorganization of Foreign-Trade Zone 102, Under Alternative Site Framework; St. Louis, MO

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170–1173, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the St. Louis County Port Authority, grantee of FTZ 102, submitted an application to the Board (FTZ Docket 61–2010, filed 10/19/2010) for authority to reorganize under the ASF with a service area that includes the City of St. Louis and St. Louis County, Missouri, within and adjacent to the St. Louis Customs and Border Protection port of entry; FTZ 102's existing Sites 3A, 3B and 3C would be renumbered as Sites 3, 4 and 5, respectively; Sites 2, 3, 4 and 5 would be categorized as magnet sites; and, Site 1 would be categorized as a usage-driven site;

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 65612–65613, 10/26/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to reorganize and expand FTZ 102 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 3, 4 and 5 if not activated by June 30, 2016, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 1 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by June 30, 2014.

Signed at Washington, DC, this 22nd day of June 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: _____

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–16484 Filed 6–29–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results and Preliminary Intent To Terminate, in Part, Antidumping Duty Changed Circumstances Review and Extension of Time Limit for Final Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting a changed circumstances review (''CCR'') of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China (''PRC'') pursuant to section 751(b) of the Tariff Act of 1930, as amended (''Act''), and 19 CFR 351.216(d). We preliminarily determine that Hebei Husqvarna-Jikai Diamond Tools Co., Ltd. (''Hebei Husqvarna'') is not the successor-in-interest to Hebei Jikai Industrial Group Co., Ltd. (''Hebei Jikai''), but is instead a new entity.

DATES: *Effective Date:* June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Alan Ray, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5403.

SUPPLEMENTARY INFORMATION:

Case History

On August 13, 2010, the Diamond Sawblades Manufacturers Coalition (''DSMC'') filed a submission to the Department requesting that it conduct a CCR of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China (''PRC'') to determine whether Hebei Husqvarna is the successor-in-interest to Electrolux Construction Products (Xiamen) Co. Ltd. (''Electrolux''), Husqvarna Holding AB, or is an altogether new entity that would therefore be subject the PRC-wide rate. On August 20, 2010, the DSMC submitted further information supporting its claim that Hebei Husqvarna should be found to be the successor-in-interest to Electrolux, Husqvarna Holding AB, or found to be a new entity. On September 13, 2010, Respondent [1] submitted to the Department a request for a CCR, contending that Hebei Husqvarna should be considered the successor-in-interest to Hebei Jikai. On September 30, 2010, the Department initiated a CCR based on these two requests but did not expedite the review, as requested by Respondent, because the Department required additional information to perform the successor-in-interest analysis.[2]

Between October 13, 2010, and April 12, 2011, Hebei Husqvarna and the DSMC submitted questionnaire responses and comments regarding the successor-in-interest factors that the Department considers in making a determination. In its April 12, 2011, submission, the DSMC argued that the Department should apply adverse facts available (''AFA'') to Hebei Husqvarna and terminate the review because Hebei Husqvarna failed to provide complete information for two of the four criteria (described below) that the Department typically examines in a successor-in-interest analysis.

Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that

[1] The second request for initiation of a changed circumstances review was submitted on behalf of Husqvarna Construction Products North America, Inc., Hebei Jikai, and Hebei Husqvarna, collectively (''Respondent''). However, because the Department requested and received information from individual companies that compose Respondent, in certain instances the Department will refer to specific companies.

[2] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Initiation of Antidumping Duty Changed Circumstances Review,* 75 FR 60409 (September 30, 2010) (''*Initiation*'').

is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order. Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'''). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Preliminary Termination of CCR Based Upon DSMC's Request

In its August 13, 2010, and August 20, 2010, submissions, the DSMC requested that the Department initiate a CCR and find that Hebei Husqvarna is a successor-in-interest to Electrolux, Husqvarna Holding AB, or is an altogether new entity. Operationally, a finding that Hebei Husqvarna is the successor-in-interest to Electrolux, Husqvarna Holding AB, or an altogether new entity, would result in a continuation of the status quo in terms of cash deposit requirements. Unless the Department concludes that Hebei Husqvarna is the successor-in-interest to Hebei Jikai, all exports to the United States should be subject to the PRC-wide antidumping duty rate of 164.09 percent. Therefore, the Department is preliminarily terminating this review under the request submitted by the DSMC, as the completion of the review based upon its request would not result in any possible change with respect to Hebei Husqvarna's appropriate antidumping duty cash deposit rate.

Successor-in-Interest Determination Based Upon Respondent's Request

In making a successor-in-interest determination, the Department typically examines several factors including, but not limited to: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.[3] While no single factor or combination of these factors will necessarily be dispositive, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor.[4] Respondent provided complete information with respect to management, production facilities, and Hebei Husqvarna's and Electrolux's suppliers and customers. The Department requested information regarding Hebei Jikai. Specifically, the Department requested the quantity and value of subject merchandise that it had sold to its largest customers, as well as the percentage of inputs accounted for by Hebei Jikai's largest suppliers. Hebei Husqvarna did not provide this information to the Department.[5]

Preliminary Results

On September 14, 2006, Husqvarna Holding AB and Hebei Jikai agreed to form a joint venture company, Hebei Husqvarna, in China to produce and sell diamond tools, including diamond sawblades.[6] Based on the facts surrounding the formation of the joint venture and the subsequent restructuring described in the accompanying memorandum, and in accordance with 19 CFR 351.221(c)(3)(i), we preliminarily determine that Hebei Husqvarna is not the successor-in-interest to Hebei Jikai but is instead a new entity.[7] The Department disagreed with the DSMC in its request to terminate the review, given Respondent's failure to provide the Department with information regarding Hebei Jikai's customers and suppliers. The Department finds that Hebei Husqvarna's and Hebei Jikai's omission does not provide a sufficient basis to terminate the review, as the Department could continue to perform the successor-in-interest analysis. With respect to the four factors that the Department typically examines, we preliminarily find that, first, the management and board of directors that had been in place at Hebei Jikai have significantly changed. Second, we find that production facilities of Hebei Husqvarna are substantially the same as those of Hebei Jikai. Finally, because Respondent provided incomplete information regarding changes in customers and suppliers, we cannot conclude that for those two factors Hebei Husqvarna is materially the same as Hebei Jikai. We note that even with the limited information regarding Hebei Jikai's customers and suppliers on the record, there appears to have been a significant change in customer base. Therefore, in considering the totality of the information we have on the record, the Department preliminarily determines that Hebei Husqvarna is not the successor-in-interest to Hebei Jikai. Furthermore, the Department finds the application of AFA, as argued by the DSMC, is unnecessary.

In conclusion, as a result of this determination, we preliminarily find that Hebei Husqvarna remains subject to the PRC-wide antidumping duty cash deposit rate of 164.09 percent with respect to the subject merchandise. If the above preliminary results are affirmed in the Department's final results, the cash deposit rate resulting from this changed circumstances review will apply to all entries of the subject

[3] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 75 FR 12726 (March 17, 2010) and accompanying Issues and Decision Memorandum at Comment 7.

[4] *See Fresh and Chilled Atlantic Salmon From Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 9979, 9980 (March 1, 1999).

[5] *See* Respondent's April 4, 2011, submission.

[6] *See* Respondent's September 13, 2010, submission at page 7.

[7] For a complete discussion involving the business proprietary information involving the four criteria noted above, *see* Memorandum to James C. Doyle, Office Director, Through Matthew Renkey, Acting Program Manager, From Alan Ray, Case Analyst, Diamond Sawblades and Parts Thereof from the People's Republic of China: Successor-in-Interest Analysis, dated concurrently with the signature of this notice.

merchandise from Hebei Husqvarna, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review.[8] Finally, we note that the 48.5 percent rate that Hebei Jikai received in the investigation continues to apply only to subject merchandise that was both produced and exported by Hebei Jikai and would not be applicable to merchandise produced by Hebei Husqvarna and exported by Hebei Jikai.

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than seven days after the publication of these preliminary results.[9] Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 12 days after the publication of these preliminary results.[10] All written comments shall be submitted in accordance with 19 CFR 351.303. Any interested party may request a hearing within 14 days of publication of this notice.[11] Any hearing, if requested, will be held no later than 30 days after the date of publication of this notice, or the first workday thereafter.[12] Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of hearing.

Extension of Time Limit for the Final Results

In the *Initiation,* the Department stated that it would issue the final results of the review within 270 days after the date on which the changed circumstances review was initiated. However, it is not practicable to complete the review within this time period. Accordingly, pursuant to 19 CFR 351.302(b), we are extending the time limit by 55 days.

The Department finds that it is not practicable to complete this review within the original time frame as it is granting interested parties seven days from the date of publication of this notice to submit comments, five additional days to submit rebuttal comments. Furthermore, the Department is providing parties the opportunity to request a hearing pertaining to these preliminary results. Consequently, in accordance with 19 CFR 351.302(b), the Department is extending the time period for issuing the final results in this review by 55 days. Therefore, the final results will be due no later than August 18, 2011.

We are issuing and publishing these preliminary results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: June 24, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–16498 Filed 6–29–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, 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) 482–3338.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period January 1, 2011, through March 31, 2011.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: June 22, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix—Subsidy Programs on Cheese Subject to an In-Quota Rate of Duty

Country	Program(s)	Gross[1] subsidy ($/lb)	Net[2] subsidy ($/lb)
27 European Union Member States[3]	European Union Restitution Payments	$ 0.00	$0.00
Canada	Export Assistance on Certain Types of Cheese	0.35	0.35
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	0.00	0.00
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[8] *See Pressure Sensitive Plastic Tape from Italy: Final Results of Antidumping Duty Changed Circumstances Review,* 75 FR 27706 (May 18, 2010).

[9] *See* 19 CFR 351.309(c)(ii).

[10] *See* 19 CFR 351.309(d).

[11] *See* 19 CFR 351.309(d)(i).

[12] *See* 19 CFR 351.310(d)(1).

[3] The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

[FR Doc. 2011–16497 Filed 6–29–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–838]

Certain Frozen Warmwater Shrimp From Brazil: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2011, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain frozen warmwater shrimp from Brazil for the period of review (POR) of February 1, 2010, through January 31, 2011. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 5559 (February 1, 2011). The Department received a timely request from the Ad Hoc Shrimp Trade Action Committee (Domestic Producers) in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil. On April 1, 2011, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Brazil with respect to seven companies. *See Certain Frozen Warmwater Shrimp From Brazil, India and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews,* 76 FR 18157 (April 1, 2011) (*Initiation Notice*).

The Department stated in its initiation of this review that it intended to rely on U.S. Customs and Border Protection (CBP) data to select respondents. *See Initiation Notice.* However, our review of the CBP database, with respect to the companies for which reviews were requested, showed no entries of certain frozen warmwater shrimp originating in Brazil, subject to AD/CVD duties, during the POR. *See* April 1, 2011, Memorandum to the File from Kate Johnson entitled ''Release of POR Entry Data from CBP,'' as revised on April 11, 2011. We released the results of our CBP data query to the Domestic Producers and invited them to comment on the CBP data and respondent selection, which they did on April 6, 2011. On April 12, 2011, we conducted another query of the CBP database which showed no entries of subject merchandise subject to AD/CVD duties from companies other than those for which reviews were requested.

On May 24, 2011, we sent a ''No Shipments Inquiry'' to CBP to confirm that there were no shipments or entries of frozen warmwater shrimp from Brazil during the POR. We received no information from CBP to contradict the results of our data query that there were no shipments or entries of subject merchandise to the United States during the POR.

On June 10, 2011, we addressed the Domestic Producers' April 6, 2011, comments in a Memorandum to James Maeder, Director, Office 2, AD/CVD Operations from Kate Johnson and Rebecca Trainor, Senior Case Analysts, Office 2, AD/CVD Operations, entitled ''Intent to Rescind Administrative Review'' and invited parties to comment on our intent to rescind this administrative review. We did not receive comments from any interested party.

Rescission of Review

Section 351.213(d)(3) of the Department's regulations stipulates that the Secretary may rescind an administrative review if there were no entries, exports, or sales of the subject merchandise during the POR. As there were no entries, exports, or sales of the subject merchandise during the POR, we are rescinding this review of the antidumping duty order on certain frozen warmwater shrimp from Brazil pursuant to 19 CFR 351.213(d)(3). We intend to issue assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 24, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–16491 Filed 6–29–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Workshop—Monitoring Changes in Extreme Storm Statistics: State of Knowledge; Notice of Open Public Workshop

AGENCY: National Environmental Satellite, Data, and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open public workshop.

SUMMARY: This notice sets forth the schedule and topics of an upcoming workshop hosted by NOAA's National Climatic Data Center in Asheville, North Carolina. Invited participants will discuss topics as outlined below.

Members of the public are invited to attend the workshop, and are required to fulfill a request to RSVP to *brooke.stewart@noaa.gov* by 5 p.m. EDT, Friday, July 14, 2011 if they wish to attend. The workshop is to be held in a federal facility; building-security restrictions preclude attendance by members of the public who do not RSVP by the deadline. Space is also limited and public attendees will be admitted based on the order in which RSVPs are received.

The public will be invited to offer their comments during a 30-minute period to be held from 9:30 to 10 a.m. on Monday, July 25, 2011. Each individual or group making a verbal presentation will be limited to a total time of five minutes.

DATES: *RSVP Deadline:* Any member of the public wishing to attend the workshop must RSVP no later than 5 p.m. EDT on July 14, 2011.

Workshop Date and Time: The workshop will be held on July 25–27, 2011 at the following times: July 25, 2011 from 8:15 a.m. to 5:30 pm; July 26, 2011 from 8:15 a.m. to 5:30 p.m.; and July 27, 2011 from 8:15 a.m. to 2 p.m.

ADDRESSES: The workshop will be held at the Veach-Baley Federal Complex, located at 151 Patton Avenue, Asheville, North Carolina 28801.

For changes in the schedule, agenda, and updated information, please check the workshop website at *https://sites.google.com/a/noaa.gov/severe-storms-workshop/.*

FOR FURTHER INFORMATION CONTACT: Brooke Stewart, National Climatic Data Center, 151 Patton Avenue, Rm. 563, Asheville, North Carolina 28801. (Phone: 828–257–3020, E-mail: *brooke.stewart@noaa.gov.*)

SUPPLEMENTARY INFORMATION: This workshop will provide an update to the climate science surrounding extreme events. The intent is to make key input available to the National Climate Assessment (NCA) for consideration. Further information regarding the NCA is available at *http://www.globalchange.gov/what-we-do/assessment*). NOAA is sponsoring this workshop in support of the National Climate Assessment process.

As workshop materials become available, they may be found at *https://sites.google.com/a/noaa.gov/severe-storms-workshop/.*

Topics To Be Addressed: This conference will address all aspects of trend monitoring for severe storms. Specific topics include: Severe Thunderstorms (and associated hail and winds), tornadoes, extreme precipitation, hurricanes (winds and rainfall) and typhoons, severe snowstorms and ice storms. The workshop will consider monitoring both physical measurements of these events as well as proxy information such as socio-economic impact.

Participants will consider:

- what determinations can be made regarding the detection of trends;
- what determinations can be made regarding possible causes of any observed trends; and
- what degree of confidence is implied by the best available science regarding the detection and possible causes of trends

The workshop will feature invited speakers and discussions. The workshop is designed to produce a draft detailed outline of an article for submission to a peer-reviewed journal.

The report from this workshop will also include the following:

(1) Maintenance/updates of the data sets related to the events considered.

(2) What are the key impediments in detecting changes in the events?

(3) How can the impediments be overcome?

Mary E. Kicza,

NOAA Assistant Administrator for Satellite and Information Services.

[FR Doc. 2011–16428 Filed 6–29–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA524

Marine Mammals; File No. 15488

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to the Georgia Department of Natural Resources, Wildlife Resources Division [Responsible Party: Dan Forster], to conduct research on North Atlantic right whales (*Eubalaena glacialis*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On December 3, 2010, notice was published in the **Federal Register** (75 FR 75458) that a request for a permit to conduct research on North Atlantic right whales had been submitted by the 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).

The permit authorizes harassment of North Atlantic right whales off the coast of Georgia, Florida, and South Carolina. Annual activities include aerial surveys and close approach by vessel to collect right whale photo-identification and behavioral data from up to 350 whales. An additional 50 adult or juvenile whales and 20 whales older than one month would be approached by vessel to collect photo-identification and behavioral data and skin/blubber biopsy samples. The purpose of the research is to monitor North Atlantic right whale population status, demographics, habitat and anthropogenic impacts. Up to 350 bottlenose (*Tursiops truncatus*) and 200 Atlantic spotted dolphins (*Stenella frontalis*) would be harassed incidental to research. The permit is valid for five years.

An environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on June 23, 2011.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 24, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–16519 Filed 6–29–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA280

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Test Pile Program

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Navy (Navy) to incidentally harass, by Level B harassment only, five species of marine mammals during pile driving activities conducted as part of a test pile program in the Hood Canal, Washington.

DATES: This authorization is effective from July 16, 2011, through October 31, 2011.

ADDRESSES: A copy of the IHA and application are available by writing 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.

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.* Supplemental documents, including the Navy's Environmental Assessment and NMFS' associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act (NEPA), are available at the same site. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, NMFS, Office of Protected Resources, NMFS, (301) 713–2289.

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 by harassment 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 a notice of a proposed authorization is provided to the public for review.

Authorization for 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 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 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 2, 2010, from the Navy for the taking of marine mammals incidental to pile driving in association with a test pile program in the Hood Canal at Naval Base Kitsap in Bangor, Washington (NBKB). Vibratory and impulsive pile driving operations associated with the test pile program have the potential to affect marine mammals within the waterways adjacent to NBKB, and could result in harassment as defined in the MMPA. This test pile program will occur between July 16, 2011, and October 31, 2011. Six species of marine mammals may be present within 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 timeline (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 is not found in the Hood Canal 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, and were analyzed in detail in NMFS' analysis of this action.

Description of the Specified Activity

In accordance with regulations implementing the MMPA, NMFS published notice of the proposed IHA in the **Federal Register** on January 25, 2011 (76 FR 4300). A complete description of the action was included in that notice and will not be reproduced here.

NBKB is located on the Hood Canal approximately 20 miles (32 km) west of Seattle, Washington, and provides berthing and support services to Navy submarines and other fleet assets. The Navy will install and remove up to 29 test and reaction piles, conduct loading tests on select piles, and measure in-water sound propagation parameters (e.g., transmission loss) during pile installation and removal. Geotechnical and sound propagation data collected during pile installation and removal will be integrated into the design, construction, and environmental planning for the Navy's proposed Explosive Handling Wharf (EHW–2)—a separate project in planning stages and currently undergoing environmental review. While this project is designed to produce information necessary for the proposed EHW–2, the collected data will allow a better understanding of the characteristics of sound produced by pile driving in Hood Canal. This information will be instrumental to better understanding the potential impacts of other future projects at the NBKB waterfront. In addition, the Navy, in collaboration with NMFS, will study the performance of new methods of sound attenuation and will investigate the efficacy of soft start techniques as well as of the use of sound attenuation devices for vibratory driving. This information will be broadly applicable to NMFS' future efforts to mitigate impacts to marine mammals, and thus carries value in addition to the project's intended purpose.

The test pile program will require a maximum of forty work days for completion. The forty work day duration of the program includes the time for the initial pile installations, for performing loading tests, and to remove all of the test piles. The test pile program will involve driving 18 steel pipe piles, at pre-determined locations within the proposed footprint of EHW–2. Some of the initial 18 piles will be removed and re-driven as part of lateral load and tension tests. A total of 11 piles will be installed to perform lateral load and tension load tests. 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, which involves driving a pile the last few feet into the substrate to determine the load capacity of the pile. Noise attenuation measures (i.e., bubble curtain) will be used during most impact hammer operations and on two of the vibratory-driven piles. Certain piles will undergo unmitigated impact driving in order to determine performance of the bubble curtain. This represents a change from the action as proposed and is discussed later in this document. Hydroacoustic

monitoring will be performed to assess effectiveness of noise attenuation measures.

The Navy anticipates that an average of two piles will be installed and removed per day. For each pile installed, the driving time is expected to include no more than 1 hour for vibratory driving and 15 minutes for the impact driving portion, with a maximum 100 blows executed per day. All piles will be extracted using a vibratory hammer. Extraction is anticipated to take approximately 30 minutes per pile. Overall, this results in an estimated maximum of 2 hours for driving and removal per pile, or approximately 4 hours per day. Therefore, while 40 days of total in-water work time is proposed, only a fraction of the total work time will actually be spent on pile driving and removal. Based on these estimates, the total pile driving time from vibratory or impact pile driving would be less than 15 days (29 piles at an average of two per day), although delays may spread pile driving over additional days.

For pile driving activities, the Navy used NMFS-promulgated thresholds for assessing pile driving 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 30–72 in. (0.8–1.8 m) diameter steel pile driving 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 activities, and that 1,187 Level B harassments may occur during the test pile program from underwater sound. No incidents of harassment were predicted from airborne sounds associated with pile driving.

Changes to the Proposed Action

As a result of negotiation with the U.S. Fish and Wildlife Service, which has jurisdiction over the ESA-listed marbled murrelet, the Navy now has the opportunity to conduct some unmitigated impact pile driving (i.e., without use of a sound attenuation device) in order to empirically determine the performance of sound attenuation devices under local conditions. NMFS supports this effort, which will enable more precise understanding of device efficacy and ensure that the best-performing device will be used in this and other pile driving projects. In order for the Navy to confirm that the sound attenuation system is functioning properly and achieving the levels of reduction that were anticipated, comparative measurements must be taken during the course of pile driving with the sound attenuation device both in operation and shut off.

Unmitigated driving will be limited to no more than seven piles in total, with maximums of one pile per day and 60 seconds per pile. The Navy's application provided modeled distances to buffer (Level B harassment) and exclusion (Level A harassment or injury) zones, for both mitigated and unmitigated driving. The exclusion zone for pinnipeds (190-dB) would increase from 5 to 22 m when the sound attenuation device is off. The injury zone for cetaceans (180-dB) would increase from 22 to 100 m with the device off. The behavioral disturbance zone for all marine mammals (160-dB) would increase from 464 to 2,154 m when the sound attenuation system is off. Using the methodology described in NMFS' notice of proposed IHA (76 FR 4300; January 25, 2011), the calculated acoustic zones of influence would change slightly, as shown in Table 1.

TABLE 1—AREA ENCOMPASSED BY UNDERWATER SOUND THRESHOLDS FOR IMPACT PILE DRIVING, MITIGATED AND UNMITIGATED.

Description	Area (km^2) encompassed by threshold		
	Pinniped injury—190 dB	Cetacean injury—180 dB	Level B—160 dB
Impact driving, no mitigation	0.002	0.031	5.80[1]
Impact driving with bubble curtain, assuming 10 dB attenuation	0.000	0.002	0.509[1]

[1] These areas are smaller than calculated values because the morphology of the shoreline and intervening land masses constrain the propagation of sound, resulting in a reduced area of acoustic influence.

The initial analysis predicted that no injuries would occur, and the increased areas of influence do not change that prediction, using methodology described in the notice of proposed IHA. However, the increase in the size of the behavioral disturbance zone could result in additional exposures of animals to underwater sound, and thus additional takes under the MMPA. Because only sixty seconds of unmitigated driving may occur, for a maximum of seven days, the additional impact will be slight. The Navy's initial calculation of take estimate conservatively considered a pile driving day to be eight hours long. Dividing the potential number of takes that may occur per day by the number of minutes in a pile driving day (i.e., 480 minutes) allows estimation of a per minute take ratio. NMFS conservatively rounded any value above 0.01 (i.e., greater than a 1-percent chance of take occurring in a minute) up to one. The total number of takes is equivalent to the number of takes previously estimated for fifteen days of attenuated pile driving, plus any takes predicted to result per minute of unattenuated pile driving. This method predicts an additional seven takes by Level B harassment for harbor seals—the species present in the highest density—but does not predict additional take of any kind for the other species present. This change in estimated take is reflected in the section ''Estimated Takes by Incidental Harassment.''

Errata

In NMFS' notice of proposed IHA (76 FR 4300; January 25, 2011), Table 10 (''Number of Potential Warm Season (May-Oct) Exposures of Marine Mammals within Various Acoustic Threshold Zones'') contained a transcription error. Total numbers in the bottom row of that table were each shifted one cell to the left. For example, total takes should have been depicted as 1,180.

Comments and Responses

On January 25, 2011, NMFS published notice of proposed IHA (76 FR 4300) in response to the Navy's request to take marine mammals incidental to a test pile program and requested comments and information concerning that request. During the 30-day public comment period, NMFS received comments from eighteen private individuals, the Ground Zero Center for Nonviolent Action (GZCNA), the Washington State Department of Natural Resources (DNR), and the Marine Mammal Commission (MMC). Seventeen individuals and the GZCNA expressed opposition to the proposed action, while one individual expressed concern and provided information and recommendations. Those expressing opposition did so on the grounds of general concerns related to the environment, defense spending, military policy, and international treaty issues. In addition, the majority of individuals expressed concern over the appropriateness of the Navy's NEPA process, stating that the test pile program and the proposed EHW–2 construction are connected and should be considered together in the same NEPA analysis. It is important to note that NMFS' request for comments and information was limited to the proposed authorization of marine mammal take incidental to the proposed action. NMFS' sole jurisdiction with regard to the MMPA and the proposed action is the potential incidental take of marine mammals; NMFS has no jurisdiction to approve or deny the proposed action itself or over the manner in which the Navy fulfills its responsibilities under NEPA. The Navy has chosen to request authorization for the test pile program as a standalone action and NMFS is required to accept the request to analyze the action. NMFS conducted appropriate analysis of the potential for cumulative impacts related to the test pile program under NEPA.

As such, the majority of public comment received concerns matters that are outside of

NMFS' jurisdiction under the MMPA and will not be addressed further. The DNR requested that information about results from monitoring of the test pile program be shared and raised a concern over use of state-owned aquatic lands. These concerns are outside of NMFS' jurisdiction and DNR was referred to the Navy. The remaining comments and NMFS' responses are detailed below.

Comment 1: The MMC recommends that NMFS require the Navy to make careful observations in conjunction with in-air sound propagation information in order to add to the limited data available so that in the future thresholds for harassment due to airborne sound can be set based on more robust data.

Response: NMFS agrees with the MMC about the importance of founding thresholds for behavioral harassment from airborne sound upon the best scientific information available, and about the importance of collecting additional data to improve that information. As described in the notice of proposed IHA, the Navy will be required to collect information regarding observed marine mammal behavioral responses to project activities, and if possible, the correlation to sound pressure levels. This information will be included in the Navy's monitoring report after completion of the test pile program.

Comment 2: The MMC recommends that NMFS require the Navy to provide a full description of the survey methods used during shoreline surveys at NBKB, including how the Navy searched for animals, if and how it corrected its estimate for sighting probability, and if and how it corrected its estimate for decreasing sighting probability with distance from the observer.

Response: The Navy has conducted two types of shoreline surveys at NBKB. The first set, which generated data used by the Navy in calculating density for California sea lions, are opportunistic visual area scans for marine mammals conducted by NBKB personnel from land at the NBKB waterfront. Sightings of marine mammals at manmade haul-out locations (e.g., piers) along the NBKB waterfront and in waters adjoining these locations are recorded. NBKB personnel attempt to conduct these surveys daily during a typical work week (i.e., Monday-Friday), although inclement weather or security constraints sometimes preclude surveying. Due to these constraints, the number of surveys conducted each month varies. During July-October (the period of the test pile program), surveys have been conducted an average of 13 times per month. Data recorded during these scans include species, behavior, associated habitat, and weather, among other descriptive information. The majority of all sightings are of hauled-out individuals.

No correction factor for sighting probability of California sea lions was used because there is no existing data to support it. The availability of a published study in which the movement of tagged animals was used in conjunction with aerial surveys allowed the Navy to use such a correction factor for harbor seals. The Navy did not correct for decreasing detection probability with distance because it would be atypical to do so for shoreline pinniped surveys. Correcting for decreasing sighting probability with distance is appropriate for at-sea surveys, typically targeted towards cetaceans. In addition, no information that could potentially support such a correction was collected during the surveys. Each shoreline and wharf location is at a different height above the surface; therefore, the distance surveyed offshore is different at each position, which would result in deviations in detection probability rather than a constant value. However, the area surveyed of nearshore waters adjoining manmade haul-out locations is generally contained within the Waterfront Restricted Area (WRA), which extends approximately 500–1000 m offshore, and is generally able to be clearly observed.

The second set of shoreline surveys conducted by the Navy, which generated data used by the Navy in calculating density for Dall's porpoise and harbor porpoise, were defined line transect surveys. Marine mammal surveys were conducted from a small vessel operating at a speed of approximately five knots. Surveys involved following pre-determined transects parallel to the shoreline along the 3.5-mi waterfront. Transects were run from shallow water to deeper water with the first transect in each area located approximately 300 ft (91 m) offshore. Additional parallel transects were located at 300-ft intervals out to 1,800 ft (549 m) from shore. During these surveys, the distance surveyed offshore generally encompassed the area out to the WRA, resulting in a total area of 3.9 km^2 for each survey. Two observers and a vessel operator performed the surveys. Observers were trained in identification of marine mammal species and behavior, distance estimation, and area scanning techniques in order to reduce observer variation and avoid missed detections.

While on transect, the two observers scanned from zero degrees off the bow to 90 degrees abeam on each side of the vessel. Observers scanned ahead of the vessel for diving mammals and communicated any wildlife detections to the other observer to minimize missed detections and avoid duplicate observations. Observers scanned continuously, not staring in one direction, with a complete scan taking about 4–8 seconds. An observer focusing beyond 100 m is likely to miss some animals that are closer; thus, observers varied their focus from near to far fields in scanning within the 90-degree arc on each side of the vessel, and used binoculars only for species identification but not for sighting animals. To maintain effective transect width, animals detected through binoculars that would not otherwise have been detected with the naked eye were recorded in the comments field of the data form as being off transect. For all detections, time stamps were generated and locations recorded with a GPS. In addition, the observers recorded a compass bearing and distance to each animal or group of animals at the point of first detection. Distances were measured with a laser rangefinder when possible. Number and species of animals and behavior at first sighting were recorded.

Comment 3: The MMC recommends that NMFS require the Navy to (1) explain why it used the anticipated area of ensonification rather than surveyed area to estimate sea lion density and (2) correct the density estimate unless the Navy has a reasoned basis for not making such corrections.

Response: The data employed in deriving a density estimate for California sea lions comes from the first set of surveys (shoreline surveys) described previously. NMFS has determined that these surveys provide the best available data for determining sea lion density. The other available dataset (defined line transect surveys) included only sixteen survey days in 2007–2008 during the time period in which the test pile program will occur (July-October); only six sightings of California sea lions were recorded during these sixteen survey days. Two sightings were of individuals swimming, and the other four sightings were of groups of hauled-out animals. All observations of California sea lions during these surveys were over a mile away from the test pile location.

Although the first dataset is limited in not having a defined survey area, as exists for the second dataset, the first dataset provides several years of data with many more data points for the months in which the test pile program is scheduled to occur and is thus the more robust source of data for estimating density of California sea lions. As described previously, the shoreline surveys averaged 13 survey days per month during July-October of 2008–2009, thus providing 104 data points compared with 16 for the line transect surveys. In addition, use of this more robust dataset results in a more conservative estimate for California sea lion density. The Navy also investigated published studies external to survey efforts at NBKB. Ideally, aerial surveys encompassing the local population's entire geographic range, used in conjunction with a correction factor for sighting probability, would be available, as was the case for harbor seals. However, this data is not available for California sea lions in Hood Canal.

Because these surveys are of known manmade haul-out areas and adjoining waters, and are conducted from land, there is no appropriate way to define an area surveyed. It would not be appropriate to define survey area strictly as the area observed (i.e., the WRA) because the vast majority of sighted animals are hauled-out. At haul-outs, animals that forage over some greater area—unknown in this case—congregate in greater numbers than would be found in the absence of the availability of such habitat. Thus, a density calculated for animals found at known haul-outs and adjoining waters would not be applicable to the broader marine waters of the action area and would result in a gross exaggeration of sea lion numbers if extrapolated to that larger area.

Because all of the California sea lion observations were of hauled-out individuals, which gives a reasonable proxy understanding of the numbers of animals that are utilizing waters in the vicinity of the project area for foraging, a reasonable method of generating a realistic in-water density would be to determine the approximate area that might be used by the animals when swimming and/or foraging. However,

minimal data is available regarding the foraging home ranges of California sea lions. Research by Costa *et al.* (2007) regarding the foraging behavior of 32 adult females in California indicated that they travel an average distance of 66.3 +/− 11 km from rookeries. Data from Wright *et al.* (2010) for 14 wintering males from the Columbia River indicate that travel is a maximum of 70 km from shore. Additional data for 12 adult males from mixed stocks in Washington showed a maximum travel distance of 99 km per day (Wright *et al.,* 2010). Given these data regarding California sea lion travel during foraging trips, NMFS feels that using the maximum action area—the largest area affected by underwater sound produced by the action (i.e., 41.5 km^2)—as proposed by the Navy is an acceptable representation of the area in which these animals may be expected to forage in Hood Canal.

In a previous environmental analysis for Dabob Bay, located in Hood Canal to the south of the action area, the Navy used published data (Jeffries *et al.,* 2000) to produce a density estimate of 0.052 animals/km^2. While that was likely an underestimate, the density estimate produced by the methodology described here (0.410 animals/km^2) is significantly higher, and thus more conservative. The density estimate is conservative in part because the Navy used the highest recorded daily values for each month in the dataset to estimate density. For example, in September 2009, the Navy used the highest recorded value of 32 animals; the daily average for twelve surveys conducted that month was 6.75 animals. In addition, California sea lions are generally not present in the action area during July–August (one observed sea lion in 51 survey days during July–August 2008–2009). While take was estimated for the test pile project as though pile driving was equally likely to occur from July–October, it is possible that only 15 days may be required. Although this is an optimistic scenario (two piles per day for 29 total piles), and delays may occur that would spread driving out over more total days, it is probable that the bulk of pile driving will be concluded while there are few California sea lions present.

NMFS concedes that the data used, and the methodology used in estimating density, are not ideal. However, as described here, the data used is the best available, and the method of estimating density is the most appropriate based on available information. The density estimate is also likely conservative, as described previously. Finally, no better information or alternative method of estimating density was provided or proposed to NMFS during the public comment period.

Comment 4: The MMC recommends that NMFS require the Navy to re-estimate the expected number of in-water and in-air takes for harbor seals using the overall density of harbor seals in Hood Canal (i.e., 3.74 animals/km^2).

Response: As described in NMFS' notice of proposed IHA, the entire population of harbor seals in Hood Canal is estimated at 1,088 (Jeffries *et al.,* 2003). Using this estimate, with the entire area of Hood Canal (291 km^2), produces a density estimate of 3.74 animals/km^2. These data represent comprehensive, dedicated aerial surveys that were conducted for harbor seals hauled out in the Hood Canal by the Washington State Department of Fish and Wildlife from 1978–1999. However, the work by Jeffries *et al.* (2003) used a correction factor of 1.53, based on VHF-tagging data (Huber *et al.,* 2001), to account for seals in the water and not counted. The tagged animals were from the same populations that were surveyed aerially. The data from Huber *et al.* (2001) indicated that approximately 65 percent of harbor seals are hauled-out at a given moment (i.e., only 35 percent of seals are in the water at a given moment). The data loggers in these studies ran 24 hours per day. These studies computed the average proportion ashore for all seals in the population assuming an annual basis; therefore, the data indicates that the percentage of harbor seals that can be in the water at any one time (35 percent) is assumed to be reasonably consistent on a daily basis for the entire year. As a result, exposures to underwater sound were calculated using a density derived from the number of harbor seals that are anticipated to be present in the water at any one time (35 percent of 1,088, or approximately 381 animals; 1.31 animals/km^2).

There are a number of caveats associated with use of this data. The cited studies involved aerial surveys that were conducted primarily at low-tide, when maximum numbers of seals were hauled-out. However, the correction factor applied to determine the total population and take into account in-water harbor seals was not based on the aerial surveys but on VHF tag data which is unaffected by tidal influences. While some of the aerial surveys were conducted in Hood Canal, Huber *et al.'*s (2001) tagging data came from outside Hood Canal. The VHF data came from radio tags deployed in three sites within the coastal stock and three sites within the inland waters stock to determine any regional haul-out variability. While Hood Canal was not specifically sampled in Huber *et al.'*s (2001) study, Jeffries *et al.* (2003)—Huber was an author on this study as well—found the VHF data broadly applicable to all inland water stocks and applied it to estimate the total population for the inland waters. While it is possible that proportions of harbor seals in the water versus on land in Hood Canal could deviate slightly from other inland water stock populations, it is unlikely that such deviation would be large. No similar site specific data exists for Hood Canal. Therefore, the data described here is considered the best available.

It is possible that the density estimate used for estimating take may be an underestimate. Pile driving is estimated as occurring a maximum of 4 hours per day, and it is reasonable to expect that greater than 35 percent of the individuals in the action area would enter the water during the estimated 4-hour duration of pile driving. That is, assuming 65 percent of animals are hauled-out at a given time, it is possible that some animals may enter and exit the water during those 4 hours. Thus, while it is possible that no more than 35 percent of animals will be in the water at any given moment during pile driving, it is also possible that more than 35 percent could potentially be exposed to underwater sound from pile driving during those four hours. However, no data exists regarding fine-scale harbor seal movements within the project area on time durations of less than a day, thus precluding an assessment of ingress or egress of different animals through the action area. As such, it is impossible, given available data, to determine exactly what number of individuals above 35 percent may potentially be exposed to underwater sound. There is no existing data that would indicate that the proportion of individuals entering the water during pile driving would be dramatically larger than 35 percent; thus, the MMC's suggestion that 100 percent of the population be used to estimate density would likely result in a gross exaggeration of potential take.

In addition, there are a number of factors indicating that a density derived from 35 percent of the population may not result in an underestimate of take. Hauled-out harbor seals are necessarily at haul-outs, and no harbor seal haul-outs are located within or near the action area. Harbor seals observed in the vicinity of the NBKB shoreline are rarely hauled-out (for example, in formal surveys during 2007–2008, approximately 86 percent of observed seals were swimming), and when hauled-out, they do so opportunistically (i.e., on floating booms rather than established haul-outs). Harbor seals are typically unsuited for using manmade haul-outs at NBKB, which are used by sea lions. Primary harbor seal haul-outs in Hood Canal are located at significant distance (20 km or more) from the action area in Dabob Bay or further south (see Figure 4–1 in the Navy's application), meaning that animals casually entering the water from haul-outs or flushing due to some disturbance would not automatically be exposed to underwater sound; rather, only those animals embarking on foraging trips and entering the action area may be exposed. Moreover, because the Navy is be unable to determine from field observations whether the same or different individuals are being exposed, each observation will be recorded as a new take, although an individual theoretically would only be considered as taken once in a given day. If the estimated take is an underestimate (i.e., if authorized take is exceeded), there is the possibility that the Navy's action may need to be halted. Lastly, no alternative information or methodology was presented or proposed during the public comment period that would lead NMFS to believe that the MMC's recommendation would not lead to a gross exaggeration of potential take, or that would present a better estimate than that contained herein.

Comment 5: Because the Navy did not request authorization for take of harbor seals resulting from exposure to airborne sound, the MMC recommends that NMFS require the Navy to shut down activities whenever a harbor seal is within the in-air Level B harassment zone (i.e., within a radius of 358 m).

Response: The Navy's waterfront surveys have found that it is extremely rare for harbor seals to haul out in the vicinity of the test

pile project area. While in-water sightings are fairly common, even temporary, opportunistic haul-out locations are limited within the acoustic zone of influence for airborne sound (maximum of 358 m) estimated for the test pile program. Harbor seal haul-out area can include intertidal or sub-tidal rock outcrops, sandbars, sandy beaches, peat banks in salt marshes, and manmade structures such as log booms, docks, and recreational floats. The lack of any of these suitable haul-out habitats in the immediate vicinity of the test pile project area makes it extremely unlikely that a harbor seal would be hauled out in range of sounds that could cause acoustic disturbance. The only structures within the largest airborne zone of influence (358 m) are the current Explosive Handling Wharf (EHW–1) and Marginal Wharf. Both of these structures are elevated more than sixteen feet above the Mean Higher High Water (MHHW) mark, so there is no opportunity for harbor seals to haul out on these structures, even during the highest tides. Secondly, while a small intertidal/shoreline zone is present between these structures, it does not represent favorable haul-out habitat for the harbor seal. The shoreline located between the current EHW–1 and Marginal Wharf is extremely narrow, and is backed by a steep cliff face that is heavily vegetated with trees. Additionally, any portion of the intertidal zone that may be exposed at low tide is also vegetated with eelgrass beds and macroalgae, neither of which is known haul-out attractant for harbor seals. All harbor seals that are found swimming or diving within 358 m of the pile location would be considered to be taken by underwater sounds from pile driving activities; thus, there is no additional need to shutdown any time a harbor seal is within the airborne Level B harassment zone.

Comment 6: The MMC recommends that NMFS encourage the Navy to consult with experts at the National Marine Mammal Laboratory to review and revise the Navy's survey methods as needed to make them scientifically sound.

Response: The Navy has consulted with marine science experts in the past in the development of surveys and will continue to do so, including outreach with the National Marine Mammal Laboratory. NMFS is supportive of the Navy's effort to improve the strength of their survey design.

Comment 7: The MMC recommends that NMFS require the Navy to record distances to and behavioral observations of animals sighted within the entirety of the in-water Level B harassment zone that would be established for vibratory pile driving and removal activities.

Response: All shutdown and buffer zones will initially be based on predicted distances from the source, as described in the Navy's application. The size of the shutdown and buffer zones will be adjusted accordingly based on in-situ empirically measured received sound pressure levels. The 120-dB disturbance criterion for vibratory pile driving predicts an affected area of 41.5 km^2. Due to financial and personnel constraints, it is impracticable to effectively monitor such a large area. However, the 120-dB zone will be adjusted as necessary based on the results of in-situ hydroacoustic monitoring, and it is possible that the true 120-dB zone may be of a size that is practicable to monitor. Nevertheless, the Navy has committed to monitoring a minimum zone of 2,400 m, which corresponds to the width of the Hood Canal at the project site. This distance subsumes the next largest buffer zone (the 464 m, 160-dB Level B disturbance zone for underwater sound from impact pile driving). Observers will also be placed in additional locations within the 41.5 km^2 vibratory disturbance zone, as indicated in the Navy's Marine Mammal Monitoring Plan. Sightings occurring in the area outside of the 2,400 m zone—the maximum zone in which it is practicable to effectively monitor—will still be recorded and noted as a take. However, it would not be possible to state with certainty that all takes were recorded, and fine-scale behavioral observations may not be possible. In addition, the proposed monitoring methodology is consistent with other actions analyzed by NMFS that involve prohibitively large harassment zones. These include seismic air gun and sonar activities, in which visual monitoring is only practicable for an exclusion zone corresponding to the injury thresholds and precise quantification of impacts to marine mammals within the behavioral harassment zones could not be empirically verified through visual observation, but was estimated by modeling.

Comment 8: The MMC recommends that NMFS complete an analysis of the impact of the proposed activities together with the cumulative impacts of all the other pertinent risk factors affecting marine mammals in the Hood Canal area, including the Navy's concurrent wharf repair project, before issuing the authorization.

Response: The test pile program and the EHW–1 pile replacement project overlap somewhat spatially and temporally. Spatially, the two areas are located adjacent to one another. There could be an overlap in their buffer zones (Level B harassment zones) but not for their exclusion zones (Level A harassment or injury zones) when the test piles closest to EHW–1 are installed and removed. Temporal overlap will occur as both projects will operate with a work window from July 16 through October 31. However, for the test pile program impact pile driving will cease no later than October 14, and for EHW–1 impact pile driving will cease no later than September 30.

The injury zones are not large enough to overlap spatially, and the Navy has agreed that no simultaneous impact driving will occur, in order to ensure that the combined energy of two impact rigs operating at once would not increase the potential injury zones. With regard to impact pile driving, EHW–1 is limited to impact pile driving only five piles per in-water work window, with a maximum of one pile driven per day and a maximum of 15 minutes of impact driving per pile. The test pile program is anticipated to require proofing for 18 test piles, although additional impact driving may be required should any of the piles fail to reach the necessary embedment depth with vibratory driving. Any impact pile driving during the test pile program would be limited to 100 strikes or 15 minutes per day.

No limitation has been placed upon vibratory pile installation and removal, as such limitation would significantly extend the length of each project's timeline and would result in a longer period of potential exposure for marine mammals in the Hood Canal. Vibratory pile drivers produce significantly lower initial sound pressure levels than impact hammers and are not known to cause injury to marine mammals. The simultaneous use of two vibratory drivers with similar sound outputs would likely increase initial sound pressure levels by approximately three decibels, thus increasing the potential area encompassed by the 120-dB buffer zone (Level B harassment zone) from a modeled 100,000 m to 158,489 m, using the practical spreading loss model. As described in NMFS' notice of proposed IHA, these distances assume a field free of obstruction. However, Hood Canal does not represent open water conditions, and sound attenuates upon encountering land masses or bends in the canal. As a result, neither hypothetical area of potential behavioral effects is possible in the project area. The actual distances to the 120-dB behavioral disturbance threshold for vibratory pile driving will be significantly reduced due to the irregular contours of the waterfront, narrowness of the canal, and maximum fetch (furthest distance sound waves travel without obstruction) at the project area. Based on these factors, the concurrent use of vibratory hammers at both project locations will not result in any actual increase in the area encompassed by the 120-dB criteria.

The Navy and NMFS have considered the potential overlap of these projects and the resulting effects that may occur, and have addressed these issues in the cumulative impacts analyses contained within their respective NEPA documents for these projects.

Comment 9: One commenter described a release of toxic material that occurred in the test pile area in 2000, and suggested that the test pile program could cause further contamination of Hood Canal, presumably by suspension of toxic sediment into the water column. If this occurred, it could result in decreased quality of pinniped habitat.

Response: Existing sediment information from the project area, from sampling conducted in 2007, indicates that sediment quality at the project site is generally good. Concentrations of a range of metals and organic contaminants were at or below the analytical detection limits in some cases and were consistently below the Sediment Quality Standards established by Washington State.

Comment 10: One commenter questioned the need for the full complement of test piles proposed by the Navy, stating that the relevant information could be collected through installation of a lesser number of piles or through alternative methods.

Response: As described in the Navy's application, the test pile program will serve to validate the geotechnical explorations used in the design to estimate capacities of piles. Estimated pile embedment requirements and pile capacities provided by the geotechnical engineer without the benefit of site-specific empirical data from the test

pile program are conservative. The program will serve to provide such data to verify required embedment lengths and pile capacities. Real data can reduce conservatism, providing the potential of reduced pile sizes and lengths. The cost of piles can be broken into material purchase price and pile installation costs. A reduction of overall pile size or length, thus steel quantity, provides benefit of reduced costs both with initial price of material purchase and installation costs. Additionally, pile size or length reductions can reduce the amount of time the pile driving rigs are on site, reducing pile installation costs and impacts to the environment. The program will also establish the ability to advance piles to design tip using a vibratory hammer. This will potentially limit the strikes with an impact hammer to that of proofing piles, resulting in both environmental and cost benefits. The Navy has no desire to incur unnecessary expenditures, either through installing extraneous piles or by using methods inappropriate to gather required data. This data is critical to the design and cost planning of an explosives handling wharf, and validation of geotechnical and design assumptions is critical to long term survivability and safety.

Comment 11: One commenter challenged several assumptions and conclusions made by the Navy related to acoustic impacts. The commenter included numerous questions, but three key points related to acoustics were: (1) That, while total energy may be important for threshold shifts, frequency content is important as well (e.g., for masking); (2) that the Navy's use of the practical spreading loss model may not be appropriate, instead suggesting a ray path model using a salinity/velocity profile; and (3) that an assumption of a 10-dB reduction in sound intensity through attenuation by bubble curtain is unduly optimistic.

Response: The purpose of the test pile program is, in part, to answer many of the questions posed. For example, data from the test pile program will show whether the practical spreading loss model is appropriate as used (i.e., the appropriate transmission loss coefficient will be derived through test pile measurements) and will empirically determine the actual performance of sound attenuation measures (e.g., bubble curtain). As the commenter points out, certain factors (e.g., depth, salinity) are important considerations for propagation modeling. Again, measurements from test piles will enable empirical determination of sound propagation in this location and for this activity. The commenter inquires about the spectrum of pulse transmission, which may refer to the distribution of frequency in narrow bands across the frequency range. This data will be collected during test pile driving.

With regard to bottom propagation and surface reflection, computation for these values by modeling is extremely complex, especially in shallow water. However, although use of a simple spreading model may not be entirely accurate, it is likely to produce a conservative estimate of sound propagation distances because it does not take bottom loss into consideration. In addition, because pile driving will occur in shallow water, and the dominant energy is low frequency, ray theory is unlikely to be the most appropriate method of modeling propagation. It is important to note that the estimates of buffer and exclusion zones presented here, as determined by relatively simple modeling, will be corrected as dictated by in-situ empirical measurements. This makes more complicated modeling efforts using bottom loss and surface reflection values unnecessary. Finally, while NMFS concedes that it is extremely difficult to accurately predict site-specific attenuation performance (specifically by bubble curtains) due to the number of variables at play, the estimate of 10 dB is not necessarily overly optimistic—it falls below the midpoint of attenuation variability described by Thorson and Reyff (2004)—and will likely be effective at reducing peak pressure characteristics of impact strikes regardless of total attenuation. Calculated buffer and exclusion zones will be adjusted in the field as appropriate based not only on empirically measured sound propagation, but also on actual performance of sound attenuation measures.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species that may be harassed incidental to estuary management activities are the harbor seal, California sea lion, killer whale, Dall's porpoise, and harbor porpoise. None of these species are listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. NMFS presented a more detailed discussion of the status of these stocks and their occurrence in the action area in the notice of the proposed IHA (76 FR 4300; January 25, 2011).

Potential Effects of the 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 waters adjoining the project site.

Based on the analysis contained in NMFS' notice of proposed IHA, it is unlikely that this project will result in temporary or permanent hearing impairment or non-auditory physical or physiological effects for any marine mammal. Because this project involves driving a small number of piles, with limited use of an impact driver, and will occur in a small area for limited duration, effects to marine mammals are likely to be limited to behavioral harassment. The planned mitigation measures for this project (see the ''Mitigation'' section 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.

The effects of behavioral disturbance resulting from this project are difficult to predict, as behavioral responses to sound are highly variable and context specific. 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. These behavioral changes may include changes in duration of surfacing and dives or moving direction and/or speed; changes in vocalization; visible startle response or aggressive behavior; avoidance of areas where noise sources are located; and/or flight responses. Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance. 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 from the area. Temporary impacts from pile driving activities could be experienced by individual marine mammals, but would not be likely to cause population level impacts, or affect any individual's long-term fitness.

The three cetacean species are rare in the project area, and, if present, numbers will likely be in single digits. While pinniped numbers will likely be greater, there are several factors indicating that these animals may only experience minor effects from behavioral disturbance. As described previously in this document, California sea lions are typically not present in the project area during July-August, and it is likely that the majority of pile driving will be complete before sea lions begin arriving in September. No haul-out areas are located in the immediate vicinity of the project site. California sea lions haul-out on manmade structures along the NBKB waterfront, typically over a mile from the project site. Harbor seals, though present in the Hood Canal year-round, have primary haul-outs even further away, in Dabob Bay to the west and at points further south.

Anticipated Effects on Habitat

NMFS provided a detailed discussion of the potential effects of this action on marine mammal habitat in the notice of the proposed IHA (76 FR 4300; January 25, 2011). The pile driving 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 marine mammal prey (i.e., fish) near NBKB

and minor impacts to the immediate substrate during installation and removal of piles during the test pile program.

Sound pressure levels of sufficient strength have been known to cause injury to fish and fish mortality (CALTRANS 2001; Longmuir and Lively 2001). However, due to mitigation measures in place to reduce impacts to ESA-listed fish—notably including adherence to the July 16–October 31 work window—the most likely impact to fish from pile driving activities at the project area will be temporary 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 test pile program.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The Navy has established exclusion and buffer zones (Level A and Level B harassment, respectively), based on modeling described in NMFS' notice of proposed IHA (76 FR 4300; January 25, 2011). The Navy will implement the following measures for these zones:

(1) The Navy will implement a minimum shutdown zone of 50 m (164 ft) radius around all pile driving 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, pile driving sounds are expected to attenuate below 180 dB at distances of 22 m or less, but the 50-m shutdown is intended to further avoid the risk of direct interaction between marine mammals and the equipment.

(2) The buffer zone shall initially be set at a radius of 2,400 m, which is the width of the Hood Canal at the project site. This zone, which would subsume the 160-dB buffer zone, is the maximum area that is practicable for the Navy to monitor. The full 120-dB buffer zone for vibratory pile driving (modeled as radius of 13,800 m, but reduced to 41.5 km^2 when attenuation due to landmasses is accounted for) is so large as to make monitoring impracticable. Additional observers will be present in this zone, and any sighted animals would be recorded as takes, but it is impossible to guarantee that all animals will be observed or to make observations of fine-scale behavioral reactions to sound throughout this zone. The 2,400 m (1,644 ft) zone may be adjusted according to empirical, site-specific data after the project begins. Additional buffer zone distances, including the 160-dB zone for underwater sound from impact driving (464 m), may also be adjusted based upon the results of hydroacoustic monitoring.

(3) 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 will be recorded and behaviors documented. However, that pile segment will be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities will be halted.

(4) 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.

Monitoring will take place from thirty minutes prior to initiation through thirty minutes post-completion of pile driving activities. The following additional measures will apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers. A trained observer will be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shut-down or delay procedures when applicable by calling for the shut-down to the hammer operator.

(2) 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 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.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving 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.

The following additional measures will be implemented:

(1) Sound attenuation devices will be utilized during most impact pile driving operations (exceptions described previously in this document).

(2) The Navy will use 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 40 percent energy, followed by a 1-minute waiting period, then two subsequent three strike sets.

(3) Pile driving will only be conducted during daylight hours.

(4) For in-water heavy machinery work other than pile driving, 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.

NMFS has carefully evaluated the applicant's mitigation measures as proposed and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures includes consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

It is unlikely that injury, serious injury, or mortality to marine mammals would result from any actions undertaken during the test pile program. The impacts of the project will likely be limited to temporary behavioral disturbance. However, to reduce the amount and degree of behavioral disturbance that occurs, NMFS and the Navy have developed the previously described mitigation measures. These are designed to limit the numbers of marine mammals that are exposed to underwater sound, by reducing the intensity of sound entering the environment, limiting the amount of impact pile driving and the duration of all driving, and to prevent any individual from being exposed to levels of sound that could result in injury. Based upon experience from previous pile driving projects and the analysis contained in NMFS' notice of proposed IHA and in this document, NMFS has determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat.

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.

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 in order to determine the actual distance to the 120-dB isopleth for behavioral harassment relative to background levels. The Navy's hydroacoustic monitoring plan (see **ADDRESSES**) addresses collection of data for both underwater and airborne sounds

from the test pile program, and is discussed in greater detail in NMFS' notice of proposed IHA (76 FR 4300; January 25, 2011).

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. Details regarding monitoring protocols are available in the Navy's marine mammal monitoring plan, and were discussed in greater detail in NMFS' notice of proposed IHA (76 FR 4300; January 25, 2011). 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.

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 30 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 sound attenuation device, 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

NMFS is authorizing the Navy to take harbor seals, California sea lions, killer whales, Dall's porpoises, and harbor porpoises, by Level B harassment only, incidental to pile driving activities. These activities, involving driving and extraction of 29 piles in order to collect geotechnical and hydroacoustic data, are expected to harass marine mammals present in the vicinity of the project site through behavioral disturbance only. Estimates of the number of marine mammals that may be harassed by the activities are based upon the estimated densities of each species in the area, the modeled areas of ensonification to various thresholds, and the estimated number of pile driving days. Table 2 details the total number of authorized takes. Methodology of take estimation was discussed in detail in NMFS' notice of proposed IHA (76 FR 4300; January 25, 2011).

TABLE 2—AUTHORIZED NUMBERS OF INCIDENTAL MARINE MAMMAL TAKES

Species	Density	Underwater			Airborne	Total (percent of stock or population)
		Impact injury threshold	Impact disturbance threshold (160 dB)	Vibratory disturbance threshold (120 dB)	Impact and vibratory disturbance threshold	
California sea lion	0.410	0	15	255	0	270 (0.01)
Harbor seal	1.31	0	[1] 22	810	[4] 0	832 (5.6)
Killer whale	0.038	0	9	30	N/A	39 (12.4)
Dall's porpoise	0.043	0	1	30	N/A	31 (0.06)
Harbor porpoise	0.011	0	0	* 15	N/A	15 (0.1)
Total		0	47	1,140	0	1,187

[1] This value represents the sum of previously estimated takes from fifteen days of attenuated driving and seven days of unattenuated driving, at sixty seconds per day.

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 determining whether or not authorized incidental take will have a negligible impact on affected species stocks, NMFS considers a number of criteria regarding the impact of the proposed action, including the number, nature, intensity, and duration of Level B harassment take that may occur. Although the Navy's pile driving activities may harass marine mammals occurring in the project area, impacts are occurring to small, localized groups of animals for short durations or to individual cetaceans that may swim through the area. No permanent haul-outs or breeding or pupping areas are located within the action area. No mortality or injury is anticipated, nor will the action result in long-term impacts such as permanent abandonment of haul-outs. No impacts are expected at the population or stock level. No pinniped stocks known from the action area that will be present during the work period are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The number of animals authorized to be taken for each species of pinnipeds can be considered small

relative to the population size. Please see Table 2 for these numbers.

Based on the foregoing analysis, behavioral disturbance to marine mammals in the Hood Canal will be of low intensity and limited duration. To ensure minimal disturbance, the Navy will implement the mitigation measures described previously, which NMFS has determined will serve as the means for effecting the least practicable adverse effect on marine mammals stocks or populations and their habitat. NMFS finds that the Navy's pile driving activities will result in the incidental take of small numbers of marine mammals, and that the authorized number of takes will have no more than a negligible impact on the affected species and stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

There are no ESA-listed marine mammals found in the action area during the project's in-water work timeframe; therefore, no consultation under the ESA is required by NMFS.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the test pile project. NMFS has adopted that EA in order to assess the impacts to the human environment of issuance of an IHA to the Navy. NMFS signed a Finding of No Significant Impact (FONSI) on June 24, 2011. The Navy's EA and NMFS' FONSI for this action are available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Determinations

NMFS has determined that the impact of conducting the specific activities described in this notice and in the IHA request in the specific geographic region in the Hood Canal, Washington may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, 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 action.

Authorization

As a result of these determinations, NMFS has issued an IHA to the Navy to conduct a test pile program in the Hood Canal from the period of July 16, 2011, through October 31, 2011, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 24, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–16515 Filed 6–29–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA517

Western Pacific Fisheries; Approval of a Marine Conservation Plan for Pacific Insular Areas; Western Pacific Sustainable Fisheries Fund

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces approval of a marine conservation plan for Pacific Insular Areas other than American Samoa, Guam, and the Northern Mariana Islands.

DATES: This agency decision is effective from June 24, 2011 through June 23, 2014.

ADDRESSES: Copies of the MCP are available from *http://www.regulations.gov,* or the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries, NMFS Pacific Islands Regional Office, 808–944–2108.

SUPPLEMENTARY INFORMATION: Section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary) and in consultation with the Council, to negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA). A PIAFA would allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to any Pacific Insular Area other than American Samoa, Guam or the Northern Mariana Islands, that is, in the EEZ around the Pacific remote island areas (PRIA). The PRIA are Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, and Palmyra Atoll. Before entering into a PIAFA for the PRIA, the Council must develop a 3-year Marine Conservation Plan (MCP) providing details on uses for any funds collected by the Secretary under the PIAFA.

The Magnuson-Stevens Act requires any payments received under a PIAFA, and any funds or contributions received in support of conservation and management objectives for the PRIA to be deposited into the Western Pacific Sustainable Fisheries Fund (Fund) for use by the Council. Additionally, amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act for violations by foreign vessels occurring within the EEZ off any PRIA are also deposited into the Fund for use by the Council.

An MCP must be consistent with the Council's fishery ecosystem plans, must identify conservation and management objectives (including criteria for determining when such objectives have been met), and must prioritize planned marine conservation projects. Although no foreign fishing is being considered at this time, the Council, at its 151st meeting held June 15–18, 2011, approved its PRIA MCP. On June 18, 2011, the Council submitted the MCP to NMFS for review and approval.

The MCP contains five conservation and management objectives, and identifies major task areas under which nine planned activities are described, as follows:

Objective 1. Support quality research and obtain the most complete scientific information available to assess and manage fisheries within an ecosystem approach.

a. Support cooperative research on U.S. purse seine vessels fishing on fish aggregation devices in the PRIA.

b. Support tagging studies in the PRIA to provide better understanding of pelagic species.

c. Support collection and analysis of life history characteristics of federally managed species through bio-sampling.

Objective 2. Conduct education and outreach to foster good stewardship principles and broad and direct public participation in the Council decision-making process by supporting education and outreach activities related to sustainable fisheries management of pelagic fisheries in the PRIA.

Objective 3. Promote regional cooperation to manage domestic and international fisheries, by participating in international fishery policy development in Pacific Regional Fishery Management Organizations.

Objective 4. Encourage development of technologies and methods to achieve the most effective level of monitoring, control, and surveillance and to ensure safety at sea.

a. Support pilot programs to test new technologies for information gathering,

in coordination with federal, state, and industry representatives.

b. Support observer programs or other monitoring efforts that are adequate to monitor the harvest, bycatch, and compliance of foreign fishing vessels that fish under a PIAFA in the PRIA.

c. Participate in Pacific-wide vessel monitoring system consultations.

Objective 5. Support activities that promote western Pacific community demonstration projects and the western Pacific community development program.

The MCP also outlines a process by which the Council's Executive Committee could revisit the project ranking to adapt to changing management needs.

This notice announces that NMFS has determined that the PRIA MCP satisfies the requirements of the Magnuson-Stevens Act and approves the MCP for the 3-year period from June 24, 2011, through June 23, 2014.

Dated: June 24, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–16454 Filed 6–27–11; 4:15 pm]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

Federal Register CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 76, No. 122, Friday, June 24, 2011, page 37070.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETINGS: 1. Open to Public—10 a.m.–12 Noon., and 2. Closed to Public—2–3 p.m., Wednesday June 29, 2011.

CHANGES IN MEETINGS:

1. For Meeting Open to the Public, rescheduled to 9–11 a.m.;

2. Revised Agenda: 1. *Briefing Matter:* Lead 100 ppm, 2. *Decisional Matter:* Final 15(j) Rule for Drawstrings;

3. Time for Closed Compliance Status Report rescheduled to 11 a.m.–12 Noon;

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: June 28, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–16588 Filed 6–28–11; 4:15 pm]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The White House Council for Community Solutions gives notice of the following meeting:

DATE AND TIME: Friday, July 15, 2011, 3 p.m.–4 p.m. Eastern Daylight Time.

PLACE: The Council will meet via phone conference call. The meeting will be open to the public in Listen-Only mode and it will be recorded. To dial in, please call 1–866–525–0652. More details and materials will be available on the Council's Web site (*http://www.serve.gov/communitysolutions*) on Thursday, July 14th.

PUBLIC COMMENT: The public is invited to submit publicly available comments through the Council's Web site. To send statements to the Council, please send written statements to the Council's electronic mailbox at *WhiteHouseCouncil@cns.gov*. The public can also follow the Council's work by visiting its Web site: *http://www.serve.gov/communitysolutions*.

STATUS: Open.

MATTERS TO BE CONSIDERED: The purpose of this meeting is to review the Council's recommended next steps. The recommendations are the result of what the Council has learned through its outreach and other efforts about issues facing young Americans who are neither in school nor in the workplace and promising solutions to address this challenge. These recommendations will guide the work of the Council going forward.

CONTACT PERSON FOR MORE INFORMATION: Leslie Boissiere, Executive Director, White House Council for Community Solutions, Corporation for National and Community Service, 10th Floor, Room 10911, 1201 New York Avenue, NW., Washington, DC 20525. Phone: (202) 606–3910. Fax: (202) 606–3464. E-mail: *lboissiere@cns.gov.*

Dated: June 28, 2011.

Leslie Boissiere,

Executive Director, White House Council for Community Solutions.

[FR Doc. 2011–16658 Filed 6–28–11; 4:15 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–16]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. M. Ayers, DSCA/DBO/CFM, (703) 601–3732.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–16 with attached transmittal, and policy justification.

Dated: June 27, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUN 15 2011

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-16, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Germany for defense articles and services estimated to cost $300 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.
Acting Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 11-16

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Germany

(ii) Total Estimated Value:

Major Defense Equipment*	$ 20 million
Other	$280 million
TOTAL	$300 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Continuation of base services for the German Air Force Tornado aircraft operations at Holloman Air Force Base (AFB), New Mexico. Base services provided will be for operations and logistics support including training, fuel, munitions, base operating support, and other related operational/logistics requirements. Munitions will include 720 MK 82, 135 MK 84 and 5 Target Drone BQM 167.

(iv) Military Department: Air Force (QYA)

(v) Prior Related Cases, if any: Multiple Prior Related

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: JUN 15 2011

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Germany - Tornado Aircraft Training and Logistics Support

The Government of Germany has requested the continuation of base services for the German Air Force Tornado aircraft operations at Holloman Air Force Base (AFB), New Mexico. Base services provided will be for operations and logistics support including training, fuel, munitions, base operating support, and other related operational/logistics requirements. Munitions will include 720 MK 82, 135 MK 84, and 5 Target Drone BQM 167. The estimated cost is $300 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Germany and enhancing standardization and interoperability with U.S. forces.

Holloman AFB is the only location where the German Air Force trains aircrews in Tornado aircraft operations and tactics. These operations began at U.S. Air Force facilities in 1989.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

There is no prime contractor involved in this program. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. government or contractor representatives to Germany.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–16446 Filed 6–29–11; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

Applications for New Awards; Literacy Information and Communication System Regional Professional Development Centers

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice.

Overview Information

Literacy Information and Communication System Regional Professional Development Centers Program Notice inviting applications for new awards using fiscal year (FY) 2010 funds for FY 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.191B.

DATES:

Applications Available: June 30, 2011.

Deadline for Notice of Intent To Apply: July 11, 2011.

Deadline for Transmittal of Applications: August 1, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Literacy Information and Communication System (LINCS) Regional Professional Development Centers (RPDCs) program is authorized under title II of the Workforce Investment Act of 1998 (WIA) (20 U.S.C. 9253(2)(H)), the Adult Education and Family Literacy Act (AEFLA). Under section 243 of the AEFLA, the Secretary is authorized to establish and carry out a program of national leadership activities to enhance the quality of adult education and literacy programs nationwide. Through the LINCS RPDC grants funded under this competition, we intend to support evidenced-based virtual or in-person adult education professional development (AEPD) activities in order to assist educators who provide adult education services [1] or adult education instruction [2] to adult learners (adult educators). In addition, the LINCS RPDC grants will enhance the quality of adult education and literacy nationwide by disseminating information to each eligible agency responsible for administering or supervising policy for adult education and literacy programs under section 203(4) of the AEFLA [3] (eligible agency), and to adult education and related organizations within each State and outlying area.

Background: President Obama is committed to ensuring that America will once again lead the world in college completion by 2020. To help achieve this goal, the Department supports States to improve the effectiveness of teachers and school leaders, strengthen the use of data to improve instruction, provide high-quality instruction based on rigorous college- and career-ready standards, and measure students' mastery of standards using high-quality assessments aligned with those standards. Improving the education and literacy of the adult learner population is an important component in attaining the President's goal. Improving adult literacy hinges on the dissemination and effective delivery of high-quality, evidence-based AEPD. For the past 16 years, LINCS Regional Resource Centers (RRCs) have been supported by funding under section 242 of the AEFLA. The LINCS network provides information on a wide variety of literacy-related topics and resources [4] to assist adult educators in providing adult education services. As part of the LINCS network, the Department currently funds three LINCS RRCs, which collaborate with adult education and related organizations to disseminate high-quality literacy education resources (*e.g.,* online materials) to adult educators, as well as to provide virtual and in-person AEPD and technical assistance to adult educators. The current RRCs provide training and workshops for adult educators using evidenced-based materials and assist adult educators in using online adult education instructional resources available through the LINCS network. The project period for the three LINCs RRCs will end on September 30, 2011.

Through this competition, the Department plans to award up to four cooperative agreements to entities to serve as LINCS RPDCs.[5] As outlined in the *Demonstrate capacity* requirement in this notice, the RPDCs to be supported through this competition are designed to: (1) Disseminate information on the materials and the AEPD in the LINCS Resource Collection [6] to each eligible agency in the region that the applicant proposes to serve pursuant to the *Select a region* requirement in this notice (the applicant's selected region), and to adult education and related organizations within each State and outlying area in that region; (2) collaborate closely with eligible agencies to organize and deliver virtual or in-person AEPD; and (3) foster the use of new technologies, including virtual moderated communities of practice [7] (CoP), for adult educators. The Department plans to award grants for the RPDCs under the terms of cooperative agreements, giving the Department substantial direct operational involvement in the management and implementation of the activities undertaken by the RPDCs.

In conducting the required activities under the cooperative agreements awarded under this competition, LINCS RPDC grantees must: (1) Use the LINCS Resource Collection materials and other AEPD materials available on the Department's LINCS Web site for dissemination and AEPD, and (2) work collaboratively with the Department's LINCS Resource Collection contractor and the LINCS technical services contractor to meet the project's goals, objectives, and outcomes as required in paragraph (a) of the *Develop a project design* requirement in this notice. By structuring the required activities under

[1] *Adult education services* (*e.g.,* career counseling, transportation counseling, education counseling) are provided to adult learners by educators who may include staff of eligible providers identified in section 203(5) of the AEFLA, as well as State staff responsible for the implementation of adult education programs.

[2] *Adult education instruction* (*e.g.,* instruction in basic literacy, mathematics, and English language skills) is provided to adult learners by educators who may include adult education teachers and other instructional personnel of eligible providers identified in section 203(5) of the AEFLA.

[3] Section 203(4) of the AEFLA defines the term ''eligible agency'' as ''the sole entity or agency in a State or an outlying area responsible for administering or supervising policy for adult education and literacy in the State or outlying area, respectively, consistent with the law of the State or outlying area, respectively.''

[4] The LINCS network provides a centralized point of access to information about adult literacy and an infrastructure to facilitate communication for adult educators (*see http://lincs.ed.gov/*). The components of the LINCS network, coordinated by the Department, currently include (1) A resource collection of research- and evidence-based resources and online discussion lists on topics such as reading, mathematics, English as a second language, transitions to postsecondary education, and workforce preparation (the Resource Collection); (2) a technology database and Web site infrastructure provided under a technical services contract; and (3) a regional system of three LINCS Regional Resource Centers.

[5] The current cooperative agreements under section 242 of the AEFLA for the three LINCS RRCs expire September 30, 2011. The three current RRCs develop and deliver professional development to recipients approved by the National Institute for Literacy (NIFL). Congress did not appropriate funds for NIFL in FY 2010. Therefore, the LINCS projects will be funded under section 243 of the AEFLA, National Leadership Activities. The LINCS RPDCs funded under this competition will be required to use professional development designed by the LINCS Resource Collection contractor with direction from and approval by the Department.

[6] For more information on the LINCS Resource Collection, see *http://lincs.ed.gov/lincs/resourcecollections/resource_collections.html.*

[7] *Communities of practice* are groups of people who share a concern or a passion for something they do and learn how to do it better as they interact regularly (*see http://www.ewenger.com/theory/*).

the cooperative agreements in this way, the Department can build on earlier investments in the LINCS network and support new projects that use evidenced-based learning practices to improve adult literacy.

We are requiring that applicants select a single region that they propose to serve and agree to provide AEPD to each eligible agency in each State and outlying area in that region, as well as to adult education and related organizations within each State and outlying area in that region. This regional structure, which aligns with the Department's regional organization for the administration of adult education program services,[8] is designed to ensure that adult educators and each eligible agency have direct access to AEPD through a LINCS RPDC.

Priority: We are establishing this priority for a competition using FY 2010 funds in FY 2011, and any subsequent year in which we make awards from the list of unfunded applicants from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Competitive Preference Priority: This priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 15 points to an application, depending on how well the application meets this priority.

This priority is:

Demonstrated Experience in Providing Evidence-Based Professional Development for a Diverse Population of Adult Educators.

This priority provides a competitive preference for applicants that demonstrate that they have previous experience in facilitating AEPD for adult educators, using both virtual and in-person formats. To meet this priority, in its application, an applicant must—

(a) Describe the applicant's previous experience in providing AEPD to adult educators, using virtual and in-person formats;

(b) Describe the characteristics of the populations of adult educators to whom the applicant has provided AEPD in the past, including, at a minimum—

(1) The type of geographic location (*e.g.,* urban, rural, suburban) of the adult educators to whom the applicant has provided AEPD; and

(2) The institutional affiliation (*e.g.,* public school, community college, correctional facility, community-based organization) of the adult educators to whom the AEPD was provided; and

(c) Provide supporting evidence of the quality of the applicant's past AEPD by including at least one of the following:

(1) A summary of the participant evaluation ratings for at least three of its past AEPD training sessions of 12 hours of instruction or more.

(2) Letters endorsing the quality of the applicant's past AEPD from eligible agencies in at least three States or outlying areas within the applicant's selected region. *Requirements:* We are establishing these requirements for a competition using FY 2010 funds for FY 2011, and for any subsequent year in which we make awards from the list of unfunded applicants from this competition, in accordance with section 437(d)(1) of GEPA, 20, U.S.C. 1232(d)(1).

1. Select a region. To be eligible for funding under this competition, an applicant must, in its application, select one of the following regions to serve during the project period and describe its rationale for selecting that region:

(a) *Region 1*—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands.

(b) *Region 2*—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

(c) *Region 3*—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(d) *Region 4*—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

2. Demonstrate capacity. To receive a grant under this competition, an applicant must demonstrate, in its application, that it has the capacity to—

(a) Implement effective approaches to AEPD by establishing collaborations with adult education and related organizations that help adult educators use evidence-based instructional practices in the applicant's selected region;

(b) Disseminate information about the materials and the AEPD in the LINCS Resource Collection to the eligible agency in each State and outlying area in the applicant's selected region and to adult education and related organizations within each State and outlying area in that region;

(c) Work with the Department's LINCS Resource Collection contractor and the LINCS technical services contractor to achieve the project goals, objectives, and outcomes of the application;

(d) Provide AEPD to adult educators using the evidence-based resources in the LINCS Resource Collection;

(e) Provide virtual or in-person AEPD, using materials from the LINCS Resource Collection, to each eligible agency in the applicant's selected region that requests AEPD;

(f) Provide virtual or in-person AEPD through collaborations with adult education and related organizations by using various formats (*e.g.,* workshops, on-line courses, or other formats identified by the applicant) to help adult educators use evidence-based instructional practices designed to improve adult learners' basic literacy, mathematics, and English language skills and increase adult learners' rates of progression along their educational or occupational pathways;

(g) Organize and deliver AEPD that addresses priority AEPD topics identified in collaboration with the Department at the Department's post-award meeting;

(h) Foster the use of new technologies, including virtual moderated CoPs, and provide training for adult educators in the use of those technologies, including virtual moderated CoPs, to improve adult education teaching and learning; and

(i) Collect data on and evaluate the effectiveness of the training that it provides.

3. Provide a comprehensive high-quality regional AEPD and dissemination plan. The applicant must include in its application a plan for the development, implementation, and dissemination of comprehensive high-quality regional AEPD that improves adult learners' basic literacy, mathematics, and English language skills, and increases adult learners' rates of progression along their educational or occupational pathways. In the plan, the applicant must specify the procedures it will use to—

(a) Ensure equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability;

(b) Disseminate information about the materials and the AEPD in the LINCS Resource Collection to each eligible agency in the applicant's selected region, and to adult education and related organizations within each State and outlying area in that region;

[8] Adult education services are those services provided by the Division of Adult Education and Literacy within the Office of Vocational and Adult Education to support States in the administration of formula and discretionary grants under the AEFLA.

(c) Assess the AEPD needs of adult educators in each State and outlying area in the applicant's selected region that requests AEPD;

(d) Based on the results of the assessment described in paragraph (c) of this section, identify and provide evidence-based, cost-effective AEPD using materials in the LINCS Resource Collection to the adult educators in each State and outlying area in the applicant's selected region that requests AEPD;

(e) Enhance capacity of the RPDC to use various approaches to providing AEPD (on helping adult educators use evidence-based instructional practices) for each eligible agency in the applicant's selected region that will be receiving AEPD by establishing collaborations with adult education and related organizations;

(f) Identify the factors that it will consider when determining which formats (in accordance with paragraph (f) of the *Demonstrate capacity* requirement in this notice) to use for providing AEPD to adult educators;

(g) Organize and manage the AEPD that the RPDC will provide using its own staff or recognized AEPD trainers from the LINCS Resource Collection directory of AEPD trainers [9] (AEPD trainers), or both;

(h) Foster the use of new technologies, including virtual moderated CoPs, and provide AEPD to adult educators in the use of those technologies to improve the technology skills of adult educators;

(i) Assess the outcomes of the AEPD it provides and the outcomes of its dissemination of AEPD-related information;

(j) Plan and implement, in coordination with the Department, no less than two five-day AEPD sessions using Learning to Achieve [10] for a minimum of 40 adult educators from the applicant's selected region; and

(k) Implement the AEPD sessions described in paragraph (j) of this section, by at a minimum—

(1) Securing meeting facilities;

(2) Providing materials and supplies; and

(3) Implementing meeting logistics, including by—

(A) Coordinating with the LINCS Resource Collection to ensure that the appropriate number of qualified AEPD trainers is assigned to each session; and

(B) Planning the budget for costs related to—

(i) Travel, per diem, and lodging for participants and trainers;

(ii) Meeting facilities and equipment rental; and

(iii) Meeting materials and supplies.

4. Identify advisory partners and the extent of their participation. An applicant that is awarded a cooperative agreement under this competition must—

(a) Identify at least one advisory partner in each State and outlying area in the applicant's selected region that will—

(1) Assist in the implementation of the project;

(2) Ensure equitable access to virtual or in-person AEPD for each State and outlying area in the applicant's selected region that requests such AEPD; and

(3) Ensure efficient use of resources;

(b) Include an advisory partner participation plan that describes—

(1) The rationale for selecting the advisory partners;

(2) How each advisory partner will—

(i) Participate in the proposed project through conference calls, in person meetings, or other means identified by the applicant; and

(ii) Assist the RPDC in achieving its project goals, objectives, and outcomes described in the *Develop a project design* requirement in this notice.

(c) Provide a letter of commitment from each advisory partner that indicates each advisory partner's capacity to—

(1) Assist in the dissemination of information about the materials and the AEPD in the LINCS Resource Collection to adult educators in their State or outlying area in the applicant's selected region;

(2) Assist in identifying the AEPD needs of adult educators and eligible agencies in their State or outlying area in the applicant's selected region that request such AEPD; and

(3) Assist in providing AEPD to adult educators and eligible agencies in States and outlying areas in the applicant's selected region that request such AEPD.

5. Develop a project design. The applicant must submit, as part of its application, a project design for the proposed project. The project design must include—

(a) Project goals, objectives, and outcomes for the three years of the proposed project, including but not limited to—

(1) The methods for dissemination of information about the materials and AEPD in the LINCS Resource Collection to adult educators in each State and outlying area in the applicant's selected region, and to adult education and related organizations within each State and outlying area in that region;

(2) How the applicant will determine (in accordance with paragraph (f) of the *Develop capacity* requirement in this notice) the formats it will use to provide AEPD to the adult educators in each State and outlying area in the applicant's selected region that requests such AEPD;

(3) The number of adult educators it proposes to provide AEPD in each year of the project;

(4) How the applicant will involve the advisory partners in achieving the project goals, objectives, and outcomes; and

(5) How the applicant will assess—

(A) The effectiveness of its dissemination of information about the materials and AEPD in the LINCS Resource Collection to adult educators in each State and outlying area in the applicant's selected region; and

(B) The quality of the AEPD it provides to adult educators in each State and outlying area in the applicant's selected region that requests such AEPD.

(b) A description of the process for implementing the priorities that will be established in collaboration with the Department at the Department's post-award meeting, for providing virtual or in-person AEPD to each State and outlying area in the applicant's selected region that requests such AEPD.

(c) A description of how the applicant would use data and information on first-year outcomes in paragraph (a) of this section to modify project goals, objectives, and outcomes for years two and three of the project period.

(d) A description of how progress on each project goal, objective, and outcome would be reported, on a quarterly basis, to the Department.

6. Propose a management plan. The applicant must submit, as part of its application, a management plan for the proposed project that—

(a) Identifies activities to be undertaken to accomplish each project goal, objective, and outcome, including, at a minimum, the required project

[9] Under the new contract to be awarded for the LINCS Resource Collection, a directory of AEPD trainers will be developed in consultation with the RPDCs and the Department. The AEPD trainers listed in this directory will be selected based on criteria that include content area expertise, experience, and knowledge related to adult education.

[10] ''Learning to Achieve'' is a program offered in conjunction with the Department that is designed to build State capacity to increase the achievement of students with learning disabilities. This program includes an integrated set of research-based resources, and professional development materials based on the latest rigorous research. These resources and materials are designed to increase teacher effectiveness in providing services to adults with learning disabilities. Information about this program can be found at *http://lincs.ed.gov/programs/learningtoachieve/learningtoachieve.html.*

activities described in paragraph (c)(3) of this section;

(b) Assigns responsibility for the completion of the activities identified in accordance with paragraph (a) of this section to specific project personnel, with the assistance of one or more advisory partners identified in the *Identify advisory partners participation and the extent of their participation* requirement in this notice when appropriate, and specifies timelines that will result in the timely completion of all required project activities;

(c) Describes how the applicant proposes to coordinate its project activities with—

(1) Eligible agencies and organizations responsible for adult education projects in the applicants' selected region;

(2) Other RPDCs;

(3) The Department and, as appropriate, other similar projects funded by the Department, in order to maximize the impact of the RPDC's activities that, at a minimum, must include—

(A) Attendance at the Department's biannual meetings of RPDC project directors and Department adult education project staff in order to—

(i) Report to the Department on the progress of its project goals, objectives, and outcomes; and

(ii) Identify and discuss common AEPD issues, strategies, and promising practices;

(B) Participation in monthly conference calls and other telephone or electronic meetings with the Department, as necessary;

(d) Provide assurance that the applicant will meet the following requirements—

(1) Attend a post-award meeting in Washington, DC, in order to—

(A) Discuss grantee project goals, objectives, outcomes, and activities;

(B) Work with the Department and other grantees to develop a plan for the coordination of AEPD among RPDC grantees; and

(C) Address management and accountability issues, such as, but not limited to—

(i) Determining the methods for reporting the effectiveness of the RPDC's efforts to—

(I) Disseminate information about the materials and AEPD in the LINCS Resource Collection to adult educators in each State and outlying area in the applicant's selected region; and

(II) Provide AEPD to the adult educators in each State and outlying area that requests such AEPD in the applicant's selected region; and

(ii) Establishing AEPD priorities in collaboration with the Department; and

(2) Provide presentations related to the work of the grantee's RPDC at—

(A) Department-sponsored meetings for eligible agency directors of adult education programs; and

(B) The annual meeting of the Commission on Adult Basic Education (COABE);

(e) Provides evidence that the time commitments of the project director and other key project personnel are appropriate to the activities assigned; and

(f) Provides a plan for monitoring the implementation of the AEPD it will provide under the proposed project.

7. Identify project personnel. In its application, the applicant must—

(a) Identify the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(b) Document the qualifications, including relevant training and experience, of the project director and key project personnel that clearly demonstrates their abilities to successfully implement assigned project tasks.

8. Provide adequate resources. In its application, the applicant must—

(a) Provide evidence of the level of support that the applicant and its advisory partners would provide to the proposed project (*e.g.,* facilities, equipment, supplies, or other resources); and

(b) Demonstrate that the applicant's proposed budget is adequate to support the proposed project and the costs are reasonable in relation to the number of AEPD participants; the overall project goals, objectives, and outcomes; and the design of the proposed project.

Note: As indicated elsewhere in this notice, we plan to make each award under this program under the terms of a cooperative agreement between each grantee and the Department. We expect to have substantial and direct operational involvement in the management of the funded RPDCs and to work closely with grantees on project implementation and on plans for AEPD and project activities, including by facilitating the collaboration between grantees and the Department's LINCS Resource Collection contractor and the LINCS technical services contractor. We will review and approve all project activities based on the reports of progress on the goals, objectives, and outcomes during the project period. We will halt a project activity if it is not consistent with project requirements or does not align with the application's project goals, objectives, and outcomes.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed requirements, priorities, and selection criteria. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 243 of the AEFLA and, therefore, qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priority and requirements in this notice under the authority of section 437(d)(1) of GEPA. The priority and requirements set forth in this notice apply to the competition using FY 2010 funds in FY 2011 and any subsequent year in which we make awards to grantees selected from the list of unfunded applicants from this competition.

Program Authority: 20 U.S.C. 9253(2)(H).

Applicable Regulations: (a) The Education Department General Administrative Regulation (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Awards: Cooperative agreements.

Estimated Available Funds: $1,475,000 is available from the FY 2010 appropriations for the implementation of the AEFLA for the first 12 months of this project period. Funding for years 2 through 3 is subject to the availability of funds and to a grantee meeting the requirements of 34 CFR 75.253.

Estimated Range of Awards: $350,000 to $386,000 for the first 12 months.

Estimated Average Size of Awards: $368,750 for the first budget period of 12 months.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months. Applicants under this competition are required to provide detailed budget information for each year of the proposed project and for the total grant. Continuation awards are contingent on a grantee's progress, as provided in section 75.253 of EDGAR, and on the availability of appropriations.

III. Eligibility Information

1. *Eligible Applicants:* The following entities are eligible to apply under this competition:

(a) Institutions of higher education.

(b) Public or private nonprofit agencies or organizations.

(c) Consortia of eligible institutions, organizations, or agencies. Eligible applicants seeking to apply as a consortium must comply with the regulations in 34 CFR 75.127 through 75.129, which address group applications.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* Noreen Lopez, U.S. Department of Education, 400 Maryland Avenue, SW., Room 11012, Potomac Center Plaza (PCP), Washington, DC 20202–7240. Telephone: (202) 245–6309 or by e-mail: *noreen.lopez@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail should include only the applicant's intent to submit an application; it does not need to include information regarding the content of the proposed application. This e-mail notification should be sent no later than: July 11, 2011 to Noreen Lopez at: *noreen.lopez@ed.gov.* Please include ''LINCS RPDC Application'' in the subject line of your electronic message. We will consider an application submitted by the deadline date for transmittal of applications even if the applicant did not provide notice of its intent to apply. Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins on the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is 12 point or larger or no smaller than 10 pitch (charters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: June 30, 2011.

Deadline for Notice of Intent to Apply: July 11, 2011.

Deadline for Transmittal of Applications: August 1, 2011.

Applications for grants under this project must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) Be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in

accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the LINCS Regional Professional Development Centers, CFDA Number 84.191B, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

Address and mail or fax your statement to: Noreen Lopez, U.S. Department of Education, 400 Maryland Avenue, SW., PCP, Room 11012, Washington, DC 20202–7240. FAX: (202) 245–7171.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.191B), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.191B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from EDGAR, 34 CFR 75.210, and are as follows:

Quality of the Project Design: (34 CFR 75.210(c)(1), (c)(2)(i) and (ii), (c)(2)(v), (c)(2)(x), (c)(2)(xiii), (c)(2)(xvii) and (c)(2)(xxi).

Quality of Project Services: (34 CFR 75.210(d)(1), (d)(2), (d)(3)(i), (d)(3)(ii), (d)(3)(iii), (d)(3)(v), (d)(3)(ix) and (d)(3)(x)).

Quality of Project Personnel: (34 CFR 75.210(e)(1), (e)(2), (e)(3)(i) and (e)(3)(ii)).

Adequacy of Resources: (34 CFR 75.210(f)(1), (f)(2)(i), (f)(2)(ii), (f)(2)(iii) and (f)(2)(v)).

Quality of the Management Plan: (34 CFR 75.210 (g)(1), and (g)(2)(i), (g)(2)(ii) and (g)(2)(iv)).

The text of these selection criteria is provided in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR Parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:*

We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR Part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of each quarter you must submit to the Secretary a report on your progress in meeting each project goal, objective, and outcome.

(c) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, Federal departments and agencies must clearly describe the project objectives of programs, identify resources and actions needed to accomplish the project objectives, develop a means of measuring progress made, and regularly report on achievement. To assist the Department in determining the overall effectiveness of projects funded under this competition, grantees must be prepared to measure and report on the following measures of effectiveness:

(a) The number of eligible agencies and adult education and related organizations to which the LINCS RPDC disseminates information regarding the materials and the AEPD in the LINCS Resource Collection.

(b) The number of adult educators participating in AEPD offered by the RPDC.

(c) The number of hours of AEPD offered by the RPDC that are completed by adult educators.

(d) The percentage of adult educators participating in the RPDC's AEPD who implemented evidence-based practices in their instruction as a result of their completion of the AEPD.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Noreen Lopez, U.S. Department of Education, 400 Maryland Avenue, SW., Room 11012, PCP, Washington, DC 20202–7240. Telephone: (202) 245–6309, or by e-mail: *noreen.lopez@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 27, 2011.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 2011–16480 Filed 6–29–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

Proposed Agency Information Collection

AGENCY: Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will allow Department of Energy (DOE) to gather utility bill data in order to manage energy efficiency programs in the Office of Weatherization and Intergovernmental Programs (OWIP) effectively. The utility billing data will help DOE determine the impacts and success of these programs in achieving savings, creating jobs, and expanding retrofit markets.

DATES: Comments regarding this collection must be received on or before August 1, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503. And to Keith Dennis, EE–2K, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Fax#: (202) 287–7145, *Keith.Dennis@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Keith Dennis, EE–2K, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Fax#: (202) 287–7145, *Keith.Dennis@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5156; (2) *Information Collection Request Title:* Utility Billing; (3) *Type of Request:* Extension of Emergency ICR; (4) *Purpose:* The Authorization form will allow an evaluator specified by DOE to obtain grantee project site's energy usage and cost (electricity and natural gas). The

purpose of the information collection is to estimate the direct impacts on energy and cost savings of energy efficiency programs; (5) *Annual Estimated Number of Respondents:* 60,629; (6) *Annual Estimated Number of Total Responses:* 60,629; (7) *Annual Estimated Number of Burden Hours:* 29,998; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $41,085.

Statutory Authority: Title IV of the Energy Conservation and Production Act of 1976 (42 U.S.C. 6861 *et seq.*), as amended, authorizes the DOE to administer the Weatherization Assistance Program (WAP). Title III of the Energy Policy and Conservation Act of 1975, (42 U.S.C. 6321 *et seq.*) as amended, authorizes DOE to administer the State Energy Program (SEP). Title V, Subtitle E of the Energy Independence and Security Act of 2007 (42 U.S.C. 17151 *et seq.*) authorizes DOE to administer the Energy Efficiency and Conservation Block Grant Program (EECBG).

Issued in Washington, DC on June 28, 2011.

LeAnn M. Oliver,

Program Manager, Office of Weatherization and Intergovernmental Programs, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–16583 Filed 6–29–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–208–WA]

Public Utility District No. 2 of Grant County; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380, the Office of Energy Projects has reviewed Public Utility District No. 2 of Grant County's proposed shoreline management plan (SMP) for the Priest Rapids Hydroelectric Project, located on the mid-Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan Counties, Washington, and has prepared an environmental assessment (EA) of the SMP.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2114) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments on the EA should be filed by July 23, 2011, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please reference the project name and project number (P–2114–208) on all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. **FOR FURTHER INFORMATION CONTACT** Hillary Berlin at (202) 502–8915.

Dated: June 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–16472 Filed 6–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–67–001]

Texas Eastern Transmission, LP; Notice of Amendment

Take notice that on June 13, 2011, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed in the above referenced docket an amendment to its application filed under CP11–67–000 for its proposed TEAM 2012 Project. Specifically, Texas Eastern's original application is amended to reduce the Holbrook East New Loop by approximately 1.47 miles. Texas Eastern proposes no additional facilities changes with this amendment. Texas Eastern estimates its amended TEAM 2012 project to cost $196,998,000, all as more fully set forth in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this Application should be directed to Berk Donaldson, Director, Rates and Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, by phone: (713) 627–4488 or by fax: (713) 627–5947.

Pursuant to section 157.9 of the Commission's rules, a Notice of Schedule for the Environmental Review of the TEAM 2012 Project was issued on May 5, 2011. Based on Texas Eastern's filing of an amendment to its application, the Commission staff is no longer able to issue its environmental assessment (EA) on July 14, 2011 as identified in the May 5, 2011 Notice of Schedule. The Commission staff will issue a Revised Notice of Schedule for Environmental Review within 90 days of this Notice. The Revised Notice of Schedule will identify the anticipated issuance date of the Commission staff's EA and will serve to notify agencies issuing Federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a Federal authorization within 90 days of the issuance of the EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to

the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: July 15, 2011.

Dated: June 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–16470 Filed 6–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC11–99–000]

Public Service Company of Colorado; Notice of Filing

Take notice that on June 6, 2011, Public Service Company of Colorado (PSCo) submitted a filing seeking approval of proposed journal entries to clear Account 102, Electric Plant Purchased or Sold, relating to its purchase of 100 percent of the ownership interests of Blue Spruce Energy Center, LLC and Rocky Mountain Energy Center, LLC and the subsequent merger of those entities into PSCo. Additionally, PSCo requested a waiver of the Commission's accounting regulations to allow it to include the fair value of the acquired Calpine facilities in Account 101, Electric Plant in Service.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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 July 7, 2011.

Dated: June 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–16469 Filed 6–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14154–000]

William Arkoosh; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 15154–000.

c. *Dated Filed:* April 28, 2011.

d. *Submitted By:* William Arkoosh.

e. *Name of Project:* Little Wood River Ranch II Hydroelectric Project.

f. *Location:* On the Little Wood River, in Lincoln County, Idaho. The project occupies 3.3 acres of United States lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* William Arkoosh, 2005 Highway 26, Gooding, ID 83330; (208) 934–5387.

i. *FERC Contact:* Jennifer Harper at (202) 502–6136; or e-mail at *Jennifer.Harper@ferc.gov.*

j. Mr. Arkoosh filed his request to use the Traditional Licensing Process on April 28, 2011. Mr. Arkoosh provided public notice of his request on May 26, 2011. In a letter dated June 23, 2011, the Director of the Division of Hydropower Licensing approved Mr. Arkoosh's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) (c) the Idaho 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. A copy of the Pre-Application Document, filed April 28, 2011, is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

m. 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.

Dated: June 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–16476 Filed 6–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.: ER02–2001–000]

Revised Public Utility Filing; Requirements for Electric Quarterly Reports; Notice of Electric Quarterly Reports Users Group Meeting

This notice announces a meeting of the Electric Quarterly Reports (EQR) Users Group to be held Wednesday, July 13, 2011, in the Commission Meeting Room at 888 First Street, NE., Washington, DC and via teleconference. The meeting will run from 9 a.m. to 12 p.m. (EDT).

During the meeting, Commission staff and EQR users will discuss staff plans for the EQR redesign with software implementation now adopting an XML technical approach. A tentative agenda for the conference is attached.

All interested persons are invited to attend or call in for the meeting. Those interested in attending either in person or by phone hook-up are asked to register no later than July 6, 2011, on the FERC Web site at *https://www.ferc.gov/whats-new/registration/eqr-brief-07-13-11-form.asp*. There is no registration fee. Information for the meeting will be sent to registered attendees. Registration will help staff to determine the proper accommodations needed for this meeting.

Documents to be discussed at the meeting will be posted on the EQR Users Group and Workshops page on FERC.gov at *http://www.ferc.gov/docs-filing/eqr/groups-workshops.asp*.

Interested persons wishing to file comments may do so under the above-captioned Docket Number. Those filings will be available at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance accessing document on eLibrary, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or via phone at (866) 208–3676 (toll-free). For TTY, contact (202) 502–8659.

For additional information about the meeting, please contact Mark Blazejowski of FERC's Office of Enforcement at (202) 502–6055 or by e-mail at *eqr@ferc.gov*.

FERC conferences and meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

Dated: June 24, 2011.

Kimberly D. Bose,

Secretary.

Attachment: Meeting Agenda

Tentative Agenda EQR Users Group Meeting; Commission Meeting Room, Wednesday, July 13, 2011

9–9:15 a.m. Welcome, Introductions, Logistics.

9:15–10:15 a.m. Discussion of Reasons for EQR Redesign.

- Performance and Scalability.
- Modernization and Support.
- Stability.
- Links to Other FERC Software Systems.
- Out of Software Supplying/Support Business.

10:15–10:30 a.m. Break.

10:30–11:30 a.m.

- Xsd.
- Xml.
- Xsd Sample.
- Xml Sample.
- What is schema validation.
- How is schema validation done.
- EQR schema validation diagram.

11:30 a.m.–12 p.m. Review and Wrap-up.

[FR Doc. 2011–16471 Filed 6–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2696–033]

Albany Engineering Corporation, Town of Stuyvesant, NY; Notice of Site Visit and Technical Meeting

On July 12, 2011, Office of Energy Projects staff will participate in a site visit and technical meeting for the Stuyvesant Falls Hydroelectric Project (FERC No. 2696–033). The purpose of the site visit and technical meeting is to discuss the parameters of an Instream Flow Incremental Methodology study to be conducted for the Stuyvesant Falls Hydroelectric Project relicensing.

The site visit will begin at 9 a.m. E.S.T at Stuyvesant Falls Town Park (Sandbar Park) below Stuyvesant Falls dam. The technical meeting will begin at 12 p.m. E.S.T at the Town of Stuyvesant Town Hall, 5 Sunset Drive, Stuyvesant, NY 12173. Interested parties wishing to attend should contact Andy Bernick at (202) 502–8660, or via e-mail at *andrew.bernick@ferc.gov.*

Dated: June 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–16473 Filed 6–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14153–000]

Ballville Hydroelectric Group, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications.

On April 22, 2011, Ballville Hydroelectric Group, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ballville Dam Hydroelectric Project No. 14153, to be located at the existing Ballville Dam on the Sandusky River, in the City of Freemont, in Sandusky County, Ohio. The Ballville Dam is owned by the City of Freemont.

The proposed project would consist of: (1) The existing concrete gravity dam which is 34 feet in height with an overall length of 423 feet; (2) a new concrete powerhouse, 40 feet wide by 50 feet long by 30 feet deep; (3) the existing 50-foot-long by 20-foot-wide by 30-foot-deep intake structure; (4) two new 500-kilowatt Kaplan turbine-generator units with a combined capacity of 1.0 megawatt; (5) a new 1,200-foot-long, 12.6-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 5,256 megawatt-hours.

Applicant Contact: Mark Chudzinski, 2502 Old Plank Road, Fremont, OH 43420, (419) 680–5858.

FERC Contact: Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance date of this notice. 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/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at

FERCOnlineSupport.gov; call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly recommends electronic filing, documents may also be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

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–14153) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–16474 Filed 6–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. EC11–60–000	6–17–11	Perchrista Boone.
Exempt:		
1. CP95–35–001	6–16–11	Luis G. Fortno.
	Hon.	
2. CP11–46–000	6–16–11	Raymond Bransfield.
3. CP11–128–000	6–22–11	Kevin Bowman.[1]
4. P–2299–000	6–8–11	Hon. Anthony Cannella.
5. P–2299–000	6–8–11	Hob. Kristin Olsen.
6. P–2299–000	6–9–11	Hon. Tom Berryhill.
7. P–2299–000	6–17–11	Hon. Jim Ridenour.

[1] Record of telephone conversation.

Dated: June 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–16468 Filed 6–29–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2011–0465; FRL–9427–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; Water Quality Standards (Renewal)

AGENCY: Environmental Protection Agency (EPA).

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 December 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 August 29, 2011.

ADDRESSES: Submit your comments, identified by docket ID number EPA–HQ–OW–2011–0465 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov.*
- *Mail:* ''EPA Docket Center, Water Docket, Environmental Protection Agency, *Mailcode:* 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460].
- *Hand Delivery:* Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington DC. 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–OW–2011–0465. 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/dockets.*

FOR FURTHER INFORMATION CONTACT: Beth LeaMond, Office of Water, (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–566–0444; *fax number:* 202–566–0409; *e-mail address: leamond.beth@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–OW–2011–0465 which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 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 Water Docket is 202–566–2426.

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?

Affected entities: Entities potentially affected by this action are all States and certain authorized Indian Tribes that adopt water quality standards under the Clean Water Act; and water dischargers subject to certain requirements related to water quality standards in the Great Lakes system, including dischargers in the following SIC categories: Mining (SIC codes 10, 14); Food (20); Pulp and Paper (26); Inorganic Chemical Manufacturing (281); Organic Chemical Manufacturing (28); Petroleum Refining (29); Metal Manufacturing (33), Metal Finishing (34–37); Steam Electric (4911), and Publically Owned Treatment Works (4952). For the purposes of the Regulation, the term ''State'' means the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Title: Water Quality Standards Regulation (Renewal).

ICR Number: EPA ICR No. 988.11, OMB Control No. 2040–0049.

ICR status: This ICR is currently scheduled to expire on December 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: Water quality standards are provisions of State, Tribal, and Federal law that consist of designated uses for waters of the United States, water quality criteria to protect the designated uses, and an antidegradation policy. Section 303(c) of the Clean Water Act requires States and authorized Tribes to establish water quality standards, and to review and, if appropriate, revise their water quality standards once every three years. The Act also requires EPA to review and either approve or disapprove the new or revised standards, and to promulgate replacement Federal standards if necessary. Section 118(c)(2) of the Act specifies additional water quality standards requirements for waters of the Great Lakes system.

The Water Quality Standards Regulation (40 CFR part 131 and portions of part 132) governs national implementation of the water quality standards program. The Regulation describes requirements and procedures for States and authorized Tribes to develop, review, and revise their water quality standards, and EPA procedures for reviewing and approving the water quality standards. The regulation requires the development and submission of information to EPA, including:

—The minimum elements in water quality standards that each State or Tribe must submit to EPA for review, including any new or revised water quality standards resulting from the jurisdiction's triennial review (40 CFR 131.6 and 131.20). The elements include use designations for specific water bodies; methods used and analyses conducted to support water quality standards revisions; supporting analysis for use attainability analyses; water quality criteria sufficient to protect the designated uses; methodologies for site-specific criteria development; an antidegradation policy; certification by the jurisdiction's Attorney General or other appropriate legal authority that the water quality standards were duly adopted pursuant to State or Tribal law; information that will aid EPA in determining the adequacy of the scientific basis for the standards; and information on general policies that may affect the implementation of the standards.

—Information that an Indian Tribe must submit to EPA in order to determine whether a Tribe is qualified to administer the water quality standards program (40 CFR 131.8).

—Information a State or Tribe must submit if it chooses to exercise a dispute resolution mechanism for disputes between States and Tribes over water quality standards on common water bodies (40 CFR 131.7).

—Information related to public participation requirements during State and Tribal review and revision of water quality standards (40 CFR 131.20). States and Tribes must hold public hearings as part of their triennial reviews, and make any proposed standards and supporting analyses available to the public before the hearing.

The Regulation establishes specific additional requirements for water quality standards and their implementation in the waters of the Great Lakes system, contained in the Water Quality Guidance for the Great Lakes System (40 CFR part 132). This portion of the Regulation includes the following requirements for information collection: bioassay tests to support the development of water quality criteria; studies to identify and provide information on antidegradation control measures that will guard against the reduction of water quality in the Great Lakes system; and information collection and record keeping activities associated with analyses and reporting to request regulatory relief from Guidance requirements. The Guidance includes additional information collections that are addressed in separate Information Collection Requests for the National Pollutant Discharge Elimination System program.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1060 hours per response. 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 following estimates are based on estimates from the previous ICR renewal and will be revised prior to OMB submission. The public will have a second opportunity to comment before then. The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: [1] 2,809 (56 States and Territories, 43 Tribes; 2,710 Great Lakes dischargers).

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 0.095.

Estimated total annual burden hours: 293,214 hours.

Estimated Total Annual Cost: $14,866,862 with no annualized capital or O&M cost.

Are there changes in the estimates from the last approval?

This FR Notice shows the burden estimate from the ICR renewal in 2008. EPA will be revising the burden estimate to include adjustments for changes in the number of tribes authorized to administer a water quality standards program, adjustments for the number of permits expected to be subject to requirements of the Water Quality Guidance for the Great Lakes System (40 CFR part 132), and adjustments for changes in labor cost. EPA is not aware of any programmatic changes needed to the burden estimate. These revisions will be reported in the second FR Notice. Changes from 2008 are not expected to be large. If you know of significant changes to the burden that are not listed in this notice, EPA asks you to submit comments containing that information, or contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

[1] Note: EPA estimates that of the estimated total number of potential respondents there will likely be only 264 responses.

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: June 23, 2011.

Ephraim King,

Director, Office of Science and Technology.

[FR Doc. 2011–16508 Filed 6–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9427–8; Docket ID No. EPA–HQ–ORD–2009–0204]

Draft Toxicological Review of Acrylonitrile: In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and listening session.

SUMMARY: EPA is announcing a 60-day public comment period and a public listening session for the external review draft human health assessment titled, ''Toxicological Review of Acrylonitrile: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–08/013A). The draft assessment was prepared by the National Center for Environmental Assessment (NCEA) within the EPA's Office of Research and Development (ORD). EPA is releasing this draft assessment for the purposes of peer review and public comment. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views.

After public review and comment, an EPA contractor will convene an expert panel for independent external peer review of this draft assessment. The public comment period and external peer review meeting are separate processes that provide opportunities for all interested parties to comment on the assessment. The external peer review meeting will be scheduled at a later date and announced in the **Federal Register**. Public comments submitted during the public comment period will be provided to the external peer reviewers before the panel meeting and considered by EPA in the revision of the draft document. Public comments received after the public comment period closes will not be submitted to the external peer reviewers and will only be considered by EPA if time permits. The listening session will be held on August 10, 2011, during the public comment period for this draft assessment. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties attending the listening session. EPA welcomes the comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft assessment after the independent external peer review. If listening session participants would like EPA to share their comments with the external peer reviewers, they should also submit written comments during the public comment period using the detailed and established procedures described in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The public comment period begins June 30, 2011, and ends August 29, 2011. Comments should be in writing and must be received by EPA by August 29, 2011.

The listening session on the draft assessment for acrylonitrile will be held on August 10, 2011, beginning at 9 a.m. and ending at 4 p.m., Eastern Daylight Time, or when the last presentation has been completed. To attend the listening session, interested parties should register no later than August 3, 2011. To present at the listening session, indicate in your registration that you would like to make oral comments at the session and provide the length of your presentation. The following are instructions for registering: To attend the listening session, register by August 3, 2011 online at *https://www2.ergweb.com/projects/conferences/peerreview/register-acryl.htm,* via e-mail at *meetings@erg.com* (subject line: Acrylonitrile Listening Session), by phone: 781–674–7374 or toll free at 800–803–2833, or by faxing a registration request to 781–674–2906 (please reference the ''Acrylonitrile Listening Session'' and include your name, title, affiliation, full address and contact information). When you register, please indicate if you will need audio-visual equipment (*e.g.,* laptop computer and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by August 3, 2011, the listening session will be cancelled, and EPA will notify those registered, as observers, of the cancellation.

ADDRESSES: The draft ''Toxicological Review of Acrylonitrile: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (Address: Information Management Team, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8561; facsimile: 703–347–8691). If you request a paper copy, please provide your name, mailing address, and the assessment title.

Comments may be submitted electronically via *http://www.regulations.gov,* by e-mail, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

The listening session on the draft acrylonitrile assessment will be held at the EPA offices at Potomac Yard (North Building), 7th Floor, Room 7100, 2733 South Crystal Drive, Arlington, Virginia 22202. Please note that to gain entrance to this EPA building to attend the meeting, attendees must have photo identification with them and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, attendees should give the name Christine Ross and the telephone number 703–347–8592 to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188 and the access code is 926–378–7897, followed by the pound sign (#). The teleconference line will be activated at 8:45 a.m., and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the acrylonitrile listening session and will make every effort to accommodate

persons with disabilities. For information on access or services for individuals with disabilities, please contact Christine Ross at 703–347–8592 or *ross.christine@epa.gov.* To request accommodation of a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Additional information: For information on the docket, www.regulations.gov, or the public comment period, please contact the Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For information on the public listening session, please contact Christine Ross, IRIS Program, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8592; facsimile: 703–347–8689; or e-mail: *ross.christine@epa.gov.*

If you have questions about the assessment, please contact Ambuja Bale, IRIS Program, National Center for Environmental Assessment (Mail code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8643; facsimile: 703–347–8689; or e-mail: *bale.ambuja@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to specific chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. How To Submit Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0204, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Facsimile:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The telephone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

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 and cannot contact you for clarification, EPA may not be able to consider your comment.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0204. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a 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 and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: June 24, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–16487 Filed 6–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2011–0534, FRL–9427–6]

Caraleigh Phosphate and Fertlizer Works Superfund Site; Raleigh, Wake County, NC; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Caraleigh Phosphate and Fertilizer Works Superfund Site located in Raleigh, Wake County, North Carolina for publication.

DATES: The Agency will consider public comments on the settlement until August 1, 2011. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2011–0534 or Site name Caraleigh Phosphate and Fertilizer Works Superfund Site by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm*
- *E-mail. Painter.Paula@epa.gov*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: June 13, 2011.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2011–16490 Filed 6–29–11; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Policy Statement Concerning Adjustments to the Insurance Premiums and Policy Statement on the Secure Base Amount and Allocated Insurance Reserves Accounts

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Policy statements; request for comments.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation or FCSIC) announces that it is publishing for comment a revised draft Policy Statement Concerning Adjustments to the Insurance Premiums and a revised draft Policy Statement on the Secure Base Amount and Allocated Insurance Reserves Accounts (AIRAs). The revisions to these two policy statements reflect amendments to the Farm Credit Act made by the Food, Conservation, and Energy Act of 2008, and other changed conditions. The policy statement concerning premiums maintains the Corporation's semiannual review process as a basis for the Corporation's exercise of its discretion to adjust premiums in response to changing conditions. The policy statement concerning the secure base amount and AIRAs maintains the Corporation's general approach to questions concerning the computation of the secure base amount and allocation and payment of Allocated Insurance Reserves Accounts (AIRAs), with modifications to reflect the legislation and the Corporation's recent AIRAs payments.

DATES: Written comments must be submitted on or before August 1, 2011.

ADDRESSES: Comments should be mailed or delivered to James M. Morris, General Counsel, Farm Credit System Insurance Corporation, McLean, Virginia 22102. Copies of all comments will be available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation.

FOR FURTHER INFORMATION CONTACT: James M. Morris, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883–4380, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Farm Credit System Insurance Corporation (FCSIC or Corporation) insures the timely payment of principal and interest on insured debt obligations issued by Farm Credit System banks under the Farm Credit Act of 1971, as amended (Act). The Corporation collects premiums from Farm Credit System (FCS) institutions to fund the Farm Credit Insurance Fund (Fund).

On March 23, 2007, the Corporation's Board of Directors (Board) adopted a legislative proposal requesting that the Congress amend the Act to, *inter alia,* base premiums on the outstanding insured debt obligations instead of loans, and permit the Corporation to collect a broader range of premiums on insured debt. The legislative proposal reflected the Corporation's concern that, despite generally collecting premiums at the maximum statutory rates, the Fund was trending away from the ''secure base amount,'' the Corporation's target for the Fund. Provisions incorporating the Corporation's legislative proposal became a part of versions of proposed Farm Bills in the House and Senate. Ultimately, enactment of the Food, Conservation, and Energy Act of 2008 (FCE Act) in 2008 amended the provisions of the Farm Credit Act of 1971 that govern FCSIC premiums to include the Corporation's proposed changes.

The Corporation took action to ensure that the amended provisions of the Act were implemented promptly and that there was a measured and structured transition to the new premium structure. In June 2008, the Corporation's Board of Directors took action to implement the amendments of the Act's premium provisions. The Board implemented (effective on July 1, 2008) the new premium rates and calculation method and adjusted the premiums pursuant to the Corporation's authority under section 5.55 of the Act, as amended by the FCE Act. The Corporation also took action to amend its long-standing regulations concerning premiums. *See* 12 CFR part 1410. The Corporation amended its regulations, effective June 9, 2009, to withdraw regulations that were inconsistent with the FCE Act and clarify the effect of the premium provisions of the Act as amended by the FCE Act. *See* 74 FR 28156 (June 15, 2009); 74 FR 17371 (April 15, 2009).[1]

The Corporation is now publishing for comment a revised ''Policy Statement Concerning Adjustments to the Insurance Premiums.'' As revised, the policy statement will reflect the FCE Act amendments of the Farm Credit Act. However, the policy statement will maintain the existing semiannual consideration of premium rates and the five policy factors that are contained in the present policy. In addition, the Corporation is now publishing for comment a revised ''Policy Statement

[1] In 2009, the Corporation generally limited its amendments of its premium regulations to changes that were necessary in order to eliminate provisions that were obsolete or inconsistent with the FCE Act, and did not add new regulatory definitions. While two new terms, ''investment'' and ''other than temporarily impaired,'' were added by the FCE Act, the Corporation continues to believe that those terms can be interpreted as accounting terms. Definitions will be added if experience under the new statutory provisions and the regulations leads the Corporation to believe that those two terms, or other terms, should be defined.

on the Secure Base Amount and Allocated Insurance Reserves Accounts.'' As revised, this policy statement will reflect the FCE Act amendments of the Farm Credit Act that affect the secure base amount and Allocated Insurance Reserves Accounts and will clarify how the policy will apply under the new statutory provisions.

As amended, the Act's provisions assess premiums that are generally based on each bank's pro rata share of outstanding insured debt obligations (rather than on loans), aligning premiums with the obligations that FCSIC insures. The amendments reduce the total insured debt obligations on which premiums are assessed by 90 percent of Federal government-guaranteed loans and investments and 80 percent of State government-guaranteed loans and investments, and deduct similar percentages of such guaranteed loans and investments when calculating the ''secure base amount.'' If the Farm Credit Insurance Fund is below the secure base amount, the amended Act requires that each insured Farm Credit System bank pay FCSIC the premium due from the bank, which shall be equal to (a) The adjusted average outstanding insured obligations multiplied by 0.0020; and (b) the average principal outstanding on loans in nonaccrual status and average amount outstanding of other than temporarily impaired investments multiplied by 0.0010; subject to FCSIC's power to reduce the premium in its sole discretion.

In addition to changes concerning premiums and the secure base amount, the FCE Act amended the Act to simplify provisions concerning allocation of amounts to AIRAs, and payment of amounts from AIRAs to accountholders. At year-end 2009, the Insurance Fund was $165.4 million above the SBA. This amount was allocated to the six Allocated Insurance Reserves Accounts (AIRAs). In January 2010, the Board of Directors authorized payment of $39.9 million from the AIRAs to the accountholders. This amount had been transferred into the AIRAs at year-end 2003. In March, the Board authorized the payment of the $165.4 million transferred into the AIRAs at year-end 2009 to the accountholders. During 2010, a total of $20.5 million was paid to the former FAC stockholders.

We note that the two policy statements published today largely maintain the interpretations that the Corporation adopted when it approved the earlier policy statements, with changes necessary to reflect the changes in the statute. Thus, much of the discussion contained in the **Federal Register** publication of the predecessor policy statement concerning adjustments in premiums, *see* 61 FR 16788, (April 17, 1996); 61 FR 39453 (July 29, 1996), and the **Federal Register** publication of the predecessor policy statement concerning AIRAs, *see* 65 FR 5340 (February 3, 2000); 63 FR 53423, (October 5, 1998), continues to apply.

The text of the ''Policy Statement Concerning Adjustments to the Insurance Premiums'' is set out below:

Farm Credit System Insurance Corporation Policy Statement Concerning Adjustments to the Insurance Premiums

Background:

The Farm Credit Act of 1971, as amended (Act) established the Farm Credit System Insurance Corporation (FCSIC or Corporation) to, among other things, insure the timely payment of principal and interest on Farm Credit System obligations.[2] Section 5.55 of the Act mandates that the Corporation build and manage the Farm Credit Insurance Fund (Insurance Fund) to attain and maintain a secure base amount (SBA), defined as 2 percent of the aggregate outstanding insured obligations of all insured System banks (excluding a percentage of State and Federally guaranteed loans and investments) or such other percentage of the aggregate amount as the Corporation in its sole discretion determines is actuarially sound. The Farm Credit System Reform Act of 1996,[3] amended section 5.55 of the Act to establish in the Insurance Fund an Allocated Insurance Reserves Account (AIRA) for the benefit of each insured System bank and an AIRA for the Farm Credit System Financial Assistance Corporation (FAC) stockholders; allocate any excess balances above the SBA to these AIRAs; and make partial distributions of the excess funds in the AIRAs. Congress, by enactment of the Food, Conservation, and Energy Act of 2008 (FCE Act),[4] amended the provisions of the Act that govern FCSIC premiums, the SBA, and AIRAs to incorporate the Corporation's recommendations concerning calculation of premiums and the SBA, and the simplification of the provisions governing AIRAs. In 2009 the Corporation adopted final regulations implementing the amended provisions of the Act governing FCSIC premiums, the SBA and AIRAs.

Applicability:

This policy statement will govern adjustments to premiums in response to changing conditions.

Policy Statement:

The Corporation's Board of Directors (Board) will review the premium assessment schedule at least semiannually in order to determine whether to exercise its discretion to adjust the premium assessments in response to changing conditions. The Board may reduce the premiums when the Farm Credit System demonstrates good health and sound risk management and other conditions warrant, and raise premiums to the statutory level if, for example, the amount of insured obligations increases, or the Insurance Fund suffers a significant loss or if bank capital or collateral decreases significantly before the secure base amount is achieved.

As a basis for its decision the Board will consider the following:

1. The current level of the Insurance Fund and the amount of money and time needed to reach the secure base amount in light of potential growth;
2. The likelihood and probable amount of any losses to the Insurance Fund;
3. The overall condition of the Farm Credit System, including the level and quality of capital, earnings, asset growth, asset quality, loss allowance levels, asset liability management, as well as the collateral ratios of the five banks;
4. The health and prospects for the agricultural economy, including the potential impact of governmental farm policy and the effect of the globalization of agriculture on opportunities and competition for U.S. producers; and
5. The risks in the financial environment that may cause a problem, even when there is no imminent threat, such as volatility in the level of interest rates, the use of sophisticated investment securities and derivative instruments, and increasing competition from non-System financial institutions.

In its review of the premium assessments, the Board will consider multiple scenarios that reflect the impact of potential growth in Farm Credit System debt levels on the time required to achieve the secure base amount. The secure base amount should be achieved while the Farm Credit System is in good health with very few problem institutions. Thus, the premium on adjusted average outstanding insured obligations will be set between zero and the statutory rate of 20 basis points. The Board will not

[2] The Agricultural Credit Act of 1987, Public Law 100–233 (1988), amended the Farm Credit Act of 1971 to establish the Farm Credit System Insurance Corporation. (12 U.S.C. 2277a–1 *et seq.*)

[3] Public Law 104–105, 110 Stat. 162 (1996).

[4] Public Law 110–234, Public Law 110–246, 122 Stat. 1651 (2008).

reduce the 10 basis points premium on the average principal outstanding on loans in nonaccrual status and the average amount outstanding of other than temporarily impaired investments, to continue providing an incentive for sound credit extension and administration and sound investment policy.

The text of the ''Policy Statement on the Secure Base Amount and Allocated Insurance Reserves Accounts'' is set out below:

Farm Credit System Insurance Corporation Policy Statement on the Secure Base Amount and Allocated Insurance Reserves Accounts

Background:

The Farm Credit Act of 1971, as amended (Act) established the Farm Credit System Insurance Corporation (FCSIC or Corporation) to, among other things, insure the timely payment of principal and interest on Farm Credit System obligations.[5] Section 5.55 of the Act mandates that the Corporation build and manage the Farm Credit Insurance Fund (Insurance Fund) to attain and maintain a secure base amount (SBA), defined as 2 percent of the aggregate outstanding insured obligations of all insured System banks (excluding a percentage of State and Federally guaranteed loans and investments) or such other percentage of the aggregate amount as the Corporation in its sole discretion determines is actuarially sound. The Farm Credit System Reform Act of 1996,[6] amended section 5.55 of the Act to establish in the Insurance Fund an Allocated Insurance Reserves Account (AIRA) for the benefit of each insured System bank and an AIRA for the Farm Credit System Financial Assistance Corporation (FAC) stockholders; allocate any excess balances above the SBA to these AIRAs; and make partial distributions of the excess funds in the AIRAs. Congress, by enactment of the Food, Conservation, and Energy Act of 2008 (FCE Act),[7] amended the provisions of the Act that govern FCSIC premiums, the SBA, and AIRAs to incorporate the Corporation's recommendations concerning calculation of premiums and the SBA, and the simplification of the provisions governing AIRAs. In 2009, the Corporation adopted final regulations implementing the amended provisions of the Act governing FCSIC premiums, the SBA and AIRAs.

Applicability:

This policy statement will govern the calculation of the secure base amount, the determination of any excess above the SBA, the method for allocating any excess to the AIRAs, and the method for making payments from the AIRAs to accountholders.

Policy Statement:

I. Secure Base Amount Determination

As stated in the Corporation's Policy Statement Concerning Adjustments to the Insurance Premiums, the Corporation's Board of Directors (Board) will review the premium assessments at least semiannually to determine whether to adjust premiums in response to changing conditions. The Board continues to engage in this review even after the Insurance Fund achieves the SBA because the law requires the Corporation to maintain the SBA. Thus, the Corporation must ensure that as the Farm Credit System's insured debt grows, or if the Insurance Fund suffers a significant loss, the Insurance Fund builds back to the SBA.

The Farm Credit System Reform Act of 1996 established a process for making partial distributions of the Insurance Fund's balance above the SBA. On March 23, 2007, the Corporation's Board of Directors adopted a legislative proposal requesting that the Congress amend the Act to, *inter alia,* base premiums on the outstanding insured debt obligations instead of loans, permit the Corporation to collect a broader range of premiums on insured debt, and simplify the provisions concerning allocation of funds to the AIRAs and the payment of funds from the AIRAs to accountholders. Ultimately, enactment of the FCE Act in 2008 amended the provisions of the Farm Credit Act of 1971 that govern FCSIC premiums to include the Corporation's proposed changes.

As amended, the Act's provisions also reduce the total insured debt obligations on which premiums are assessed by 90 percent of Federal government-guaranteed loans and investments and 80 percent of State government-guaranteed loans and investments, and deduct similar percentages of such guaranteed loans and investments when calculating the secure base amount. The amendments also simplified the method of paying out AIRAs, prescribing that, if the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount at the end of any calendar year, the Corporation shall allocate to the AIRAs the excess amount less the amount that the Corporation, in its sole discretion, maintains for estimated operating expenses and estimated insurance obligations of the Corporation for the following calendar year.

To begin the process, the Corporation must define the aggregate outstanding insured obligations of all the System banks. Then it must follow the steps in the statute to determine the SBA. Finally, at the end of any calendar year in which the Insurance Fund attains the secure base amount, the Corporation must determine whether any excess funds exist for allocation to the AIRAs.

The principal calculation for determining whether the Insurance Fund is at the SBA amount will be 2 percent of the aggregate adjusted insured obligations defined as follows:

(1) ''Insured obligation'' means any note, bond, debenture, or other obligation issued under subsection (c) or (d) of section 4.2 of the Farm Credit Act on or before January 5, 1989, on behalf of any System bank; and after such date which, when issued, is issued on behalf of any insured System bank and is outstanding at the quarter-end. The balance outstanding at the quarter-end shall include principal and accrued interest payable as reported by the banks in the call reports submitted to the Farm Credit Administration.

(2) The aggregate outstanding insured obligations of all insured System banks determined under paragraph (1) Of Section I shall be adjusted downward to exclude an amount equal to the sum of (as determined by the Corporation):

(A) Ninety (90) percent of each of

(i) The guaranteed portions of principal outstanding on Federal government-guaranteed loans in accrual status made by the banks; and

(ii) The guaranteed portions of the amount of Federal government-guaranteed investments made by the banks that are not permanently impaired; and

(B) Eighty (80) percent of each of

(i) The guaranteed portions of principal outstanding on State government-guaranteed loans in accrual status made by the banks; and

(ii) The guaranteed portions of the amount of State government-guaranteed investments made by the

For the purpose of this paragraph (2), the principal outstanding on all loans made by an insured System bank, and the amount outstanding on all investments made by an insured System bank, shall be determined based on

(a) All loans or investments made by any production credit association, or any other association making direct loans under authority provided under section 7.6 of the Act, that is able to

[5] The Agricultural Credit Act of 1987, Public Law 100–233 (1988), amended the Farm Credit Act of 1971 to establish the Farm Credit System Insurance Corporation. (12 U.S.C. 2277a–1 *et seq.*)

[6] Public Law 104–105, 110 Stat. 162 (1996).

[7] Public Law 110–234, Public Law 110–246, 122 Stat. 1651 (2008).

make such loans or investments because such association is receiving, or has received, funds provided through the insured System bank;

(b) All loans or investments made by any bank, company, institution, corporation, union, or association described in section 1.7(b)(1)(B) of the Act, that is able to make such loans or investments because such entity is receiving, or has received, funds provided through the insured System bank; and

(c) All loans or investments made by such insured System bank (other than loans made to any party described in paragraph (a) or (b)).

At the end of any calendar year when the Insurance Fund balance exceeds the SBA, calculated using December 31, balances, the Corporation will determine whether any excess funds exist for allocation to the AIRAs.

II. Allocated Insurance Reserves Accounts

Determination of Excess Insurance Fund Balances

An AIRA shall be established in the Insurance Fund for each insured System bank and for FAC stockholders. Amounts representing excess Insurance Fund balances will be allocated to the AIRAs. The AIRAs remain a part of the Insurance Fund and are available to the Corporation.

(a) Authorized Deductions

If, at the end of any calendar year, the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the Corporation shall allocate to the AIRAs the excess amount less the amount that the Corporation, in its sole discretion, determines to be the sum of the estimated operating expenses and estimated insurance obligations of the Corporation for the immediately succeeding calendar year. The Corporation will budget for the next calendar year operating expenses and it will deduct the operating expenses it expects to incur. When determining estimated insurance obligations, the Corporation will include all anticipated allowances for insurance losses, claims, and other potential statutory uses of the Insurance Fund.

The excess Fund balance shall be allocated to the accounts of each insured System bank and to the FAC stockholders. The AIRA balances will be fixed at year-end until paid to account holders or used under paragraph (c). The Act provides that, not later than 60 days after receipt of a payment from the AIRAs established for the insured System banks, each insured System bank, in consultation with affiliated associations of the insured System bank, and taking into account the direct or indirect payment of insurance premiums by the associations, shall develop and implement an equitable plan to distribute payments received among the bank and associations of the bank. The Corporation will request that each insured System bank promptly transmit to the Corporation a copy of the plan that the institution develops for the distribution of such AIRA payments.[8]

(b) Allocation Formula When Excess Funds Are Available

(1) Ten (10) percent of the excess Insurance Fund balance shall be credited to the AIRAs for all holders, in the aggregate, of FAC stock. The total amount that may be allocated to this AIRA is limited to $35.5 million ($56 million less the $20.5 million that was paid out in 2010).

(2) The remaining amount of the excess Insurance Fund balance shall be credited to the AIRA for each insured System bank. There shall be credited to the AIRA of each insured system bank an amount that bears the same ratio to the total amount (less any amount credited under paragraph (b)(1) of this Section II) as—

(i) The average principal outstanding for the calendar year on insured obligations issued by the bank (after deducting from the principal the percentages of the guaranteed portions of loans and investments described in paragraph (2) of Section I above); bears to

(ii) The average principal outstanding for the calendar year on insured obligations issued by all insured System banks (after deducting from the principal the percentages of the guaranteed portions of loans and investments described in paragraph (2) of Section I above).

(3) An example of the allocation formula is shown in the attached Exhibit 1.

(c) Use of Funds in AIRAs When Reductions Are Required

To the extent that the sum of the operating expenses of the Corporation and the insurance obligations of the Corporation for a calendar year exceeds the sum of operating expenses and insurance obligations determined under paragraph (a) Of this Section II for the calendar year, the Corporation shall cover the expenses and obligations by reducing each AIRA by the same proportion, and expending the amounts so obtained before expending other amounts in the Fund.

When the Corporation's actual operating expenses and insurance obligations exceed the estimated amounts used to determine any year's AIRA balances, the Act requires AIRA balances to absorb such excess expenses before using other amounts in the Insurance Fund.[9] To the extent reductions are made in AIRA balances to absorb Corporation expenses and actual insurance obligations, each AIRA will be reduced by its proportional amount in accordance with the statute. The same formula used to make allocations of excess Insurance Fund balances shall be used to reduce AIRA balances when necessary. Ten (10) percent of any necessary AIRA reduction will be applied to the FAC stockholder AIRA. The remaining 90 percent will be applied to the System insured banks' AIRAs on the basis of the ratio of described in paragraph (b)(2) of this Section II.

BILLING CODE 6710–01–P

[8] *See,* Act, section 5.55(e)(6)(D), 12 U.S.C. 2277a–4(e)(6)(D).

[9] *See,* Act, section 5.55(e)(5), 12 U.S.C. 2277a–4(e)(5).

Recent Example - AIRAs Allocation and Payment

Insurance Fund Balance @ 12/31/2009 (including $39,888,432 allocated to AIRAs in 2003)	$	3,287,696,411
Less: FCSIC's Prospective Operating Expenses for 2010	$	(3,863,892)
Insurance Fund Balance for Calculation of AIRAs	$	3,283,832,519
Less: Secure Base Amount at 12/31/2009 (see page 3 of example)	$	(3,078,512,000)
Excess Insurance Fund Balance	$	205,320,519
Less: Amount Allocated to AIRAs in 2003	$	(39,888,432)
Amount Allocated to AIRAs in 2009	$	165,432,087
Apportionment of Amount Allocated to AIRAs in 2009	$	165,432,087
FAC Stockholders in aggregate (10% of Allocable Amount) - Apportioned Based on Number of Shares Held (see page 2 of example for details)	**$**	**16,543,209**
Banks (90% of Allocable Amount) - Apportioned Based on Average Adjusted Debt Outstanding	**$**	**148,888,878**

Bank Apportionment

	Percentage		Amount Allocated
AgFirst FCB	14.87%	$	22,141,337
AgriBank, FCB	36.30%	$	54,044,812
U.S. AgBank, FCB	13.61%	$	20,260,392
FCB of Texas	7.47%	$	11,121,022
CoBank, ACB	27.75%	$	41,321,315
Total	100%	$	148,888,878

Recent Example - AIRAs Allocation and Payment

FAC Shareholders Balances		Shares Outstanding	Percentage	Adjusted Shares Retired [1]	Amount Paid to FAC Stockholders [2] Payment 1	Shares Remaining After Payment 1	Percentage	Adjusted Shares Retired [1] Approved Mar 2010	Amount Paid to FAC Stockholders [2] Payment 2	Shares Remaining After Payment 2
FCB of Texas		**2,487,975**	**22.28%**	**177,727**	**$ 888,635.00**	**2,310,248**	**22.00%**	**727,901**	**$ 3,639,506**	**1,582,347**
AgriBank, FCB		**2,812,507**	**25.18%**	**200,910**	**$ 1,004,550.00**	**2,611,597**	**25.00%**	**827,160**	**$ 4,135,802**	**1,784,437**
CoBank		**712,660**	**6.38%**	**50,909**	**$ 254,545.00**	**661,751**	**6.00%**	**198,519**	**$ 992,593**	**463,232**
U.S. AgBank		**1,727,833**	**15.47%**	**123,427**	**$ 617,135.00**	**1,604,406**	**16.00%**	**529,383**	**$ 2,646,913**	**1,075,023**
AgFirst Associations (Total)		**3,426,889**	**30.69%**	**244,806**	**$ 1,224,030.00**	**3,182,083**	**31.00%**	**1,025,679**	**$ 5,128,395**	**2,156,404**
	MidAtlantic	770,209	22.48%	55,020	$ 275,100.00	715,189	22.48%	230,526	$ 1,152,630	484,663
	FC of the Virginias	571,525	16.68%	40,827	$ 204,135.00	530,698	16.68%	171,059	$ 855,296	359,639
	Colonial Farm Credit	448,912	13.10%	32,068	$ 160,340.00	416,844	13.10%	134,361	$ 671,804	282,483
	Chattanooga	257,737	7.52%	18,412	$ 92,060.00	239,325	7.52%	77,142	$ 385,708	162,183
	Puerto Rico Farm Credit	243,042	7.09%	17,362	$ 86,810.00	225,680	7.09%	72,743	$ 363,716	152,937
	Jackson Purchase	221,845	6.47%	15,848	$ 79,240.00	205,997	6.47%	66,399	$ 331,995	139,598
	AgChoice Farm Credit	210,042	6.13%	15,005	$ 75,025.00	195,037	6.13%	62,866	$ 314,331	132,171
	Central Kentucky	201,347	5.88%	14,384	$ 71,920.00	186,963	5.88%	60,264	$ 301,319	126,699
	AgGeorgia Farm Credit	106,773	3.12%	7,628	$ 38,140.00	99,145	3.12%	31,958	$ 159,788	67,187
	Ag Credit	97,918	2.86%	6,995	$ 34,975.00	90,923	2.86%	29,307	$ 146,536	61,616
	AgCarolina	94,692	2.76%	6,765	$ 33,825.00	87,927	2.76%	28,342	$ 141,708	59,585
	Carolina Farm Credit	83,163	2.43%	5,941	$ 29,705.00	77,222	2.43%	24,891	$ 124,455	52,331
	AgSouth Farm Credit	77,850	2.27%	5,562	$ 27,810.00	72,288	2.27%	23,301	$ 116,504	48,987
	ArborOne	41,834	1.22%	2,989	$ 14,945.00	38,845	1.22%	12,521	$ 62,605	26,324
FAC Stockholder Totals		**11,167,864**		**797,779**	**$ 3,988,895.00**	**10,370,085**		**3,308,642**	**$ 16,543,209**	**7,061,443**
	[1]The number of shares retired has been rounded upwards to the next full $5 par value share.									
	[2]The amount paid to FAC shareholders has been increased to allow for the retirement of full shares.									
	Payment 1 was authorized by the FCSIC Board in January 2010. Payment 2 was authorized in March 2010.									

Each of the revised policy statements has been approved for publication by the Board of Directors of the Corporation. After considering any comments received on each of these policy statements, the Board of Directors

will decide whether to give final approval to, modify, or withdraw, each of the revised policy statements.

Dated: June 24, 2011.

Mary Alice Donner,

Acting Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 2011–16371 Filed 6–29–11; 8:45 am]

BILLING CODE 6710–01–C

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. 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 on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before August 29, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1022.

Title: Sections 101.1403, 101.103(f), 101.1413, 101.1440 and 101.1417, MVDDS and DBS Reporting and Third Party Disclosure Requirements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 17 respondents; 108 responses.

Estimated Time per Response: 0.5 hour–40 hours.

Frequency of Response: Annual and other reporting requirements, and third-party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308 and 309(j).

Total Annual Burden: 565 hours.

Total Annual Cost: $3,000.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission is seeking an extension of this information collection in order to obtain the full three year approval from OMB. Although there are adjustments to the burden hours and cost estimates, there are no changes in any of the reporting and third party disclosure requirements.

The Commission uses the information in the following manner:

Section 101.1403—Multichannel Video Distribution and Data (MVDDS) licensees that meet the broadcast carriage requirements of 47 U.S.C. 325(b)(1) are required to send a letter to broadcast stations directly (or otherwise obtain the prior, express authority of a broadcast station before transmitting that station's signal;

Section 101.103(f)—The Commission's licensees will use the required notice and information to ensure that prior to operation the MVDDS antennas meet the minimum spacing requirement;

Section 101.1413—The Commission uses the information to determine whether a licensee is providing substantial service, as required, and for whether to apply a renewal expectancy;

Section 101.1440—The information collected and disclosed by this rule section will ensure that MVDDS licensees protect Direct Broadcast Satellite (DBS) customers of record from interference as required by the Commission's rules; and

Section 101.1417—The reporting requirement is necessary for the Commission to keep track of the MVDDS service. The information compiled in the annual report will assist the Commission in analyzing trends and competition in the marketplace.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–16441 Filed 6–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 2011.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Strategic Growth Banking LLC, and Strategic Growth Banking Partners, LLC,

both of El Paso, Texas; to become bank holding companies pursuant to the acquisition of Las Cruces B.R.G., Incorporated, Las Cruces, New Mexico, and thereby indirectly acquire control of Bank of the Rio Grande, National Association, Las Cruces, New Mexico. In connection with this application, Applicant also applied to retain control of, Capital Bank, SSB, El Paso, Texas. pursuant to Section 225.28(b)(4)(ii), of Regulation Y.

Board of Governors of the Federal Reserve System, June 27, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–16516 Filed 6–29–11; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0250; Docket No. 2011–0079; Sequence 6]

General Services Administration Acquisition Regulation; Information Collection; Zero Burden Information Collection Reports

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement regarding zero burden information collection reports.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Lague, Procurement Analyst, Contract Policy Division, at telephone (202) 694–8149 or via e-mail to *Deborah.lague@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0250, Zero Burden Information Collection Reports, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0250, Zero Burden Information Collection Reports'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0250, Zero Burden Information Collection Reports''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0250, Zero Burden Information Collection Reports'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0250, Zero Burden Information Collection Reports.

Instructions: Please submit comments only and cite Information Collection 3090–0250, Zero Burden Information Collection Reports, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information requirement consists of reports that do not impose collection burdens upon the public. These collections require information which is already available to the public at large or that is routinely exchanged by firms during the normal course of business. A general control number for these collections decreases the amount of paperwork generated by the approval process.

GSA has published rules in the **Federal Register** that fall under information collection 3090–0250. The rule that prescribed clause 552.238–70 ''Identification of Electronic Office Equipment Providing Accessibility for the Handicapped'' was published at 56 FR 29442, June 27, 1991, titled ''Implementation of Public Law 99–506'', with an effective date of July 8, 1991; and Clause 552.238–74 ''Industrial Funding Fee and Sales Reporting'' published at 68 FR 41286, July 11, 2003.

B. Annual Reporting Burden

None.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20407, telephone (202) 501–4755. Please cite OMB Control No. 3090–0250, Zero Burden Information Collection Reports, in all correspondence.

Dated: June 21, 2011.

Millisa Gary,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 2011–16347 Filed 6–29–11; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Availability of Proposed Data Collection Standards for Race, Ethnicity, Primary Language, Sex, and Disability Status Required by Section 4302 of the Affordable Care Act

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Minority Health.

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Health and Human Services (DHHS) is seeking public comment on the proposed data collection standards for race, ethnicity, sex, primary language and disability status, as required by Section 4302 of the Affordable Care Act. The proposed data collection standards are now available on the HHS Web site *minorityhealth.hhs.gov/section4302.*

DATES: Submit comments on or before August 1, 2011.

Instructions for Submitting Comments

You may submit comments, identified by docket ID number HHS–OMH–2011–0013 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Enter the above docket ID number in the ''Enter Keyword or ID'' field and click on ''Search.'' On the next web page, click on the ''Submit a Comment'' action and follow the instructions.
- *Standard U.S. Mail:* Office of Minority Health Resource Center, Attention: Affordable Care Act Section 4302 Data Standard Comments, P.O. Box 37337, Washington, DC 20013–73337. Mailed comments must be postmarked by July 27, 2011.
- *Express or Overnight Mail/Courier:* Office of Minority Health Resource Center, *Attention:* Affordable Care Act Section 4302 Data Standard Comments, 1101 Wooton Parkway, Suite 650, Rockville, MD 20852. For courier

delivery, please call (800) 444–6472 in advance to schedule delivery.

The Office of Minority Health strongly encourages commenters to submit comments via the Federal eRulemaking Portal. Comments received, including any personal information, will be posted without change to the docket at *http://www.regulations.gov* as they are submitted, usually within 1 week after submission. While the comment period remains open, individuals may also provide comments in response to already submitted comments that have been posted to the docket.

The submission of comments in response to this notice should not exceed 5 pages, not including appendices and supplemental documents. Any information you submit will be made public. Consequently, do not send proprietary, commercial, financial, business confidential, trade secret, or personal information that you do not wish to be made public.

FOR FURTHER INFORMATION CONTACT: Rochelle Rollins, PhD, MPH, Office of Minority Health, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852; Phone (800) 444–6472; E-mail *ACASection4302@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

DHHS reports, dating back to the landmark 1985 Secretary's Task Force on Black and Minority Health, note the critical importance of rich data systems and culturally competent research to understand and reduce health disparities among population subgroups. Such disparities reflect the interactive effects of multiple social, economic, behavioral, and environmental determinants of health, including access to high quality health care services. Data improvement efforts enhance the ability of the public health and healthcare systems to identify and track disparities in health and health care, and facilitate greater accountability for reducing them. Although there have been government-wide standards for the collection of race and ethnicity for many years, the lack of standards related to data collection on population subgroups defined by other characteristics—such as primary language and disability—remains a challenge for reporting and tracking data on health disparities.

Overview of Section 4302 of the Affordable Care Act

The Affordable Care Act includes multiple provisions aimed at eliminating health disparities in America. Section 4302 (Understanding health disparities: Data collection and analysis) of the Affordable Care Act focuses on the standardization, collection, analysis, and reporting of health disparities data. While data alone will not reduce disparities, it can be foundational to our efforts to characterize the disparities, design effective responses, and evaluate our progress.

Section 4302 begins by requiring the Secretary of DHHS to establish data collection standards for race, ethnicity, sex, primary language, and disability status. The law requires that, once established, these data collection standards be used, to the extent practicable, in HHS national population health surveys. The law also requires that any DHHS data standards be in compliance with standards created by the Office of Management and Budget (OMB), such as those for race and ethnicity. As such, OMB's standards are not the subject of comment in this notice.

The focus of this announcement is for data collection standards related to race, ethnicity, primary language, sex, and disability status, as outlined in Section 4302 of the Affordable Care Act. The law also requires that these data collection standards be used for the purposes of measuring quality and reporting for any federally sponsored, federally conducted, or supported health care or public health program, activity, or survey. Additional subsections of the law relate to data collection standards require the Department to develop data collection standards for access to care for persons with disabilities. The law also gives the Secretary the authority to require that additional demographic data be collected on all Departmental surveys and to develop appropriate data collection standards. The full text of Section 4302 of the Affordable Care Act can be found at *minorityhealth.hhs.gov/section4302.*

Implementation of Section 4302 of the Affordable Care Act

The Department proposed data collection standards for race, ethnicity, sex, primary language and disability status were guided by existing federal data standards, the results of studies and public reports, consultation with statistical agencies and programs, and the expertise of subject matter experts who have leadership roles with collecting and analyzing this type of data. The focus was to develop data collection standards for race, ethnicity, sex, primary language and disability status that are appropriate for the purposes and methods of population health surveys for self-reported data.

The proposed data collection standards and rationale are for race, ethnicity, primary language, sex, and disability status and pertain only to self-reported data. These proposed data collection standards represent the first round of implementation of Section 4302 of the Affordable Care Act related to race, ethnicity, sex, primary language and disability status. Implementation efforts related to additional subsections of Section 4302 of the Affordable Care Act continue.

The Department is also in the process of developing and validating standard approaches for collecting data about sexual orientation and gender identity.

With this notice, the Office of Minority Health requests comment from the public and interested stakeholders on the proposed data collection standards for race, ethnicity, sex, primary language, and disability status.

The text of the proposed data standards is available in HTML and PDF formats through the Office of Minority Health Web site at *minorityhealth.hhs.gov/section4302* and the *http://www.regulations.gov,* docket ID number HHS–OMH–2011–0013. The full text of Section 4302 of the Affordable Care Act can be found at *minorityhealth.hhs.gov/section4302.* For those who may not have Internet access, a hard copy can be requested from the point of contact, Rochelle Rollins, PhD, MPH, Office of the Minority Health, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852; Phone (800) 444–6472; E-mail *ACASection4302@hhs.gov.*

June 24, 2011.

Garth Graham,

Deputy Assistant Secretary for Minority Health, Office of Assistant Secretary for Health .

[FR Doc. 2011–16435 Filed 6–29–11; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and

Budget (OMB) approve the proposed information collection project: ''Medical Expenditure Panel Survey—Insurance Component 2012–2013.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by August 29, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRO.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Expenditure Panel Survey—Insurance Component 2012–2013

Employer-sponsored health insurance is the source of coverage for 85 million current and former workers, plus many of their family members, and is a cornerstone of the U.S. health care system. The Medical Expenditure Panel Survey—Insurance Component (MEPS–IC) measures the extent, cost, and coverage of employer-sponsored health insurance on an annual basis. These statistics are produced at the National, State, and sub-State (metropolitan area) level for private industry. Statistics are also produced for State and Local governments.

This research has the following goals:

(1) To provide data for Federal policymakers evaluating the effects of National and State health care reforms;

(2) To provide descriptive data on the current employer-sponsored health insurance system and data for modeling the differential impacts of proposed health policy initiatives; and

(3) To supply critical State and National estimates of health insurance spending for the National Health Accounts and Gross Domestic Product.

This study is being conducted by AHRQ through an interagency agreement with the U.S. Census Bureau and pursuant to AHRQ's statutory authority to conduct surveys to collect data on the cost, use and quality of health care, including the types and costs of private health insurance. 42 U.S.C. 299b–2(a).

Method of Collection

To achieve the goals of this project the following data collections for both private sector and state and local government employers will be implemented:

(1) Prescreener Questionnaire—The purpose of the Prescreener Questionnaire, which is collected via telephone, varies depending on the insurance status of the establishment contacted. (Establishment is defined as a single, physical location in the private sector and a governmental unit in state and local governments.) For establishments that do not offer health insurance to their employees, the prescreener is used to collect basic information such as number of employees. Collection is completed for these establishments through this telephone call. For establishments that do offer health insurance, contact name and address information is collected that is used for the mailout of the establishment and plan questionnaires. Obtaining this contact information helps ensure that the questionnaires are directed to the person in the establishment best equipped to complete them.

(2) Establishment Questionnaire—The purpose of the mailed Establishment Questionnaire is to obtain general information from employers that provide health insurance to their employees. Information such as total active enrollment in health insurance, other employee benefits, waiting periods, and retiree health insurance is collected through the establishment questionnaire.

(3) Plan Questionnaire—The purpose of the mailed Plan Questionnaire is to collect plan-specific information on each plan (up to four plans) offered by establishments that provide health insurance to their employees. This questionnaire obtains information on total premiums, employer and employee contributions to the premium, and plan enrollment for each type of coverage offered—single, employee-plus-one, and family—within a plan. It also asks for information on deductibles, copays, and other plan characteristics. This information is needed in order to provide the tools for Federal, State, and academic researchers to evaluate current and proposed health policies and to support the production of important statistical measures for other Federal agencies.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondent's time to provide the requested data. The Prescreener questionnaire will be completed by 31,552 respondents and takes about 5½ minutes to complete. The Establishment questionnaire will be completed by 25,839 respondents and takes about 23 minutes to complete. The Plan questionnaire will be completed by 23,230 respondents and will require an average of 2.1 responses per respondent. Each Plan questionnaire takes about 11 minutes to complete. The total annualized burden hours are estimated to be 21,440 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this data collection. The annualized cost burden is estimated to be $614,256.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Prescreener Questionnaire	31,552	1	0.09	2,840
Establishment Questionnaire	25,839	1	0.38	9,819
Plan Questionnaire	23,230	2.1	0.18	8,781
Total	80,621	na	na	21,440

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Prescreener Questionnaire	31,552	2,840	28.65	$81,366
Establishment Questionnaire	25,839	9,819	28.65	281,314
Plan Questionnaire	23,230	8,781	28.65	251,576
Total	80,621	21,440	na	$614,256

*Based upon the mean hourly wage for Compensation, Benefits, and Job Analysis Specialists occupation code 13–1141, at *http://www.bls.gov/oes/current/oes_nat.htm#13-0000* (U.S. Department of Labor, Bureau of Labor Statistics.)

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated annualized cost of this data collection. The total cost over the 2 years of this clearance is $22,954,000.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

[$ thousands]

Cost component	Total cost	Annualized cost
Project Development	$3,338	$1,669
Data Collection Activities	7,789	3,895
Data Processing and Analysis	7,789	3,895
Project Management	2,925	1,463
Overhead	1,113	557
Total	$22,954	$11,477

NOTE: Components may not sum to Total due to rounding.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 17, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–16213 Filed 6–29–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number CDC–2011–0008]

Assessing the Current Research, Policy, and Practice Environment in Public Health Genomics

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice; establishment of docket; request for comments, data and information.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) is announcing the opening of a docket to solicit comments, data, and other information helpful to assess the current research, policy, and practice environment in public health genomics. HHS/CDC is currently leading a process to assess the most important steps for public health genomics in the next five years.

DATES: Electronic or written comments must be received on or before August 1, 2011.

ADDRESSES: You may submit written comments to the following address: Office of Public Health Genomics, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS–E61, Atlanta, Georgia 30333, *Attn:* Docket No. CDC–2011–0008.

You may also submit comments electronically to *http://www.regulations.gov,* Docket No. CDC–2011–0008. Please follow directions at *http://wwww.regulations.gov* to submit comments. All relevant comments received will be posted publicly without change, including any personal or proprietary information provided.

FOR FURTHER INFORMATION CONTACT: Katherine Kolor, PhD, Office of Public Health Genomics, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS–E61, Atlanta, GA 30333, e-mail *genetics@cdc.gov*, phone 404–498–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1997, the Office of Public Health Genomics (OPHG) of the Centers for Disease Control and Prevention (CDC) has worked to integrate genomics into public health research, policy, and programs, which could improve interventions designed to prevent and control the country's leading chronic, infectious, environmental, and occupational diseases. OPHG's efforts focus on conducting population-based

genomic research, assessing the role of family health history in disease risk and prevention, supporting a systematic process for evaluating genetic tests, translating genomics into public health research and programs, and strengthening capacity for public health genomics in disease prevention programs. OPHG engages many partners to identify opportunities and challenges for using genomics to impact population health, by addressing important public health issues and improving the effectiveness and efficiency of public health programs.

II. Request for Comments, Data, and Other Information

To help inform the assessment process and strategically plan for the next five years, HHS/CDC is requesting public input to the following questions on public health genomics: (1) What are the most important activities that should be carried out by the public health system in 2012–2017 to apply genomic knowledge to public health goals? (2) What outcomes specific to public health might be achieved as the result of carrying out these activities? (3) What policies are needed in order to achieve these outcomes? (4) What institutions, organizations and agencies need to participate in achieving these outcomes and what roles should they play? (5) What barriers are anticipated in achieving these outcomes and how might they best be overcome?

III. Submission of Comments

Interested persons may submit comments, data, and information (see **ADDRESSES**) either electronically or written regarding this request. Submitted comments will be available for public review from Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. Eastern Standard Time, at 1600 Clifton Road NE., Atlanta, Georgia 30333. Please call ahead to 404–498–0001 and ask for a representative in the Office of Public Health Genomics to schedule your visit.

Dated: June 21, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–16422 Filed 6–29–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Evaluation of Tribal Health Profession Opportunity Grants (HPOG).

OMB No.: New collection.

Description: The Administration for Children and Families (ACF) is proposing information collection activities as part of the Evaluation of the Tribal Health Profession Opportunity Grants (HPOG) (HHS–2010–ACF–OFA–FY–0124). Through this information collection, ACF seeks to conduct a comprehensive process and outcome evaluation to provide documentation and lessons learned about diverse programmatic approaches to health professions trainings for Tribal populations.

The goals of the Tribal HPOG evaluation are to: (1) Provide an in-depth, systematic analysis of program structure, implementation and outcomes of the sites served by the five Tribal HPOG grantees funded in FY 2010, and (2) compare these data within and across grantees to generate hypotheses about the effectiveness of different program approaches for Tribal populations.

Both of these goals require collecting information from Tribal HPOG grantees and other program stakeholders on an annual basis for three years. The information collection will include data gathered through in-person and telephone interviews and focus groups. Program operations data related to this effort will be collected through a Web based performance reporting system under a separate information collection (the **Federal Register** Notice for this information collection was published in Vol. 76, No. 18, January 27, 2011, page 4912).

Respondents: Respondents to the Grantee and Partner Administrative Staff interview will be the administrators of the Tribal HPOG program, workforce development and TANF agencies, public and private university-based partners, and not-for profit organizations. Respondents to the Program Implementation Staff interview will be instructors, trainers, and providers of program or supportive services. Respondents to the Employers interview will be local or regional employers at public or private companies or organizations that are partnering with the Tribal HPOG program or have employed program participants. Respondents to the Program Participant focus groups or interviews will be current program participants. Interviews will be conducted in lieu of focus groups with program participants at secondary implementation sites (additional locations where the Tribal HPOG program are being implemented) in the middle data collection year. Respondents to the Program Completers interview will be program completers.

Respondents to the Program Non-completers interview will be individuals who did not complete the programs.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Grantee and Partner Administrative Staff interview	35	1	1	35
Program Implementation Staff interview	117	1	1.5	176
Employers interview	52	1	0.75	39
Program Participant focus groups or interviews	117	1	1.35	158
Program Completers interview	67	1	1	67
Program Noncompleters interview	20	1	0.5	10

Estimated Total Annual Burden Hours: 485.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this

document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–6974, *Attn:* Desk Officer for the Administration, for Children and Families.

Dated: June 22, 2011.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2011–16212 Filed 6–29–11; 8:45 am]

BILLING CODE 4184–09–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction.

SUMMARY: The Health Resources and Services Administration published an Agency Information Collection document in the **Federal Register** of June 20, 2011 (FR Doc. 2011–15194), on page 35900, regarding Bureau of Primary Health Care (BPHC) Uniform Data System (OMB No. 0915–0193).

FOR FURTHER INFORMATION CONTACT: Charles Daly, Public Health Analyst at 301–594–5110.

Correction

In the **Federal Register** issue of June 20, 2011, FR Doc. 2011–15194), on page 35900, second column, under the section Proposed Project: Bureau of Primary Health Care (BPHC) Uniform Data System (OMB No. 0915–0193–Revision), correct the first paragraph to read as follows:

The Uniform Data System (UDS) contains the annual reporting requirements for the cluster of primary care grantees funded by the Health Resources and Services Administration (HRSA) under the Health Center Program as authorized under section 330 of the Public Health Service Act, as amended. ''FQHC Look-Alikes'' are health centers that have been determined by HRSA to meet the requirements of the Health Center Program but which do not receive a grant. The UDS includes reporting requirements for grantees of the following primary care programs: Community Health Centers, Migrant Health Centers, Health Care for the Homeless, and Public Housing Primary Care.

On page 35900, second column, second paragraph, correct the fifth sentence to read as follows:

These new measures are included in the UDS data collection request in order to allow advance time for health centers and FQHC Look-Alikes to change data collection systems.

On page 35900, please correct the burden table as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Universal report	1,287	1	82	105,534
Grant report	328	1	18	5,904
Total	1,615			111,438

Dated: June 23, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–16478 Filed 6–29–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Revision to Proposed Collection; Comment Request; Formative Research Methodology Studies for the National Children's Study

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 Institute of Child Health and Human Development (NICHD), 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. This proposed information collection was previously published in the **Federal Register** on April 27, 2011, pages 23608–23609, and allowed 60 days for public comment. Two written comments and two verbal comments were received. The verbal comments expressed support for the broad scope of the study. The written comments were identical and questioned the cost and utility of the study specifically and of federally funded biomedical research overall. The purpose of this notice is to allow an additional 30 days for public comment.

Proposed Collection:

Title: Formative Research Studies for the National Children's Study (NCS)

Type of Information Collection Request: RENEWAL of OMB Clearance 0925–0590, Expiration June 30, 2011

Need and Use of Information Collection: The Children's Health Act of 2000 (Pub. L. 106–310) states:

(a) *Purpose.*—It is the purpose of this section to authorize the National Institute of Child Health and Human Development* to conduct a national longitudinal study of environmental influences (including physical, chemical, biological, and psychosocial) on children's health and development.

(b) *In General.*—The Director of the National Institute of Child Health and Human Development* shall establish a consortium of representatives from appropriate Federal agencies (including the Centers for Disease Control and Prevention, the Environmental Protection Agency) to—

(1) plan, develop, and implement a prospective cohort study, from birth to adulthood, to evaluate the effects of both chronic and intermittent exposures on child health and human development; and

(2) investigate basic mechanisms of developmental disorders and environmental factors, both risk and protective, that influence health and developmental processes.

(c) *Requirement.*—The study under subsection (b) shall—

(1) incorporate behavioral, emotional, educational, and contextual consequences to enable a complete assessment of the physical, chemical, biological, and psychosocial

environmental influences on children's well-being;

(2) gather data on environmental influences and outcomes on diverse populations of children, which may include the consideration of prenatal exposures; and

(3) consider health disparities among children, which may include the consideration of prenatal exposures.

To fulfill the requirements of the Children's Health Act, the results of formative research and pilot tests will be used to maximize the efficiency of NCS procedures, materials, and methods for outreach, engagement of stakeholders, recruitment and retention of Study subjects, and to ensure scientifically robust data collection methodologies for the National Children's Study (NCS) Vanguard and Main Studies. With this submission, the NCS seeks to obtain OMB's generic approval to conduct survey and instrument design and administration, focus groups, cognitive interviews, and health and social service provider information collection surrounding outreach, engagement, recruitment, consent and questionnaire design, and retention activities.

The results from formative research and pilot tests proposed will inform the feasibility (scientific robustness), acceptability (burden to participants and study logistics) and cost of NCS Vanguard and Main Study recruitment, retention, study visit measures and study logistics.

Frequency of Response: Annual [As needed on an on-going and concurrent basis].

Affected Public: Members of the public, researchers, practitioners, and other health professionals.

Type of Respondents: Women of child-bearing age, fathers, community leaders, members, and organizations, health care facilities and professionals, public health, environmental, social and cognitive science professional organizations and practitioners, hospital administrators, cultural and faith-based centers, and schools and child care organizations. These include both persons enrolled in the NCS Vanguard Study and their peers who are not participating in the NCS Vanguard Study.

Annual reporting burden: See Table 1. The annualized cost to respondents is estimated at: $300,000 (based on $10 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY

Data collection activity	Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Small, focused survey and instrument design and administration.	NCS participants	4,000	2	1	8,000
	Members of NCS target population (not NCS participants).	4,000	2	1	8,000
	Health and Social Service Providers	2,000	1	1	2,000
	Community Stakeholders	2,000	1	1	2,000
Focus groups	NCS participants	2,000	1	2	2,000
	Members of NCS target population (not NCS participants).	2,000	1	2	2,000
	Health and Social Service Providers	2,000	1	2	2,000
	Community Stakeholders	2,000	1	2	2,000
Cognitive interviews	NCS participants	500	1	2	1,000
	Members of NCS target population (not NCS participants).	500	1	2	1,000
Total		21,000			30,000 hrs

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 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 Dr. Sarah L. Glavin, Deputy Director, Office of Science Policy, Analysis and Communication, National Institute of Child Health and Human Development, 31 Center Drive Room 2A18, Bethesda, Maryland 20892, or call non-toll free number (301) 496–1877 or E-mail your request, including your address to *glavins@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: June 27, 2011.

Sarah L. Glavin,

Deputy Director, Office of Science Policy, Analysis and Communications, National Institute of Child Health and Human Development.

[FR Doc. 2011–16528 Filed 6–29–11; 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 Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a joint conference call of the Interagency Autism Coordinating Committee (IACC) Subcommittee on Safety and the IACC Services Subcommittee.

The IACC Subcommittee on Safety and Services Subcommittee will be having a joint conference call on Monday, July 11, 2011. The two subcommittees plan to discuss issues related to seclusion and restraint and autism spectrum disorder (ASD).

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of Meeting: Subcommittee on Safety and Services Subcommittee Joint, Conference Call.

Date: July 11, 2011.

Time: 2 p.m. to 4 p.m. Eastern Time.

Agenda: The Services and Safety Subcommittees of the IACC will meet jointly to discuss issues related to seclusion and restraint and autism spectrum disorder (ASD).

Place: No in-person meeting; conference call only.

Conference Call: Dial: 888–391–6569. Access code: 3061094,

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8185a, Rockville, MD 20852, *Phone:* 301–443–6040, *E-mail: IACCPublicInquiries@mail.nih.gov.*

Please Note: The conference call will be accessible to the public through a conference call-in number and access code. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the conference call or webcast, please e-mail *IACCTechSupport@acclaroresearch.com* or call the IACC Technical Support Help Line at 443–680–0098.

Individuals who participate by using this electronic service and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 7 days prior to the meeting.

This notice is being published less than 15 days prior to the meeting due to the urgent need to discuss issues related to seclusion and restraint and autism spectrum disorder (ASD) prior to the next IACC full committee meeting, which will take place on July 19, 2011.

Schedule subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: June 23, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–16460 Filed 6–29–11; 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 Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of an Interagency Autism Coordinating Committee (IACC) meeting.

The meeting will feature invited speakers and discussion of committee business items including the 2011 IACC Summary of Advances, subcommittee activities related to seclusion and restraint, and the Fall 2011 IACC Services Workshop. The meeting will be open to the public and accessible by live webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC) .

Type of Meeting: Open meeting.

Date: July 19, 2011.

Time: 10 a.m. to 5 p.m. *Eastern Time*—Approximate end time.

Agenda: The meeting will feature invited speakers and discussion of committee business items including the 2011 IACC Summary of Advances, subcommittee activities related to seclusion and restraint, and the Fall 2011 IACC Services Workshop.

Place: The Bethesda Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Conference Call: Dial: 800–369–1814. Access code: 7791752.

Cost: The meeting is free and open to the public.

Webcast Live: http://videocast.nih.gov/.

Registration: http://www.acclaroresearch.com/oarc/7–19–11/. Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis.

Deadlines:

Notification of intent to present oral comments: Friday, July 8, 2011 by 5 p.m. E.T.

Submission of written/electronic statement for oral comments: Tuesday, July 12, 2011 by 5 p.m. E.T.

Submission of written comments: Thursday, July 14, 2011 by 5 p.m. E.T.

Access: Medical Center Metro (Red Line)—1½ miles from the hotel. On-site parking with parking validation available.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8185a, Rockville, MD 20852, *Phone:* (301) 443–6040, *E-mail: IACCPublicInquiries@mail.nih.gov.*

Please Note: Any member of the public interested in presenting oral comments to the Committee must notify the Contact Person listed on this notice by 5 p.m. E.T. on Friday, July 8, 2011, with their request to present oral comments at the meeting. Interested individuals and representatives of organizations must submit a written/electronic copy of the oral statement/comments including a brief description of the organization represented by 5 p.m. E.T. on Tuesday, July 12, 2011.

Statements submitted will become a part of the public record. Only one representative of an organization will be allowed to present oral comments on behalf of that organization, and presentations will be limited to three to five minutes per speaker, depending on number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in the order of the date and time when their request to speak is received, along with the required submission of the written/electronic statement by the specified deadline. If special accommodations are needed, please e-mail the Contact Person listed above.

In addition, any interested person may submit written comments to the IACC prior to the meeting by sending the comments to the Contact Person listed on this notice by 5 p.m. E.T., Thursday, July 14, 2011. The comments should include the name and, when applicable, the business or professional affiliation of the interested person. All written comments received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record.

The meeting will be open to the public through a conference call phone number and webcast live on the Internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the conference call or webcast, please e-mail *IACCTechSupport@acclaroresearch.com* or call the IACC Technical Support Help Line at 443–680–0098.

To access the webcast live on the Internet the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended).

Individuals who participate in person or by using these electronic services and who need

special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 7 days prior to the meeting.

As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Schedule is subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov*.

Dated: June 23, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy .

[FR Doc. 2011–16457 Filed 6–29–11; 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 Biology.

Date: July 11, 2011.

Time: 12 p.m. to 2 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: Katherine M. Malinda, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Immunology and Pathogenesis Study Section.

Date: July 15, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Mechanisms of Neurodegeneration.

Date: July 15, 2011.

Time: 1 p.m. to 4 p.m

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Toby Behar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–10–266 Dynamics and Functions of NEDD8 In Cellular Control.

Date: July 18–19, 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: Rass M Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 23, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–16464 Filed 6–29–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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 Center for Complementary and Alternative Medicine Special Emphasis Panel, Preliminary Clinical Studies of CAM Therapies.

Date: July 25, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Hungyi Shau, PhD, Scientific Review Officer, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–402–1030, *Hungyi.Shau@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: June 24, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–16477 Filed 6–29–11; 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; PAR–08–147: Quick Trials for Imaging and Image-Guided Interventions; Exploratory Grants.

Date: July 14, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: David L Williams, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *williamsdl2@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Grant Program Ultrasound Imaging S10.

Date: July 19, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: David L Williams, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: FIRCA and GRIP in Behavioral Social Sciences.

Date: July 20–21, 2011.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Inese Z Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7808, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 24, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–16532 Filed 6–29–11; 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: Topics in Microbial Pathogens.

Date: July 13, 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: Liangbiao Zheng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–11–081: Shared Instrumentation: Electron Microscopy.

Date: July 21–22, 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: Michael H Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–11–081: Shared Instrumentation: Grant Program PET/SPECT/CT and X–RAY.

Date: July 26, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: David L Williams, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301)435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–11–081: Shared Instrumentation: Grant Program Optical Imaging.

Date: July 28, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: David L Williams, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301)435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Developmental Pharmacology.

Date: August 2–3, 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: Janet M Larkin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics A.

Date: August 2–3, 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: Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 24, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–16534 Filed 6–29–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of 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 Allergy and Infectious Diseases Special Emphasis Panel, T–Cell Regulation & Induction of Tolerance.

Date: July 20–21, 2011.

Time: 11 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Maryam Feili-Hariri, PhD, Scientific Review Officer, Immunology Review Branch, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–3243, *haririmf@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 24, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–16465 Filed 6–29–11; 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 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 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, Udall Centers Review.

Date: July 14–15, 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: Ernest W. Lyons, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056, *lyonse@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Hypothermia Clinical Trial.

Date: July 19, 2011.

Time: 12:15 p.m. to 2:15 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: Richard D. Crosland, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *Rc218u@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NeuroNEXT 1.

Date: August 1, 2011.

Time: 8 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 1250 22nd Street, NW., Washington, DC 20037.

Contact Person: Shanta Rajaram, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033 *rajarams@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NeuroNEXT 2.

Date: August 1–2, 2011.

Time: 1:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 1250 22nd Street, NW., Washington, DC 20037.

Contact Person: Shanta Rajaram, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@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: June 23, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–16461 Filed 6–29–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5511–N–03]

Credit Watch Termination Initiative; Termination of Origination Approval Agreements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll-free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 HUD published a notice (64 FR 26769), on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single-family mortgage loans and submit

them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR Part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the quarterly review period ending December 31, 2010, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes branch(es) of the mortgagee from originating FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA-insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are those already underwritten and approved by a DE underwriter, and cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another FHA-insured mortgagee with direct endorsement approval for the area covered by the termination. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for reinstatement of the Origination Approval Agreement if the approval for the affected branch or branches has been terminated for at least six months and the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 and 202.12. However, Mortgagee Letter 2010–20 and Final Rule 5356–F–02 at 24 CFR Part 202 eliminates FHA approval for loan correspondents after December 31, 2010. Therefore, HUD will not accept requests for reinstatement from loan correspondents after that date. The mortgagee's application for reinstatement must be in a format prescribed by the Secretary and signed by the mortgagee. In addition, the application must be accompanied by an independent analysis of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their Origination Agreements terminated by HUD:

Mortgagee name	Mortgagee branch office address	HUD office jurisdictions	Termination effective date	Homeownership centers
Equity Source Home Loans LLC	1120 Campus Drive West Morganville, NJ 07751.	Newark	6/1/2011	Philadelphia.
First Ohio Banc and Lending, Inc	6100 Rockside Woods Blvd., Ste 1 Independence, OH 44131.	Cleveland	6/21/11	Philadelphia.
Mac-Clair Mortgage Corp	G4355 S Saginaw St., Burton, MI 48529	Detroit	4/26/11	Philadelphia.

Dated: June 22, 2011.

Robert C. Ryan,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–16518 Filed 6–29–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5511–N–04]

Credit Watch Termination Initiative; Termination of Direct Endorsement (DE) Approval

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Direct Endorsement (DE) Approval taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their DE Approval terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll-free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 HUD published a notice (64 FR 26769), on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Approval Agreements terminated. On January 21, 2010 HUD issued Mortgagee Letter 2010–03 which advised the extended procedures for

terminating Underwriting Authority of Direct Endorsement mortgagees.

Termination of Direct Endorsement Approval: Approval of a DE mortgagee by HUD/FHA authorizes the mortgagee to underwrite single family mortgage loans and submit them to FHA for insurance endorsement. The Approval may be terminated on the basis of poor performance of FHA-insured mortgage loans underwritten by the mortgagee. The termination of a mortgagee's DE Approval is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the DE Approval with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the quarterly review period ending December 31, 2010, HUD is terminating the DE Approval of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the DE Approval precludes the mortgagee from underwriting FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA-insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are those already underwritten and approved by a DE underwriter, and cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated mortgagee; however, the cases may be transferred for completion of processing and underwriting to another mortgagee with DE Approval in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for reinstatement of the DE Approval if the DE Approval for the affected area or areas has been terminated for at least six months and the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.10 and 202.12. The mortgagee's application for reinstatement must be in a format prescribed by the Secretary and signed by the mortgagee. In addition, the application must be accompanied by an independent analysis of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their DE Approvals terminated by HUD:

Mortgagee name	Mortgagee home office address	HUD office jurisdictions	Termination effective date	Homeownership centers
Dover Mortgage Company.	711 E Morehead Street, Charlotte, NC 28202.	Knoxville	4/26/11	Atlanta.
First Ohio Banc and Lending, Inc..	6100 Rockside Woods Blvd., Ste. 1, Independence, OH 44131.	Atlanta	6/21/11	Philadelphia.
First Ohio Banc and Lending, Inc..	6100 Rockside Woods Blvd., Ste. 1, Independence, OH 44131.	Cleveland	6/21/11	Philadelphia.
Mac-Clair Mortgage Corp..	G4355 S Saginaw St., Burton, MI 48529.	Detroit	4/26/11	Philadelphia.
Mac-Clair Mortgage Corp..	G4355 S Saginaw St., Burton, MI 48529.	Flint	4/26/11	Philadelphia.

Dated: June 22, 2011.

Robert C. Ryan,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–16489 Filed 6–29–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5500–N–18

Notice of Funding Availability (NOFA) for HUD's Fiscal Year 2011 HOPE VI Main Street Grants

AGENCY: Office of the Chief of the Human Capital Officer, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site and *http://www.Grants.gov* of the applicant information, submission deadlines, funding criteria, and other requirements for HUD's FY2011 HOPE VI Main Street Grants NOFA. Specifically, this NOFA announces the availability of approximately $500,000 made available under the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10, approved April 15, 2011.

The purpose of the Main Street Grants program is to provide grants to small communities to assist in the rejuvenation of an historic or traditional central business district or ''Main Street'' area by replacing unused commercial space in buildings with affordable housing units.

The objectives of the program are to:

1. Redevelop Main Street areas;
2. Preserve historic or traditional architecture or design features in Main Street areas;
3. Enhance economic development efforts in Main Street areas; and
4. Provide affordable housing in Main Street areas.

The notice providing information regarding the application process, funding criteria and eligibility requirements, application and

instructions can be found using the Department of Housing and Urban Development agency link on the *Grants.gov/Find* Web site at *http://www.grants.gov/search/agency.do.* A link to the funding opportunity is also available on the HUD Web site at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail.*

The link from the funds available page will take you to the agency link on Grants.gov.

The Catalogue of Federal Domestic Assistance (CFDA) number for this program is 14.878. Applications must be submitted electronically through *Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2011 General Section should be directed to the Office of Grants Management and Oversight at (202) 708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: June 27, 2011.

Barbara S. Dorf,

Director, Office of Departmental Grants, Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2011–16492 Filed 6–29–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5496–N–03]

Conference Call Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting via conference call.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee) to be held via telephone conference. This meeting is open to the general public, which may participate by following the instructions below.

DATES: The meeting will be held on Wednesday, July 20, 2011, by conference call from 11 a.m. to 1 p.m. EST.

Conference Call: Members of the public who wish to join the call may call the toll free number 877–320–2367 and enter pass code 4191690. Additional information concerning the conference call can be obtained from the Department's Consensus Committee Administering Organization, the National Fire Protection Association (NFPA). Interested parties can access the NFPA Web site to obtain additional information about the Manufactured Housing Consensus Committee and the Administering Organization. The link can be found at: *http://www.nfpa.org/categoryList.asp?categoryID=858.* Locate *Quick Links* on the webpage and select Meeting Notices.

Alternately, interested parties may contact Jill McGovern of NFPA at (617) 984–7404 (this is not a toll-free number) for conference call information.

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Associate Deputy Assistant Secretary, Office of Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with Sections 10(a) and (b) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under Section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5403(a)(3). The Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured home construction and safety standards and procedural and enforcement regulations, and with developing and recommending proposed model installation standards to the Secretary.

The purpose of this conference call meeting is for the Committee to conduct routine business, receive subcommittee status reports, receive subcommittee recommendations/proposals (if any), and any other business that may come before the Committee.

Tentative Agenda

A. Roll call.
B. Welcome and opening remarks.
C. Public Testimony
D. Subcommittee Progress Reports
E. Two-year Construction and Safety Standards review period
F. Other Business
G. Adjournment

Dated: June 23, 2011.

Ronald Spraker,

Associate General Deputy, Assistant Secretary for Housing.

[FR Doc. 2011–16495 Filed 6–29–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Notice of an Open Meeting of the Advisory Committee on Water Information

AGENCY: United States Geological Survey.

ACTION: Notice of an open meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This meeting is to discuss broad policy-related topics relating to national water initiatives, and the development and dissemination of water information, through reports from ACWI subgroups. The agenda will include an update on the Department of the Interior WaterSMART initiative; an update by the Subcommittee on Ground Water regarding their National Framework for Ground Water Monitoring; a discussion of the SECURE Water Act and its implications for ACWI and its subcommittees; a discussion of a new reference network for surface-water sites; a briefing on the Reservoir Sedimentation Database; an update on preparations for the 8th National Monitoring Conference, which will be held in 2012 in Portland, Oregon; an update on the National Monitoring Network for U.S. Coastal Waters and their Tributaries, and other activities of the National Water Quality Monitoring Council; and a briefing on WaterFALL™, a Watershed Flow and Allocation Model developed by the Triangle Research Institute.

The ACWI was established under the authority of the Office of Management and Budget Memorandum M–92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water information users and professionals to advise the Federal Government on activities and plans that may improve the effectiveness of meeting the Nation's water information needs. Member organizations help to foster communications between the Federal and non-Federal sectors on sharing water information.

Membership, limited to 35 organizations, represents a wide range of water resources interests and functions. Representation on the ACWI includes all levels of government, academia, private industry, and professional and technical societies. For more information on the ACWI, its membership, subgroups, meetings and activities, please see the Web site at: *http://ACWI.gov.*

DATES: The formal meeting will convene at 9 a.m. on July 12, 2011, and will adjourn at 5 p.m. on July 13, 2011.

ADDRESSES: The meeting will be held in the USGS auditorium, located at 12201 Sunrise Valley Drive, Reston, Virginia 20192. The meeting will also be accessible by teleconference and WebEx. When it is time to attend the meeting, visit this link: *https://usgs.webex.com/usgs/j.php?ED=157656982&UID=1226445297&RT=MiMxMQ%3D%3D. Teleconference:* Dial-In Number—1–877–985–7015. Participant Access Code—9699971# .

FOR FURTHER INFORMATION CONTACT: Ms. Wendy E. Norton, ACWI Executive Secretary and Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 417, Reston, VA 20192. *Telephone:* 703–648–6810; *Fax:* 703–648–5644; *e-mail: wenorton@usgs.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Up to a half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Ms. Norton at the above address no later than July 7, 2010. It is requested that 65 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Ms. Norton for distribution at the ACWI meeting.

Dated: June 24, 2011.

Wendy Norton,

Chief, Water Information Coordination Program.

[FR Doc. 2011–16415 Filed 6–29–11; 8:45 am]

BILLING CODE 4310–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket ID No. BOEM–2011–0064]

BOEMRE Information Collection Activity: 1010–0057, Pollution Prevention and Control, Extension of a Collection; Comment Request

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of an extension of an information collection (1010–0057) extension.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), BOEMRE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under Pollution Prevention and Control.

DATES: Submit written comments by August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

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

- *Electronically:* go to *http://www.regulations.gov.* In the entry titled Enter Keyword or ID, enter BOEM–2011–0064 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEMRE will post all comments.
- E-mail *cheryl.blundon@boemre.gov.* Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0057 in your comment and include your name and return address.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart C, Pollution Prevention and Control.

OMB Control Number: 1010–0057.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.,* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to manage the mineral resources of the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-use and easement, and pipeline right-of-way. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.'' Section 1334(a)(8) requires that regulations prescribed by the Secretary include provisions ''for compliance with the National Ambient Air Quality Standards [NAAQS] pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this Act significantly affect the air quality of any State.'' Section 1843(b) calls for ''regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use.''

This is a routine information collection request (ICR) concerning the regulations at 30 CFR part 250, subpart C, Pollution Prevention and Control. It also covers the related Notices to Lessees and Operators (NTLs) that BOEMRE issues to clarify and provide additional guidance on some aspects of the regulations.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited release.'' No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, monthly, or annually, daily for inspection recordkeeping; varies by section.

Description of Respondents: Potential respondents comprise Federal OCS oil and gas or sulphur lessees and 17 states.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 198,866 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart C and related NTL(s)	Reporting and recordkeeping requirement	Hour burden
	Pollution Prevention	
300(b)(1), (2)	Obtain approval to add petroleum-based substance to drilling mud system or approval for method of disposal of drill cuttings, sand, & other well solids, including those containing NORM. Burden covered under 1010–0141 (30 CFR Part 250, Subpart D).	0
300(c)	Mark items that could snag or damage fishing devices	0.5
300(d)	Report and record items lost overboard	1 hr ea × 2 = 2
	Inspection of Facilities	
301(a)	Inspect drilling/production facilities for pollution; maintain inspection/repair records 2 years. 1/12 hr every 3 days (365/3 = 122) = 10.17 hrs	¼ hr/day × 365 days=91.25 hrs
	Facilities described in new or revised EP or DPP	
303(a) thru (d), (i), (j); 304(a), (f).	Submit, modify, or revise Exploration Plans and Development and Production Plans; submit information required under 30 CFR Part 250, Subpart B. Burden covered under 1010–0151 (30 CFR Part 250, Subpart B).	0
303(k); 304(a), (g)	Collect and report air quality emissions related data (such as facility, equipment, fuel usage, and other activity information) during the calendar year 2008 for input into State and regional planning organizations modeling.	4 hrs per month × 12 months = 48
303(l); 304(h)	Collect and submit meteorological data (not routinely collected—minimal burden)	1
	Existing Facilities	
304(a), (f)	Affected State may submit request to BOEMRE for basic emission data from existing facilities to update State's emission inventory.	4
304(e)(2)	Submit compliance schedule for application of best available control technology (BACT).	40
304(e)(2)	Apply for suspension of operations. Burden covered under 1010–0114 (30 CFR 250, subpart A).	0
304(f)	Submit information to demonstrate that exempt facility is not significantly affecting air quality of onshore area of a State.	15
	General	
300–304	General departure and alternative compliance requests not specifically covered elsewhere in subpart C regulations.	2

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of

customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: June 21, 2011.

Doug Slitor,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2011–16442 Filed 6–29–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Docket ID No. BOEM–2011–0036]

BOEMRE Information Collection Activity: Geological and Geophysical (G&G) Explorations of the OCS, Revision of a Collection; Comment Request

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of a revision of an information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), BOEMRE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations for Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf, and in particular, we are revising BOEMRE Form MMS–0327 to adapt to new advances in technology (digital options) and clarifying requirements for environmental compliance.

DATES: Submit written comments by August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation and form that requires the subject collection of information. Also, you can view or print the form via regulations.gov. See the instructions listed in the **ADDRESSES** section.

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

- Electronically: go to *http://www.regulations.gov.* In the entry titled Enter Keyword or ID, enter BOEM–2011–0036 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEMRE will post all comments.
- E-mail *cheryl.blundon@boemre.gov.* Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0048 in your comment and include your name and return address.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 251, Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf.

BOEMRE Form(s): MMS–0327.

OMB Control Number: 1010–0048.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCS Lands Act (43 U.S.C. 1340) also states that ''any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this OCS Lands Act, and which are not unduly harmful to aquatic life in such area.'' The section further requires that permits to conduct such activities may only be issued if it is determined that the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and do not disturb a site, structure, or object of historical or archaeological significance. Applicants for permits are required to submit BOEMRE Form MMS–0327 to provide the information necessary to evaluate their qualifications.

The OCS Lands Act (43 U.S.C. 1352) further requires that certain costs be reimbursed to the parties submitting required G&G information and data. Under the OCS Lands Act, permittees are to be reimbursed for the costs of reproducing any G&G data required to be submitted. Permittees are to be reimbursed also for the reasonable cost of processing geophysical information required to be submitted when processing is in a form or manner required by the Director of BOEMRE and is not used in the normal conduct of the business of the permittee.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BOEMRE is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. The G&G permits are subject to cost recovery, and BOEMRE regulations specify the filing fee for the application.

Regulations at 30 CFR part 251 implement these statutory requirements. We use the information to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the government for certain costs. The information is necessary to determine if the applicants for permits or filers of notices meet the qualifications specified by the OCS Lands Act. BOEMRE uses information collected to understand the G&G characteristics of oil- and gas-bearing physiographic regions of the OCS. It aids the Secretary in obtaining a proper

balance among the potentials for environmental damage, the discovery of oil and gas, and adverse impacts on affected coastal States. Information from permittees is necessary to determine the propriety and amount of reimbursement. Also, we are revising BOEMRE Form MMS–0327 to adapt to new advances in technology (electronic options) and clarifying requirements for environmental compliance.

We will protect information from respondents considered proprietary according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), and under regulations at 30 CFR parts 250, 251, and 252.

No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, annual; and as specified in permits.

Description of Respondents: Potential respondents comprise Federal OCS oil, gas, and sulphur permittees or notice filers.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 1,246 hours. The following chart details the individual components and respective burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 251	Reporting and recordkeeping requirement	Hour burden
		Non-hour cost burden
30 CFR 251.1 through 251.6		
251.4(a), (b); 251.5(a), (b), (d); 251.6; 251.7.	Apply for permits (BOEMRE Form MMS–0327) to conduct G&G exploration, including deep stratigraphic tests/revisions when necessary.	3 $2,012 application fee.
251.4(b); 251.5(c), (d); 251.6	File notices to conduct scientific research activities, including notice to BOEMRE prior to beginning and after concluding activities.	1
251.6(b); 251.7(b)(5)	Notify BOEMRE if specific actions should occur; report archaeological resources (no instances reported since 1982).	1
30 CFR 251.7 through 251.9		
251.7	Submit information on test drilling activities under a permit, including BOEMRE Forms MMS–0123 and MMS–0123S. Burden included under 1010–0141.	0
251.7(c)	Enter into agreement for group participation in test drilling, including publishing summary statement; provide BOEMRE copy of notice/list of participants (no agreements submitted since 1989).	1
251.7(d)	Submit bond(s) on deep stratigraphic test. Burden included under 30 CFR part 256 (1010–0006).	0
251.8(a)	Request reimbursement for certain costs associated with BOEMRE inspections (no requests in many years).	1
251.8(b), (c)	Submit modifications to, and status/final reports on, activities conducted under a permit.	2
251.9(c)	Notify BOEMRE to relinquish a permit	1/2
30 CFR 251.10 through 251.13		
251.10(c)	File appeals. Exempt under 5 CFR 1320.4(a)(2), (c)	0
251.11; 251.12	Notify BOEMRE and submit G&G data and/or information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc.	4
251.13	Request reimbursement for certain costs associated with reproducing data/information.	2
30 CFR 251.14		
251.14(a)	Submit comments on BOEMRE intent to disclose data and/or information to the public.	1
251.14(c)(2)	Submit comments on BOEMRE intent to disclose data and/or information to an independent contractor/agent.	1
251.14(c)(4)	Contractor/agent submits written commitment not to sell, trade, license, or disclose data and/or information without BOEMRE consent.	1
251.1–251.14	General departure and alternative compliance requests not specifically covered elsewhere in part 251 regulations.	1
Extension for Permit Form & Recordkeeping		
BOEMRE Permit Form (Form MMS–0327).	Request extension of permit time period	1
	Retain G&G data/information for 10 years and make available to BOEMRE upon request.	1

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden for this collection. In § 251.5, BOEMRE charges a $2,012 G&G application fee. We have identified no other non-hour paperwork cost burden.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: June 1, 2011.

Doug Slitor,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2011–16438 Filed 6–29–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2011–N068; 1265–0000–10137–S3]

James Campbell National Wildlife Refuge, Honolulu County, HI; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for the James Campbell National Wildlife Refuge (Refuge), for public review and comment. The Draft CCP/EA describes our proposal for managing the Refuge for the next 15 years.

DATES: To ensure consideration, please send your written comments by August 1, 2011.

ADDRESSES: The Draft CCP/EA is available on our Web site: *http://www.fws.gov/jamescampbell/*. A limited number of printed and CD–ROM copies of the Draft CCP/EA are available by request. You may request a copy of the Draft CCP/EA or submit comments on it by any of the following methods.

E-mail: FW1PlanningComments@fws.gov. Include ''James Campbell Refuge CCP'' in the subject line of the message.

Fax: Attn: David Ellis, Project Leader, (808) 637–3578.

U.S. Mail: David Ellis, Project Leader, O'ahu National Wildlife Refuge Complex, 66–590 Kamehameha Highway, Room 2C, Hale'iwa, HI 96712.

FOR FURTHER INFORMATION CONTACT: David Ellis, Project Leader, (808) 637–6330.

SUPPLEMENTARY INFORMATION:

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Public Outreach

We started the CCP planning process by publishing a Notice of Intent (NOI) in the **Federal Register** on December 1, 2008 (74 FR 8564), announcing our intention to complete a CCP/EA for the James Campbell and Pearl Harbor National Wildlife Refuges (the Pearl Harbor National Wildlife Refuge CCP was completed in fall 2010). Simultaneously, we released Planning Update 1. We invited the public to two open house meetings and requested public comments in the NOI and Planning Update 1. We held the open house meetings in Pearl City, Hawai'i, on December 9, 2008; and in Kahuku, Hawai'i on January 8, 2009. In Planning Update 2, distributed in June 2009, we provided a summary of the comments we received and described Refuge resources. Planning Update 3, distributed in August 2010, provided a preview of the management goals as well as a summary of each management alternative designed to accomplish these goals. All of the public comments we

have received to date were considered during development of the Draft CCP/EA.

Draft CCP Alternatives We Are Considering

Alternative A, No Action

Under Alternative A, we would continue current management. This includes focusing threatened and endangered species management on protection and successful nesting, in support of the statewide effort to implement the Hawaiian Waterbird Recovery Plan. Public use programs would remain virtually unchanged. Units would remain closed to general public entry except for seasonal docent-guided tours and Special Use Permits issued on a case-by-case basis for environmental education, research, and other compatible uses. Newly acquired expansion lands would receive custodial oversight only, no habitat restoration would occur, and no additional visitor services would be provided. Both current commercial aquaculture leases would remain in effect until 2023 at which time, by prior agreement, they would expire.

Alternative B, Partial Restoration and Management of Refuge Expansion Lands

Current habitat management programs would continue. On newly acquired Refuge lands, only the highest priority wetlands and coastal dunes would be restored and fenced to exclude large predators. Within five years of acquiring new Refuge lands, a Visitor Services Plan (VSP) would be developed to identify, evaluate, and carefully select the types of wildlife-oriented activities we would provide the public, and the sites and locations for infrastructure needed to fully support safe, meaningful, and high-quality programs for the public. Infrastructure needs identified by the VSP would include safe roads, parking areas, trails, and an overlook. We would also identify and develop any new special regulations in the VSP, which may be needed to protect sensitive wildlife resources, the fragile coastline, and the visiting public. During the interim five-year period until the VSP is prepared, the current public use program would continue under Alternative B, with slight increases in opportunities for wildlife observation and photography. The Refuge would participate and partner with other agencies and the community of Kahuku, to develop, evaluate, and implement projects to mitigate flood damage to the local area, if practical and feasible. Both current commercial aquaculture leases will remain in effect until 2023, at which time, by prior agreement, they will expire.

Alternative C, Full Restoration and Management of Refuge Expansion Lands

In addition to management actions identified in Alternative B, all wetlands, coastal dunes/strand, and scrub/shrub habitats would be restored and managed. Trial use of predator-proof fencing would be initiated on selected dune or wetland sites, to protect seabirds or waterbirds. Abandoned aquaculture facilities would be cleaned up, and the habitat would be restored to natural conditions or other approved uses.

Public Availability of Documents

We encourage you to stay involved in the CCP planning process by reviewing and commenting on the proposals we have developed in the Draft CCP/EA. Copies of the Draft CCP/EA are available by request from David Ellis, Project Leader, O'ahu National Wildlife Refuge Complex, 66–590 Kamehameha Highway, Room 2C, Hale'iwa, HI 96712. The Draft CCP/EA will also be available for viewing and downloading on the Internet at *http://www.fws.gov/pacific/planning.*

Next Steps

After this comment period ends, we will analyze the comments and address them in the Final CCP and decision document.

Public Availability of Comments

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: April 21, 2011.

Chris McKay,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2011–16466 Filed 6–29–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[LLCO956000.L14200000 BJ0000]

Notice of Filing of Plats

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to file the land survey plats listed below, and to afford all affected parties a proper period of time to protest this action, prior to the plat filing.

DATES: Unless there are protests of this action, the filing of the plats described in this notice will happen on August 1, 2011.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

SUPPLEMENTARY INFORMATION:

The plat and field notes of the dependent resurveys and subdivision of Section 36, in Township 15 South, Range 98 West, Sixth Principal Meridian, Colorado, were accepted on November 4, 2010.

The plat and field notes of the dependent resurvey in Township 15 South, Range 97 West, Sixth Principal Meridian, Colorado, were accepted on November 4, 2010.

The plat and field notes of the dependent resurvey and survey in Township 4 South, Range 3 East, Ute Meridian, Colorado, were accepted on November 4, 2010.

The plat and field notes of the dependent resurvey and survey in Fractional Township 12 South, Range 99 West, Sixth Principal Meridian, Colorado, were accepted on November 9, 2010.

The supplemental plat of Section 36, in Township 38 North, Range 9 West, New Mexico Principal Meridian, Colorado, was accepted on December 3, 2010.

The plat and field notes of the dependent resurvey and subdivision of Section 18, in Township 12 South, Range 71 West, Sixth Principal Meridian, Colorado, were accepted on December 15, 2010.

The plat and field notes of the corrective dependent resurvey in Township 1 North, Range 2 West, Ute Meridian, Colorado, were accepted on December 28, 2010.

The plat incorporating the field notes of the dependent resurvey and metes-and-bounds survey of Tract 37, in Township 15 South, Range 77 West, Sixth Principal Meridian, Colorado, was accepted on March 2, 2011.

The plat and field notes of the dependent resurvey and survey in Township 15 South, Range 81 West, Sixth Principal Meridian, Colorado, were accepted on May 10, 2011.

The plat incorporating the field notes of the corrective dependent resurvey in Township 11 South, Range 79 West, Sixth Principal Meridian, Colorado, was accepted on May 17, 2011.

The plat and field notes of the dependent resurvey and subdivision of Section 4, in Township 15 South, Range 75 West, Sixth Principal Meridian, Colorado, were accepted on May 27, 2011.

The plat incorporating the field notes of the dependent resurvey and subdivision of Section 33, in Township 17 South, Range 72 West, Sixth Principal Meridian, Colorado, was accepted on May 27, 2011.

The plat and field notes of the dependent resurvey of H.E.S. No. 77, in Township 11 North, Range 82 West, Sixth Principal Meridian, Colorado, were accepted on June 7, 2011.

The plat and field notes of the dependent resurvey and survey in Township 15 South, Range 68 West, Sixth Principal Meridian, Colorado, were accepted on June 7, 2011.

If a protest of any of these projects is received prior to the date of the official filing, the official filing of that project will be stayed pending consideration of the merits of the protest.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2011–16483 Filed 6–29–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–11–L19100000–BJ0000–LXCSMT010000]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on August 1, 2011.

DATES: Protests of the survey must be filed before August 1, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the U.S. Department of Agriculture, U.S. Forest Service, Region 1, Bozeman, Montana, and was necessary to determine the boundaries of Federal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 6 S., R. 10 E.

The plat, in three sheets, representing the dependent resurvey of a portion of the subdivisional lines and Homestead Entry Survey No. 866 and the survey of a portion of the westerly boundary of the Absaroka-Beartooth Wilderness and certain tracts and parcels, in Protraction Block 39, in Township 6 South, Range 10 East, Principal Meridian, Montana, was accepted June 21, 2011.

We will place a copy of the plat, in three sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in three sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat, in three sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Dated: June 22, 2011.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–16424 Filed 6–29–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO350000 L14300000.ER0000]

Notice of Segregation of Public Lands in the States of Arizona, California, Colorado, Nevada, New Mexico, and Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is segregating public lands located in six States from appropriation under the public land and mining laws, but not the mineral leasing or material sales acts, for a period of 2 years for the purpose of protecting potential sites for future solar energy development.

DATES: *Effective Date:* This segregation is effective on June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Linda Resseguie, Realty Specialist; *Telephone:* 202–912–7337; *Address:* 1849 C Street, NW., Room 2134LM, Washington, DC 20240; or *e-mail: linda_resseguie@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has requested the Secretary of the Interior to withdraw, subject to valid existing rights, approximately 677,384 acres of public lands located in the States of Arizona, California, Colorado, Nevada, New Mexico, and Utah from settlement, sale, location, or entry under the public land laws, including the mining laws, but not the mineral leasing, geothermal leasing, and the mineral material laws for a period of 5 years. On June 30, 2009, a Notice of Proposed Withdrawal and Opportunity for Public Meeting was published in the **Federal Register** (74 FR 31308), which closed the lands from surface entry and mining for a 2-year period. This closure period will expire on June 29, 2011. In order to prevent opening of the lands on this date, the BLM is segregating the lands under the authority contained in 43 CFR 2091.3–1(e) and 43 CFR 2804.25(e) for a period of 2 years, subject to valid existing rights. This 2-year segregation period will commence on June 30, 2011. The public lands involved in this notice will be segregated from appropriation under the public land and mining laws, but not the mineral leasing or material sale laws. It has been determined that this segregation is necessary for the orderly administration of the public lands that have been identified by the BLM as having the potential for solar energy generation.

The segregation period will terminate and the lands will automatically reopen to appropriation under the public land laws, including the mining laws, 2 years

from the effective date of publication in the **Federal Register** unless, prior to the end of the 2-year period, the BLM publishes a **Federal Register** notice terminating the segregation.

The lands to be segregated are identified in the proposed withdrawal notice that was published in the **Federal Register** on April 21, 2011 (76 FR 22414).

Michael D. Nedd,

Assistant Director, Minerals and Realty Management.

[FR Doc. 2011–16429 Filed 6–29–11; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–694]

In the Matter of Certain Multimedia Display and Navigation Devices and Systems, Components Thereof, and Products Containing Same; Notice of Commission Determination That No Violation of Section 337 Exists; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm, on modified grounds, the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on December 16, 2010, finding no violation of section 337 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the instant investigation on December 16, 2009, based on a complaint filed by Pioneer Corporation of Tokyo, Japan and Pioneer Electronics (USA) Inc. of Long Beach, California (collectively, ''Pioneer''). 74 FR 66676 (Dec. 16, 2009). 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 multimedia display and navigation devices and systems, components thereof, and products containing same by reason of infringement of various claims of United States Patent Nos. 5,365,448 (''the '448 patent''), 5,424,951 (''the '951 patent''), and 6,122,592 (''the '592 patent''). The complaint named Garmin International, Inc. of Olathe, Kansas, Garmin Corporation of Taiwan (collectively, ''Garmin'') and Honeywell International Inc. of Morristown, New Jersey (''Honeywell'') as the proposed respondents. Honeywell was subsequently terminated from the investigation.

On December 16, 2010, the ALJ issued a final ID. In his final ID, the ALJ found no violation of section 337 by Garmin. Specifically, the ALJ found that the accused products do not infringe claims 1 and 2 of the '448 patent, claims 1 and 2 of the '951 patent, or claims 1 and 2 of the '592 patent. The ALJ found that the '592 patent was not proven to be invalid and that Pioneer has established a domestic industry under 19 U.S.C. 1337(a)(3)(C). On February 23, 2011, the Commission determined to review the final ID in part. On April 18, 2011, the Commission determined to extend the target date and requested supplemental briefing.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined to affirm, on modified grounds, the ALJ's finding that Garmin has not violated section 337. In particular, the Commission has determined to reverse the ALJ's finding that Garmin's products do not infringe the asserted claims of the '951 patent, affirm his finding that Garmin's products do not infringe the asserted claims of the '592 patent, reverse his finding that the asserted claims of the '592 patent are not invalid under the written description requirement of 35 U.S.C. 112, first paragraph, and reverse his finding that Pioneer has established a licensing-based domestic industry for the '951 and '592 patents. The '448 patent is no longer asserted. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.50).

Issued: June 24, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–16317 Filed 6–29–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–780]

In the Matter of Certain Protective Cases and Components Thereof; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 25, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Otter Products, LLC of Fort Collins, Colorado. A supplement was filed on June 16, 2011. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain protective cases and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,933,122 (''the '122 patent''); U.S. Patent No. D600,908 (''the '908 patent''); U.S. Patent No. D617,784 (''the '784 patent''); U.S. Patent No. D615,536 (''the '536 patent''); U.S. Patent No. D617,785 (''the '785 patent''); U.S. Patent No. D634,741 (''the '741 patent''); U.S. Patent No. D636,386 (''the '386 patent''); and U.S. Trademark Registration No. 3,788,534 (''the '534 trademark''); U.S. Trademark Registration No. 3,788,535 (''the '535 trademark''); U.S. Trademark Registration No. 3,623,789 (''the '789 trademark''); and U.S. Trademark Registration No. 3,795,187 (''the '187 trademark''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation

and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 24, 2011, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsections (a)(1)(B) and (C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain protective cases and components thereof that infringe the '908 patent; the '784 patent; the '536 patent; the '785 patent; the '741 patent; the '386 patent; one or more of claims 1, 5–7, 13, 15, 17, 19–21, 23, 25, 27, 28, 30–32, 37, 38, 42, and 44 of the '122 patent; the '534 trademark; the '535 trademark; the '789 trademark; and the '187 trademark, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Otter Products, LLC, 1 Old Town Square, Suite 303, Fort Collins, CO 80524.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

A.G. Findings and Mfg. Co., Inc., d/b/a Ballistic, 1133 Sawgrass Corp. Parkway, Sunrise, FL 33323.

AFC Trident Inc., 14270 Albers Way, Chino, CA 91710.

Alibaba.com Hong Kong Ltd., 699 Wang Shang Road, Binjiang District, Hangzhou 310052, China.

Anbess Electronics Co. Ltd., 1F, Block B, Building 4, Cui Feng Hao Yuan, ShuiJing, BuJi, LongGang, Shenzhen, GD, 518112, China.

Cellairis Franchise, Inc., 6485 Shiloh Road, Suite B100, Alpharette, GA 30005.

Cellet Products, 14530 Anson Avenue, Santa Fe Springs, CA 90670.

DHgate.com, 6F Dimeng Commercial Building No. 3–2, Hua Yuan Road, Haidian District, Beijing, China 100191.

Griffin Technology, Inc., 1930 Air Lane Drive, Nashville, TN 37210.

Guangzhou Evotech Industry Co., Ltd., No. 28 E–05, Baoli Center Square, Jiansheda Ma Road, Guangzhou, Guangdong, China (Mainland) 510000.

Hardcandy Cases LLC, d/b/a GUMDROP LLC, 2730 Gateway Oaks Drive 100, Sacramento, CA 95833.

Hoffco Brands, Inc., d/b/a Celltronix, 4860 Ward Road, Wheat Ridge, CO 80033.

Hong Kong Better Technology Group Ltd., 10A, Hongling Building, Hongling South Road, Futian District, Shenzhen, China 518000.

Hong Kong HJJ Co. Ltd., Room 4, Block 2 West, SEG Technology Park, HuaQiang North Road, Futian District, Shenzhen, China 518028.

Hypercel Corporation, d/b/a Naztech Technologies, 28010 Industry Drive, Valencia, CA 91355.

InMotion Entertainment, 4801 Executive Park Court, Suite 100, Jacksonville, FL 32216.

MegaWatts Computers, LLC, 3501 South Sheridan Road, Tulsa, OK 74145.

National Cellular, 5620 1st Avenue, Third Floor, Brooklyn, NY 11220.

OEMBargain.com, P.O. Box 7132, Wantagh, NY 11793.

One Step Up Ltd., d/b/a Lifeworks Technology Group LLC, 1412 Broadway 3rd Floor, New York, NY 10018.

Papaya Holdings Ltd., 8/F, CNT Commercial Bldg., 302 Queen's Road, Central, Hong Kong.

Quanyun Electronics Co., Ltd., Floor 1, Workshop No. 1, Weihua Industrial Areas, Tongsheng Community, Dalang Street, Baoan District, Shenzhen, China (Mainland) 518000.

ShenZhen Star & Way Trade Co., Ltd., d/b/a DHgate Sellers Best8168 and Julyoung, Guangzhou Chaoshanglong Company, Room 901, No. 43–3 Siheng Street, Shuiyin Road, Tianhe District, Guangzhou City, China 510000.

Sinatech Industrial Co., Ltd., Room 3005, #570, FangCun, LiWan District, GuangZhou City, China.

SmileCase, 3226 Ridgeway Place, Windsor Mill, MD 21244.

Suntel Global Investment Ltd., 2F–D5, Jian Fa Square, 111#, Ji Chang Road, Baiyun District, Guangzhou, China.

TheCaseInPoint.com, 793 Marian Court, Titusville, FL 32780.

TheCaseSpace, 215 East Foothills Parkway #D–003, Fort Collins, CO 80525.

Topter Technology Co. Ltd., 2nd Floor, Building B, Jinkajin Industrial Zone, Minying Industrial Park, Shuitian Village, Shiyan Town, Shenzhen Guangdong, China.

Trait Technology (Shenzhen) Co., Ltd., 416—419RM, 305# Sufa Building, Huafa North Road, Futian District, Shenzhen, China.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the

allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: June 24, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–16361 Filed 6–29–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. George's Foods, LLC, et. al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Western District of Virginia in *United States of America* v. *George's Foods, LLC, et. al.,* Civil Action No. 5:11–cv–00043. On May 10, 2011, the United States filed a Complaint alleging that George's Foods, LLC; George's Family Farms, LLC; and George's, Inc. (collectively, ''George's'') acquisition of Tyson Foods, Inc.'s (''Tyson's'') Harrisonburg, Virginia chicken processing complex, consummated May 7, 2011, violated Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on June 23, 2011, requires the Defendants to make certain capital improvements to the Harrisonburg facility.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the Western District of Virginia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to William H. Stallings, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202–514–9323).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the Western District of Virginia, Harrisonburg Division

United States of America, Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 8000, Washington, DC 20530, Plaintiff, v. *George's Foods, LLC, P.O. Drawer G, Springdale, Arkansas 72765, George's Family Farms, LLC, P.O. Drawer G, Springdale, Arkansas 72765,* and *George's, Inc, 402 West Robinson Avenue, Springdale, Arkansas 72764,* Defendants.

Civil Action No.: 5:11–cv–00043

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action for equitable relief against George's Foods, LLC; George's Family Farms, LLC; and George's, Inc. (collectively, ''George's'') for violating Section 7 of the Clayton Act, 15 U.S.C. 18. This lawsuit challenges George's acquisition of Tyson Foods, Inc.'s (''Tyson's'') Harrisonburg, Virginia chicken processing complex, consummated May 7, 2011 (the ''Transaction''). The Transaction violates Section 7 of the Clayton Act because its effect may be substantially to lessen competition for the services of broiler growers operating in and around the Shenandoah Valley area of Virginia and West Virginia. The United States alleges as follows:

I. Nature of Action

1. The United States learned about the Transaction on or about March 18, 2011, when Tyson and George's publicly announced George's intent to buy Tyson's Harrisonburg chicken processing complex. The United States subsequently opened an investigation into the proposed deal, and issued Civil Investigative Demands (''CIDs'') on April 18, 2011, seeking information on the potential competitive effects of the acquisition and George's proposed business justifications for purchasing the plant. After serving the CIDs, the United States engaged in numerous discussions with the parties to seek the production of relevant information as quickly as possible. These discussions were continuing at the close of business on Friday, May 6, 2011. On Saturday, May 7, 2011, without any notice to the United States and before responding to the CIDs, George's and Tyson entered into an asset purchase agreement and simultaneously closed the Transaction. The parties undertook this action even though they knew that the United States had serious concerns about the Transaction and had requested to be notified prior to the parties' closing the Transaction.

2. George's and Tyson are competing chicken processors, each operating facilities involved in the production, processing, and distribution of ''broilers,'' which are chickens raised for meat products. George's and Tyson vigorously compete with each other not only in the sale of chicken products, but also for the services of farmers, called ''growers,'' who care for and raise chicks from the time they are hatched until the time they are ready for slaughter.

3. Processors compete for growers in areas where the processors' plants are close together. Prior to consummation of the Transaction, the Shenandoah Valley region of Virginia and West Virginia was one such area where George's and Tyson competed head-to-head for broiler grower services. There, George's and Tyson operated facilities about 30 miles away from each other—George's with a processing facility in Edinburg, Virginia and a feed mill in Harrisonburg, Virginia; and Tyson with a processing facility in Harrisonburg, Virginia and a feed mill in Mount Jackson, Virginia (between Harrisonburg and Edinburg). Transportation costs are such that processors typically contract with growers within limited geographic areas surrounding their facilities. Because of their close proximity, the area from which Tyson and George's recruit growers for their respective Shenandoah Valley facilities overlap substantially. For growers in that region, Tyson and George's are two of only three processors to whom growers can sell their services.

4. On May 7, 2011, George's entered into an agreement with Tyson under which George's acquired Tyson's Harrisonburg, Virginia chicken processing complex. The complex is capable of processing approximately 32 million chickens per year. Tyson contracted with over 120 area growers to support this facility. As a result of the Transaction, George's controls approximately 43% of chicken processing capacity in the Shenandoah Valley, with only one other remaining

competitor, Pilgrim's Pride Corporation (''Pilgrim's Pride'').

5. Competition among processors is critical to ensure that the hundreds of Shenandoah Valley-area growers receive competitive prices and contract terms for their services. There are nearly 500 broiler growers in the Virginia portion of the Shenandoah Valley alone, and in 2007, processors paid growers in the region about $40 million to raise approximately 160 million chickens.

6. The growers' ability to switch to a competing processor has been an important competitive restraint on processors. Elimination of Tyson as an alternative buyer will allow George's unilaterally to decrease prices or degrade contract terms to farmers for grower services in that region. Although there is one other competing processor in the area, Pilgrim's Pride, that processor does not have sufficient capacity to take on significant numbers of growers if George's were to depress payments to growers. The Transaction also makes it more likely that George's and Pilgrim's Pride will engage in anticompetitive coordination to depress prices for broiler grower services.

7. The Transaction therefore violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Jurisdiction and Venue

8. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, in order to prevent and restrain George's from continuing to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

9. Defendants purchase broiler grower services in the flow of interstate commerce, and their activities substantially affect interstate commerce. The Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 15 U.S.C. 25 and 28 U.S.C. 1331 and 1337.

10. Defendants transact business and are found within the Western District of Virginia. Venue is proper in this district under 15 U.S.C. 22 and 28 U.S.C. 1391(b) and (c).

III. Defendants

11. George's Foods, LLC is a limited liability company organized and existing under the laws of the Commonwealth of Virginia. George's Family Farms, LLC is a limited liability company organized and existing under the laws of the Commonwealth of Virginia. George's, Inc. is a corporation organized and existing under the laws of the State of Arkansas. George's Foods, LLC and George's Family Farms, LLC were joint purchasers of Tyson's Harrisonburg complex. Related George's entities operate production facilities in Springdale, Arkansas; Cassville, Missouri; and Edinburg, Virginia.

IV. Trade and Commerce

A. The Broiler Growing Industry

12. Chicken processors produce a variety of fresh, frozen, further processed, and ready to eat chicken products for retail, institutional, big-box, and food-service outlets. George's and Tyson are each vertically integrated, *i.e.,* both run in-house breeding operations, hatcheries, feed-mills, slaughtering plants, and further processing plants staffed with company employees. This type of chicken producer is commonly referred to as an ''integrator.'' The one significant operation not performed in-house is actually raising the chickens from the time they are hatched until the time they are ready for slaughter, which takes about thirty-five to sixty days. This task is contracted out to hundreds of small, independent farmers, called ''growers.''

13. Growers work under production contracts with a nearby processor. The processor typically provides the chicks, feed, and any necessary medicine. The processor also transports the chicks and feed to the farms, and transports the chickens to the processing plant. The grower typically provides the chicken houses, equipment, labor, and other miscellaneous expenses related to chicken care. The processor maintains ownership of the birds throughout the process.

14. Caring for chickens requires regular deliveries of feed from the processor, which bears the associated transportation costs. In addition, when delivering mature birds for processing, the greater the distance between the grower and the processor, the greater the chicken mortality, chicken weight loss, and labor costs. For these reasons, processors value having growers located close to the processing facilities.

15. There is no cash market for the purchase of broilers, so farmers who want to raise broilers must contract with a nearby integrator to raise chicks owned by that integrator.

16. Processors typically compensate growers through a competitive ''tournament'' system, which includes a base payment and a performance component. Growers with premium housing typically receive a higher base rate. Relative performance can also be a significant factor in how much a grower is paid: growers will receive greater payments if their broilers have lower mortality rates and more efficient feed conversion than other growers also delivering to the integrator at the same period. As a result, a grower's pay can fluctuate greatly from flock to flock.

17. When a grower enters the business, he or she must build houses to shelter the chickens. Chicken houses typically cost between $100,000 and $300,000 depending on their size and features. In some instances, growers have been able to convert existing turkey houses to chicken houses, but such conversions still require significant investment.

18. Despite the growers' long-term investment in real-estate, facilities and equipment, contracts for grower services are often very short-term—sometimes just a single flock. Processors do not typically guarantee growers a specific number or flocks per year, nor do they guarantee growers a certain number of birds per flock.

19. Growers, by regulation under the Packers and Stockyards Act, can terminate their relationship with a processor by giving 90 days notice. Growers' primary source of bargaining power when negotiating with integrators is the ability to switch to another integrator. Prior to the Transaction, there were three integrators in the Shenandoah Valley—Tyson, George's, and Pilgrim's Pride. Now, growers in the Shenandoah Valley have just two alternatives, George's and Pilgrim's Pride.

B. Relevant Market

20. The purchase of broiler grower services from chicken farmers in the Shenandoah Valley and nearby areas is a line of commerce and a relevant market within the meaning of Section 7 of the Clayton Act.

21. In order to enter the chicken growing business, growers make significant investments that are highly specific to broiler production. They must build chicken houses that may cost from $100,000 to $300,000, and have a 30-year economic life. Many growers take out substantial loans in order to make these investments. Chicken houses have no practical alternative use. If a grower were to stop raising chickens, his or her best option would likely be to raze the chicken-raising facilities because converting a chicken house to a house suitable for another use involves substantial expense. For instance, converting a chicken house to one suitable for turkey growing can cost more than $100,000. Most chicken farmers would not abandon their investments in chicken houses in response to small decreases in the prices and other contract terms they receive for their services. The relevant

product market is the purchase of broiler grower services.

22. Processors typically contract with growers who are located close to their processing complexes. The processors must bear the cost of transporting feed and live birds to the grower. Due to storage constraints, processors deliver feed to growers several times a week. Indeed, processors often offer incentives to encourage growers to build houses near the processing complex. In the Shenandoah Valley, processors rarely contract with growers who are located more than fifty to seventy-five miles from the processor's feed mill and processing plant. The geographic area within which a chicken processor contracts with growers (*i.e.,* the area within which the processor delivers chicks and feed and picks up mature broilers) is known as the ''draw area'' for the facility. The overlapping draw areas of Tyson and George's, consisting of the Shenandoah Valley area within a commercially reasonable range of their processing facilities, is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

23. In response to a small but significant, non-transitory price decrease by processors, growers within fifty to seventy-five miles of the Edinburg and/or Harrisonburg facilities would not switch to processors outside the Shenandoah Valley region, switch to providing any other service, or cease growing chickens, in sufficient numbers to render such a price decrease unprofitable.

C. Anticompetitive Effects

24. The Transaction will likely lessen competition for purchases of grower services in the relevant geographic market. As a result of the Transaction, George's controls approximately 43% of chicken processing capacity in the Shenandoah Valley. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI''), the post-acquisition HHIs increased by approximately 700 points, resulting in a post-acquisition HHI of over 5,000 points. As defined and explained in Appendix A, where, as here, changes in HHIs establish that an acquisition significantly increases concentration resulting in a highly concentrated market, such acquisitions are presumed likely to enhance market power. *See Horizontal Merger Guidelines* § 5.3. By reducing the number of purchasers of broiler grower services from three to two in the Shenandoah Valley, the Transaction will likely result in reduced competition, with likely effects including depressed prices paid and less attractive contract terms offered to farmers.

25. Prior to the Transaction, the only competitive buyers for grower services in the Shenandoah Valley were George's, Tyson, and Pilgrim's Pride. Tyson's former facility in Harrisonburg is capable of processing about 32 million chickens per year. George's facility in Edinburg is about 30 miles north of Harrisonburg and is capable of processing about 88 million chickens per year. Pilgrim's Pride operates two facilities in the region: one in Timberville, which lies between Harrisonburg and Edinburg, and is capable of processing 18 million chickens per year, and one in Moorefield, West Virginia, approximately 40 miles from Harrisonburg (about 125 million chickens per year). Alternative processors are too far away to be viable economic alternatives.

26. Farmers have benefited from competition between Tyson, George's, and Pilgrim's Pride in a variety of respects. In addition to the base rate offered to growers, there are a number of other factors that affect the total compensation offered to farmers. The contracts offered by the three processors are to some degree different, and farmers consider these differences when choosing an integrator or deciding to switch. These differences illustrate the various ways in which processors compete. For example:

a. Integrators may differ greatly in the extent to which they share various costs with the growers. For instance, George's pays the full cost of treating the chickens' bedding (a necessary step to prepare a house for a new flock), while Tyson only pays half.

b. Integrators also compete for grower services in the number of flocks they provide growers per year, a factor which greatly affects a farmer's income. In recent times, ''lay-outs,'' or the time between flocks, for some growers in the Shenandoah Valley have stretched from ten to twelve days to three or four weeks for some growers, leaving growers with fewer flocks per year. If a grower cannot shift to another integrator when lay-outs increase, his or her only choice is to let houses sit idle.

c. Another point of differentiation is the extent to which processors encourage (or require) growers to make substantial investments to upgrade their houses. For example, an integrator may insist that all growers convert their chicken houses from the standard ''curtain'' ventilation to the more efficient ''tunnel'' ventilation. If a grower prefers not to make such an investment, he or she may refuse to upgrade the facilities and move to another integrator that does not require tunnel ventilation, if one is available.

d. Similarly, processors differ in the extent to which they support grower investment in upgrades to their houses. When Tyson's recently sought new houses for its Edinburg plant, it offered interested growers the option of entering into a longer-term contract with a set number of flocks and price per pound.

27. Switching to another processor is the grower's only practicable recourse in the face of unfavorable contract terms. Farmers make substantial sunk investments in specialized chicken-raising facilities, often going deep into debt. It is prohibitively costly to convert those facilities to other uses. Growers do not have a cash market to turn to, nor can they feasibly turn to processors outside the Shenandoah Valley.

28. The Transaction eliminated one of only three alternative outlets for farmers in the Shenandoah Valley. As a result of the transaction, many George's and former Tyson growers no longer have an alternative to turn to, and have no choice but to contract with George's. Pilgrim's Pride does not have sufficient capacity to take on growers in sufficient numbers to thwart an exercise of market power by George's. Likewise, Pilgrim's Pride growers in the region will be harmed because they will lose one of their only two alternative sources for selling their services.

29. If a grower cannot switch or threaten to switch to another integrator when any of the terms of his or her contract deteriorate, he or she would likely choose to accept inferior terms rather than to have no contract at all. The Transaction is therefore likely to enhance George's incentive and ability to force growers to accept lower prices and less favorable contractual terms for grower services. This loss of competition could take the form of lower base prices, fewer allowances for miscellaneous expenses, longer layouts between broiler growing services, or other unfavorable adjustments to growers' contracts. In addition, the Transaction likely will enable easier and more durable coordinated interaction between George's and its only remaining competitor, Pilgrim's Pride.

V. Absence of Countervailing Factors

30. New entry into the production and sale of broiler chickens is costly and time consuming. Construction of a large-scale chicken processing facility would require investment of at least $35 million and take two or more years to obtain necessary permits, plan, design, and build. In addition, there are significant costs and inefficiencies

associated with the start-up period of a new chicken processing facility. Repositioning by firms or facilities that slaughter primarily turkeys would require additional capital investment. Moreover, a turkey processor seeking to add chicken products to its offering would first need to find customers for its output prior to contracting with growers. Entry or repositioning into broiler chicken production would therefore not be timely, likely, or sufficient to defeat a small but significant, non-transitory decrease in the price of broiler grower services.

VI. Cause of Action

31. The United States incorporates the allegations of paragraphs 1 through 30 above.

32. George's acquisition of Tyson's Harrisonburg, Virginia chicken complex will substantially lessen competition for the purchase of broiler grower services in the Shenandoah Valley in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The Transaction would likely have the following effects, among others:

a. Actual and potential competition between George's and Tyson in the procurement of broiler grower services in the Shenandoah Valley will be eliminated;

b. Competition generally in the procurement of broiler grower services in the Shenandoah Valley will be substantially lessened; and

c. Suppliers of broiler growing services will receive less than competitive prices or less competitive contract terms for their services.

VII. Requested Relief

33. The United States requests that:

a. The acquisition of Tyson's Harrisonburg, Virginia poultry complex by George's be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Divestiture of such assets and interests sufficient to restore competition in the Shenandoah Valley be ordered;

c. George's be permanently enjoined from further ownership and operation of the assets acquired as part of the Transaction;

d. The United States be awarded their costs of this action; and

e. The United States be awarded such other and further relief as the case requires and the Court deems just and proper.

Dated: May 10, 2011.

Respectfully submitted,
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United States District Court for the Western District of Virginia, Harrisonburg Division

United States of America, Plaintiff, v. *George's Foods, LLC, George's Family Farms, LLC,* and GEORGE'S, INC., Defendants.
Civil Action No. 5:11–cv–00043
By: Glen E. Conrad, *Chief United States District Judge*

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The Complaint in this case alleges that the acquisition by George's Foods, LLC; George's Family Farms, LLC; and George's, Inc. (collectively, ''Defendants'' or ''George's'') of the Harrisonburg, Virginia chicken processing complex from Tyson Foods, Inc., Tyson Farms, Inc. and Tyson Breeders, Inc. (''Tyson'') likely would substantially lessen competition for the services of broiler growers operating in and around the Shenandoah Valley area of Virginia and West Virginia, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

On June 23, 2011, the United States filed a proposed Final Judgment designed to remedy the effect of the competitive harm caused by George's acquisition of the Harrisonburg facility (''the Transaction''). The proposed Final Judgment, which is explained more fully below, requires George's to make certain capital improvements and modifications at the Harrisonburg complex.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violation

A. Defendants and the Transaction

George's Foods, LLC is a limited liability company organized and existing under the laws of the Commonwealth of Virginia. George's Family Farms, LLC is a limited liability company organized and existing under the laws of the Commonwealth of Virginia. George's, Inc. is a corporation organized and existing under the laws of the State of Arkansas. Related George's entities operate production facilities in Springdale, Arkansas; Cassville, Missouri; and Edinburg, Virginia.

On March 18, 2011, Tyson and George's publicly announced George's intent to buy Tyson's Harrisonburg processing complex and related assets (including a feed mill and hatchery). The Antitrust Division of the United States Department of Justice opened an investigation of the potential competitive effects of the proposed acquisition. On May 7, 2011, George's closed the acquisition, for a purchase price of approximately $3.1 million for the facilities and an additional amount for equipment and current inventory. On May 10, 2011, the United States filed this lawsuit, challenging the acquisition as a violation of Section 7 of the Clayton Act.[1]

B. Background

George's and Tyson are competing chicken processors, each operating facilities involved in the production, processing, and distribution of ''broilers,'' which are chickens raised for meat products. Chicken processors, such as George's and Tyson, rely on the services of farmers, called ''growers,'' to care for and raise chicks from the time they are hatched until the time they are ready for slaughter.

Growers work under production contracts with a nearby processor. The

[1] After notifying the parties of the Antitrust Division's concerns regarding the Transaction, the parties failed to provide the Division the information it requested to fully examine the Transaction.

processor usually provides the chicks, feed, and any necessary medicine. The processor also transports the chicks and feed to the farms, and transports the chickens to the processing plant. The grower typically provides the chicken houses, equipment, labor, and other miscellaneous expenses related to chicken care. The processor maintains ownership of the birds throughout the process.

There is no cash market for the purchase of broilers, so farmers who want to raise broilers must contract with a nearby processor to raise chicks owned by that processor.

Transportation costs (in particular, for the regular deliveries by the processors of feed to their growers) are such that processors typically contract with growers within a limited geographic area surrounding their facilities. Thus, broiler processors compete with each other for growers in geographic areas where the processors' plants are close together. Prior to the Transaction, the Shenandoah Valley region of Virginia and West Virginia was one such area where George's and Tyson competed head-to-head for broiler grower services.

Tyson's Harrisonburg, Virginia facility has the capacity to process approximately 625,000 birds per week. The plant is relatively small by industry standards, and is located on a site that prevents expansion to increase its overall processing capacity. Prior to the Transaction, Tyson consistently had been operating the plant at a level of approximately 450,000 birds per week, well below its capacity. Tyson had contracts with approximately 120 growers located in the Shenandoah Valley region to supply birds to the Harrisonburg facility.

George's Edinburg, Virginia facility has the capacity to process approximately 1,650,000 birds per week. George's has contracts with approximately 190 growers located in the Shenandoah Valley region to supply birds to the Edinburg facility.

JBS/Pilgrim's Pride also operates facilities in the Shenandoah Valley region. It has a processing plant in Timberville, Virginia with an approximate capacity of 660,000 birds per week and a processing plant in Moorefield, West Virginia, with an approximate capacity of 2,400,000 birds per week.

George's facility in Edinburg and the Tyson facility in Harrisonburg that George's acquired are approximately 30 miles away from each other. Because of the close proximity of the two facilities, the area from which Tyson and George's recruited growers for their respective facilities overlapped substantially.

C. The Relevant Market

The purchase of broiler grower services from chicken farmers in the Shenandoah Valley region is a line of commerce and a relevant market within the meaning of Section 7 of the Clayton Act. In response to a small but significant, non-transitory price decrease by processors, growers within fifty to seventy-five miles of the Edinburg and/or Harrisonburg facilities would not switch to processors outside the Shenandoah Valley region, switch to providing any other service, or cease growing chickens, in sufficient numbers to render such a price decrease unprofitable.

The purchase of broiler grower services is a relevant product market. To enter the chicken growing business, growers make significant investments that are highly specific to broiler production. They must build chicken houses that may cost from $100,000 to $300,000 and often take out substantial loans to make those investments. Chicken houses have no practical alternative use and most growers would not abandon their investments in chicken houses in response to small decreases in the prices (or degradations of other contract terms) they receive for their services.

Processors typically contract with growers who are located close to their processing complexes as processors must bear the cost of transporting feed and live birds to the grower. In the Shenandoah Valley region, processors rarely contract with growers located more than fifty to seventy-five miles from the processor's feed mill and processing plant. The overlapping draw areas of Tyson and George's in the Shenandoah Valley region (*i.e.,* the areas within which the companies deliver chicks and feed and pick up mature broilers for their processing facilities) is a relevant geographic market within the meaning of Section 7 of the Clayton Act and growers would not switch to processors outside the overlapping draw areas in response to small decreases in the prices (or degradations of other contract terms) they receive for their services.

D. Competitive Effects of the Transaction

The Complaint alleges that the Transaction would likely lessen competition for purchases of grower services in the relevant geographic market. Prior to the Transaction, George's, Tyson and JBS/Pilgrims' Pride competed against each other for grower services in the Shenandoah Valley region. The transaction will reduce the number of competitors in the relevant market from three to two and will leave George's with approximately 40% of the processing capacity in the market. The Complaint alleges that the reduction in the number of processors resulting from the Transaction would likely have the effect of enhancing George's incentive and ability to force growers to accept lower prices and less favorable contractual terms for grower services; in short, the Transaction would lead George's to exercise monopsony power.[2]

E. Entry Into Chicken Processing

New entry into the processing of broiler chickens is costly and time consuming. Entry or repositioning into broiler chicken processing in the Shenandoah Valley region would therefore not be timely, likely, or sufficient to counteract a reduction in demand for grower services resulting from the Transaction.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment requires George's to acquire and install certain assets and improvements for its Shenandoah Valley poultry processing facilities. As explained below, requiring the described improvements will enhance George's ability and financial incentive to operate the Harrisonburg facility acquired from Tyson at a greater scale than occurred pre-Transaction. Requiring these improvements gives the United States confidence that George's will have an increased demand for chickens and, consequently, an increased demand for grower services that will benefit growers in the Shenandoah Valley region.

A. Terms of the Proposed Final Judgment

Specifically, Section IV of the proposed Final Judgment requires George's within 60 days following entry of the proposed Final Judgment (subject to two 30-day extensions at the discretion of the United States) to enter into contracts to implement the following improvements:

First, George's must install at the Harrisonburg plant an individually frozen (''IF'') freezer with a rated capacity of 5,000 pounds per hour. Installation of the IF freezer will be made as soon as practicable after the signing of the purchase contract, but no later than twelve months following the date on which the contract is executed.

[2] This loss of competition could take the form of lower base prices, fewer allowances for miscellaneous expenses, longer layouts between broiler growing services, or other unfavorable adjustments to growers' contracts.

IF freezers are highly specialized equipment designed for the uniform individual freezing of small food items, such as chicken wings and other parts, at a high rate of throughput. The freezers typically cost in excess of $1.5 million and require significant expense for installation. George's will be able to use the IF freezer to process chicken that it slaughters at both its Harrisonburg and Edinburg facilities.

Second, George's must purchase and install at either the Harrisonburg or Edinburg complex a whole leg or thigh deboning line with the capacity to debone a minimum of fifty legs per minute or new automated lines with similar capacities. Installation of this equipment will be made as soon as practicable after the signing of the purchase contract, but no later than twelve months following the date on which the contract is executed. George's will be able to use the deboning equipment to enhance the mix of the types of chicken products that are processed at both its Harrisonburg and Edinburg facilities.

Third, George's will make significant repairs to the roof of the processing plant at the Harrisonburg complex. Completion of the roof repairs will be made as soon as practicable after the signing of the repair contract, but no later than six months following the date on which the contract is executed.

Section V of the proposed Final Judgment grants the United States access, upon reasonable notice, to Defendants' records and documents (including relevant contracts) relating to matters contained in the proposed Final Judgment. Defendants also, upon request, must make their employees available for interviews or depositions and answer interrogatories and prepare written reports relating to matters contained in the proposed Final Judgment.

The Final Judgment will remain in effect until notification by the United States, or motion by the Defendants, to the Court of Defendants' completion of all of the improvements and modifications required to be made by the Final Judgment.

B. The Proposed Final Judgment Is in the Public Interest

The improvements required by the proposed Final Judgment serve the public interest by ensuring that George's has the ability and incentive to increase production at its Shenandoah Valley poultry processing facilities. This will increase George's demand for grower services and thereby benefit Shenandoah Valley growers.

The key aspects of the remedy are the installation of the IF freezer, which will allow George's to produce higher margin items at both of its Shenandoah Valley facilities, and the deboning equipment, which will allow George's to alter the mix of products produced at these facilities. Together, these improvements will allow George's to produce products more highly valued in the marketplace and thereby earn higher margins. The improvements also will reduce the variable costs George's incurs in its Shenandoah Valley operations. The improvements are merger-specific in that an alternative purchaser of the Harrisonburg plant would not likely have been able to justify the equipment's high cost without the ability to spread the overhead cost across the output of two plants, as George's can.

These improvements likely will result in the following procompetitive effects: [3] The additions of the IF freezer and the deboning line will provide George's with an incentive to maintain high production levels at both plants so as to spread the Harrisonburg plant's increased fixed costs over a greater volume. For George's to fully realize the cost savings from the Transaction and to maximize its return on the investments required by the Final Judgment, George's will need to operate the plant at capacity—something Tyson had only rarely done in the past few years. The significant cost of the improvements (as well as the roofing repairs to the Harrisonburg facility) thus provides a substantial economic incentive that is consistent with George's public commitment to keeping the Harrisonburg plant open and fully operational.[4]

The increases in output from the improvements will in turn lead to a significant increase in total number of chickens George's must procure from area growers.[5] This increased demand for chickens will increase demand for grower services in the Shenandoah Valley region beyond the level demanded when Tyson owned the Harrisonburg plant.

The remedy called for in the proposed Final Judgment does not re-create an independent competitor. The remedy is, however, an effective one given the particular facts and circumstances of this matter because George's increased demand for grower services is likely to be sufficient to counteract potential adverse effects from the Transaction. The Horizontal Merger Guidelines (''the Guidelines'') state that incremental cost reductions flowing from ''merger-generated efficiencies'' may ''reduce or reverse any increases in the merged firm's incentive to elevate price'' post transaction.[6] *Horizontal Merger Guidelines* § 10. The Guidelines instruct that in analyzing the competitive effects of a transaction, the United States can consider whether verifiable, transaction-specific efficiencies ''would be sufficient to reverse the [transaction's] potential harm to [growers] in the relevant market, *e.g.,* by preventing price [decreases] in that market.'' *Id.* As discussed above, the improvements required by the proposed Final Judgment give the United States confidence that the resulting increased output will serve to counteract any potential competitive harm.

Moreover, there were significant concerns associated with the viability of the Harrisonburg processing plant. With a capacity of 625,000 birds per week, the Harrisonburg plant is relatively small compared to other industry slaughter plants (other than plants typically used to process birds for narrow specialty markets). The Harrisonburg plant has operated at a loss over the past few years, with Tyson losing more than $10 million in the three years preceding the sale to George's. For well over half of that time, output at the plant was under 525,000 birds per week.

Taking all the facts and circumstances into consideration, including the likely benefits resulting from the required improvements, the proposed Final Judgment is an effective remedy that is in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover

[3] George's also estimates that area-specific synergies between its two Shenandoah Valley plants—such as rationalizing feed deliveries in the draw areas and combining product from both plants to fill customer orders in a single shipment—will lead to significant annual savings.

[4] Altogether, the cost for the improvements will likely exceed George's purchase price for the Harrisonburg facility.

[5] George's has already assumed the contracts of all the broiler growers with whom Tyson had written agreements at the time of the Transaction and has offered those growers a contractual addendum extending the contract terms to 2018. Tyson only had contracts in place sufficient to increase the Harrisonburg plant output to 525,000 head per week.

[6] The Guidelines' reference to price elevation relates to acquisitions causing effects on the selling side (*i.e.,* downstream). In the instant case, the focus is on the buying side with the concern that the Transaction will enhance George's incentive to decrease prices paid to growers.

three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against George's.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to:

William H. Stallings, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, incurring the time, expense, and risk of a full trial on the merits in order to force George's to divest the Harrisonburg processing complex. The United States is satisfied, however, that the improvements and modification George's will implement at the Harrisonburg complex pursuant to the Final Judgment will ensure continued, and increasing, demand for grower services in the Shenandoah Valley region.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').[7]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[8] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC*

[7] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[8] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'''').

Commc'ns, 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer–Daniels–Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[9]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

Dated: June 23, 2011.

Jill A. Ptacek, Attorney, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 8000, Washington, DC 20530, Telephone: (202) 307–6607, Facsimile: (202) 307–2784, E-mail: *jill.ptacek@usdoj.gov*, Attorney for the United States.

United States District Court for the Western District of Virginia, Harrisonburg Division

United States of America, Plaintiff, v. *George's Foods, LLC, George's Family Farms, LLC,* and *George's, Inc.,* Defendants.
Civil Action No. 5:11–cv–00043
By: Glen E. Conrad, Chief United States District Judge,

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on May 10, 2011, and the United States and Defendants George's Foods, LLC; George's Family Farms, LLC; and George's, Inc. (collectively, ''Defendants''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, this Final Judgment requires the prompt and certain acquisition and installation of certain assets, and modification of other assets, by Defendants at the Harrisonburg, Virginia, chicken processing complex;

And Whereas, Defendants have represented to the United States that the asset acquisitions, installations and modifications required below can and will be made, that Defendants will abide by the obligations required below, and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action.

II. Definitions

As used in this Final Judgment:

A. The term ''George's'' means George's, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing, including George's Foods, LLC and George's Family Farms, LLC. The terms ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any person in which the company holds at least a 25 percent interest, regardless of how the company's interest is measured (e.g., number of shares, degree of control, board seats or votes).

B. The term ''Edinburg complex'' means the chicken processing plant owned by George's located in Edinburg, Virginia, and any real property specifically used to support growers that produce for that plant, including feed mills or hatcheries.

C. The term ''Harrisonburg complex'' means the chicken processing plant formerly owned by Tyson Foods, Inc., located in Harrisonburg, Virginia, and any real property specifically used to support growers that raise chickens for that plant, including feed mills or hatcheries.

D. The term ''relating to'' means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

III. Applicability

This Final Judgment applies to Defendants, as defined above, and all other persons in active concert or participation with them who receive

[9] *See United States v. Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

actual notice of this Final Judgment by personal service or otherwise.

IV. Relief

A. Defendants shall, no later than 60 days following entry of this Final Judgment, subject to two additional extensions of 30 days each at the reasonable discretion of the United States, deliver to the United States Department of Justice Antitrust Division (''Antitrust Division'') executed contracts providing for the following improvements or modifications:

1. The purchase and installation at the Harrisonburg complex of an approximately 5,000 pound per hour rated capacity (for disjointed wings) individually frozen (IF) freezer. Completion of installation of the IF freezer will be made as soon as practicable after the signing of the purchase contract, but no later than twelve months following the date on which the contract is executed.

2. The purchase and installation at *either the Harrisonburg or Edinburg complex of* a whole leg or thigh deboning line with the capacity to debone a minimum of fifty legs per minute and/or new automated lines with similar capacities. Completion of installation of the whole leg or thigh deboning line will be made as soon as practicable after the signing of the purchase contract, but no later than twelve months following the date on which the contract is executed.

3. The repair of approximately 13,300 square feet of roofing of the processing plant at the Harrisonburg complex, including removal of an existing ballasted roof and replacement with a non-ballasted roof system. The new roof system will be suitable for a poultry processing plant. Completion of the roof repairs will be made as soon as practicable after the signing of the repair contract, but no later than six months following the date on which the contract is executed.

B. Defendants shall notify the United States within two business days of entering each such contract and shall provide the United States with a copy of any purchase, installation or construction agreements entered into by the Defendants relating to implementing the improvement or modification within seven days of entering each such contract.

C. Defendants shall notify the United States within two business days of the completion of each improvement or modification required by Section VI.A and shall within seven days provide the United States with written verification that the improvement or modification was completed.

D. All documents required to be produced to the United States under Paragraph IV(B) shall be delivered by certified mail to the following address: Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 450 Fifth St., NW., Washington, DC 20530.

V. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division (''Antitrust Division''), including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copies or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VI. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

VII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire upon notification by the United States, or motion by the Defendants, to the Court of Defendants' completion of all of the improvements and modifications required by Section IV above.

VIII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: __, 20_.

Court approval subject to the procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Chief United States District Judge Glen E. Conrad.

[FR Doc. 2011–16354 Filed 6–29–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No OSHA–2011–0007]

Maritime Advisory Committee for Occupational Safety and Health (MACOSH)

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

ACTION: Notice of MACOSH meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH) was established under Section 7 of the Occupational Safety and Health (OSH) Act of 1970 to advise the Secretary of Labor through the Assistant Secretary of Labor for Occupational Safety and Health on issues relating to occupational safety and health in the maritime industries. The purpose of this **Federal Register** notice is to announce that the Committee and workgroups will meet on July 19–20, 2011 in San Diego, CA.

DATES: *MACOSH meeting:* MACOSH will meet from 9 a.m. to 5 p.m. on July 19 and 20, 2011.

Submission of written statements, requests to speak, and requests for special accommodation: Written statements, requests to speak at MACOSH meetings, and requests for special accommodations for these meetings must be submitted (postmarked, sent, transmitted) by July 10, 2011.

ADDRESSES: *MACOSH meeting:* MACOSH will meet at the San Diego Marriott Del Mar, 11966 El Camino Real, San Diego, CA 92130. *http://www.marriott.com/hotels/travel/sandm-san-diego-marriott-del-mar/*.

Submission of written statements and requests to speak: You may submit written statements and requests to speak at the MACOSH meetings, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2011–0007), by one of the following methods:

Electronically: 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.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0007, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., E.T.

Requests for special accommodations: Submit requests for special accommodations for MACOSH and its workgroup meetings by hard copy, telephone, or e-mail to: Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20110; telephone: (202) 693–1999; e-mail *chatmon.veneta@dol.gov*.

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2011–0007). Because of security-related procedures, submissions by regular mail may result in a significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, messenger, or courier service.

Written statements and requests to speak, including personal information provided, will be placed in the public docket and may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

Docket: To read or download documents in the public docket for this MACOSH meeting, go to *http://www.regulations.gov*. All documents in the public docket are listed in the index; however, some documents (e.g., copyrighted material) are not publicly available to read or download through *http://www.regulations.gov*. All submissions are available for inspection and, where permitted, copying at the OSHA Docket Office at the address above. For information on using *http://www.regulations.gov* to make submissions or to access the docket, click on the ''Help'' tab at the top of the Home page. Contact the OSHA Docket Office for information about materials not available through that Web site and for assistance in using the Internet to locate submissions and other documents in the docket. Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This notice, as well as news releases and other relevant information, is also available on the OSHA Web page at *http://www.osha.gov*.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Frank Meilinger, OSHA's Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.

For general information about MACOSH and this meeting: Mr. Joseph V. Daddura, Director of the Office of Maritime Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2080; e-mail *Daddura.Joseph@dol.gov.*

SUPPLEMENTARY INFORMATION:

All MACOSH committee and workgroup meetings are open to the public. All interested persons are invited to attend the full MACOSH committee and its workgroup meetings at the time and place listed above. The tentative agenda will include: Discussions on single and multi-piece rim wheels; working safely around radiation; person in water (man overboard); fire watch responsibilities; ventilation safety; selection of welding shade; safe entry and work in vessel's sewage tanks; best practices in eye injury reduction; electrical safety; and injury and illness prevention plans.

The workgroups will meet from 9 a.m. until 5 p.m. on July 19, 2011 (room to be determined upon arrival). The workgroups will discuss topics on which they may focus for the duration of the current Committee charter. The full MACOSH Committee will meet July 20, 2011 (rooms to be determined upon arrival).

Public Participation: Interested parties may submit a request to make an oral presentation to MACOSH by any one of the methods listed in the **ADDRESSES** section above. The request must state the amount of time requested to speak, the interest represented (e.g., organization name), if any, and a brief outline of the presentation. Requests to address MACOSH may be granted as time permits and at the discretion of the MACOSH Chair.

Interested parties may also submit written statements, including data and other information, using any one of the methods listed in the **ADDRESSES** section above. OSHA will provide all submissions to MACOSH members prior to the meeting. Individuals who need special accommodations to attend the MACOSH meeting should contact Ms. Chatmon by one of the methods listed in the **ADDRESSES** section.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by Sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), Secretary of Labor's Order No. 4–2010 (75 FR 55355), and 29 CFR part 1912.

Signed at Washington, DC, on June 24, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–16425 Filed 6–29–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 11–056]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed Lori Parker, Office of the Chief Information Officer, Mail Suite 2S65, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 2S65, Washington, DC 20546, (202) 358–1351, *lori.parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This clearance request pertains to the administration of data collection instruments designed to gather information on change, or growth, made in various domains of STEM awareness, motivation and efficacy, and career pathways, as it relates to NASA's Summer of Innovation. These outcomes are not available unless collected via surveys to students and teachers. The evaluation is an important opportunity to examine the extent to which the SOI-supported activities meet their intended objectives.

II. Method of Collection

Electronic Survey.

III. Data

Title: NASA Summer of Innovation (SOI) .

OMB Number: 2700–0150.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 11620.

Estimated Time per Response: Voluntary.

Estimated Total Annual Burden Hours: 6665.

Estimated Total Annual Cost: $67,164.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2011–16416 Filed 6–29–11; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Notice of Availability of Final Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement (PEIS/OEIS) for Marine Seismic Research Funded by the National Science Foundation (NSF) or Conducted by the U.S. Geological Survey (USGS)

AGENCY: National Science Foundation.

ACTION: Notice of availability of Final PEIS/OEIS for Marine Seismic Research Funded by NSF or Conducted by the USGS.

SUMMARY: The Division of Ocean Sciences in the Directorate for Geosciences (GEO/OCE) has prepared the Final PEIS/OEIS (hereafter Final PEIS) as the lead agency with support from the cooperating agencies, USGS and the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA).

The Final PEIS assesses the potential impacts of marine seismic research on the human and natural environment. Under the Proposed Action, a variety of acoustic sources used for research activities funded by NSF or conducted by the USGS would be operated from various research vessels operated by U.S. academic institutions or government agencies. The seismic acoustic sources would include various airgun configurations (particularly strings or arrays with as little as 2 to as many as 36 seismic airguns), as well as low-energy seismic and non-seismic acoustic sources.

The Final PEIS examines the potential impacts that may result from marine geophysical research using seismic surveys that are funded by NSF or conducted by the USGS in non-Arctic waters. The Proposed Action is for academic and U.S. government scientists in the U.S., and possible international collaborators, to conduct marine seismic research from research vessels operated by U.S. academic institutions and government agencies. The purpose of the Proposed Action is to fund the investigation of the geology and geophysics of the seafloor by collecting seismic reflection and refraction data that reveal the structure and stratigraphy of the crust and/or overlying sediment below the world's oceans. NSF has a continuing need to fund seismic surveys that enable scientists to collect data essential to understanding the complex Earth processes beneath the ocean floor. Two action alternatives and the No-Action Alternative were assessed.

Please note that responses to all comments received (including all written comments and those provided through testimony at the public hearings) on the Draft PEIS (October 2010) are included in Appendix J of the Final PEIS. The transcripts of public hearings are also included in Appendix I. The Final PEIS reflects the changes made to the Draft PEIS based on the comments received. The Final PEIS is now available on the Internet at: *http://www.nsf.gov/geo/oce/envcomp/* in Adobe® portable document format (pdf). The Final PEIS has also been distributed to interested Federal, state,

and local agencies, organizations, and individuals.

DATES: NSF will issue a record of decision (ROD) for the proposed marine geophysical scientific research using seismic surveys that are funded by NSF or conducted by the USGS following consideration of the entire administrative record for the proposed action, including the Final PEIS. The ROD will be issued in Fall 2011, or at least 30 days after the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's Notice of Availability of the Final PEIS. The Final PEIS is available on NSF's Web site at: *http://www.nsf.gov/geo/oce/envcomp/index.jsp*. Electronic copies of the Final PEIS are also available upon request from: Holly Smith, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230. *Telephone:* (703) 292–8583. *E-mail: nepacomments@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: For further information regarding the Final PEIS contact: Holly Smith, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230; *telephone:* (703) 292–8583; *e-mail: nepacomments@nsf.gov.*

Dated: June 24, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–16337 Filed 6–29–11; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Subcommittee on Forensic Science; Committee on Science; National Science and Technology Council

ACTION: Notice of Panel Session. Public input is requested concerning Automated Fingerprint Identification System (AFIS) interoperability and the appropriate Federal Executive Branch responses to the AFIS interoperability issues identified in the National Academy of Sciences 2009 report: ''Strengthening Forensic Science in the United States: A Path Forward'' (*http://www.nap.edu/catalog.php?record_id=12589#toc*).

SUMMARY: The Subcommittee on Forensic Science (SoFS) of the National Science and Technology Council's (NSTC's) Committee on Science will host a public forum in collaboration with the International Association for Identification (IAI) 96th International Educational Conference. The role of the SoFS is to coordinate Federal activities and advise the Executive Office of the President on national efforts to improve forensic science and its application in America's justice system. This special session will serve to provide the public with the opportunity to ask questions and provide comments on issues related to Automated Fingerprint Identification System (AFIS) latent print interoperability.

DATES AND ADDRESSES: The session will be held in conjunction with the IAI 96th International Educational Conference, held at the Frontier Airlines Center, 400 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203. The session will be held on Friday, August 12, 2011, from 11 a.m. to 12 p.m. Check the meeting registration desk for room location. Information regarding the IAI Annual Conference is available at *http://theiai.org/conference/2011/index.php.*

Note: Persons solely attending this SoFS public session do not need to register for the IAI 96th International Educational Conference to attend. There will be no admission charge for persons solely attending the public meeting. Seating will be on a first come, first served basis. For those who cannot attend but wish to provide written comments or questions, please do so by sending an email to the Subcommittee's Executive Secretary, Robin Jones, at: *Robin.W.Jones@usdoj.gov,* no later than Friday, July 29, 2011.

FOR FURTHER INFORMATION CONTACT: Additional information and links to the Subcommittee on Forensic Science can be obtained through the Office of Science and Technology Policy's NSTC Web site at: *http://www.ostp.gov/nstc* or by calling 202–456–6012.

Kenneth E. Melson,

Co-Chair, Subcommittee on Forensic Science.

[FR Doc. 2011–16404 Filed 6–29–11; 8:45 am]

BILLING CODE 4410–FY–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15c2–5; SEC File No. 270–195; OMB Control No. 3235–0198.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of an extension of the previously approved collection of information provided for in Rule 15c2–5 (17 CFR 240.15c2–5), under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) (''Exchange Act'').

Rule 15c2–5 prohibits a broker-dealer from arranging or extending certain loans to persons in connection with the offer or sale of securities unless, before any element of the transaction is entered into, the broker-dealer: (1) Delivers to the person a written statement containing the exact nature and extent of the person's obligations under the loan arrangement; the risks and disadvantages of the loan arrangement; and all commissions, discounts, and other remuneration received and to be received in connection with the transaction by the broker-dealer or certain related persons (unless the person receives certain materials from the lender or broker-dealer which contain the required information); and (2) obtains from the person information on the person's financial situation and needs, reasonably determines that the transaction is suitable for the person, and retains on file and makes available to the person on request a written statement setting forth the broker-dealer's basis for determining that the transaction was suitable. The collection of information required by Rule 15c2–5 is necessary to execute the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

The Commission estimates that there are approximately 50 respondents that require an aggregate total of 600 hours to comply with Rule 15c2–5. Each of these approximately 50 registered broker-dealers makes an estimated six annual responses, for an aggregate total of 300 responses per year. Each response takes approximately two hours to complete. Thus, the total compliance burden per year is 600 burden hours. The approximate cost per hour is $50.00 for clerical labor, resulting in a total compliance cost of $30,000 (600 hours @ $50.00 per hour). These reflect internal labor costs; there are no external labor, capital, or start-up costs.

Although Rule 15c2–5 does not specify a retention period or record-keeping requirement under the rule, broker-dealers are required to preserve the records for a period no less than six years pursuant to Rule 17a-4(c). The information required under Rule 15c2–5 is necessary for broker-dealers to engage in the lending activities

prescribed in the Rule. Rule 15c2–5 does not assure confidentiality for the information retained under the rule.[1]

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

Background documentation for this information collection may be viewed at the following link, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov* ; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 26, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16426 Filed 6–29–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension:

Rule 17Ad–3(b); SEC File No. 270–424; OMB Control No. 3235–0473.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the following previously approved collection of information as discussed below for Rule 17Ad–3(b) (17 CFR 240.17Ad–3(b)).

Rule 17Ad–3(b) requires registered transfer agents that for each of two consecutive months have failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) or to process at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) to send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice required under Rule 17Ad–2(c), (d), and (h). The issuer may use the information contained in the notices in several ways: (1) To provide an early warning to the issuer of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents, and (2) to assure that issuers are aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's securities. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items.

The Commission estimates that only two transfer agents will meet the requirements of Rule 17Ad–3(b). If a transfer agent fails to meet the minimum requirements under 17Ad–3(b), such transfer agent is simply sending a copy of a form that had already been produced for the Commission. The Commission estimates a requirement will take each respondent approximately one hour to complete, for a total annual estimate burden of two hours at cost of approximately $60.00 for each hour, which reflect internal labor costs. There are no external costs associated with sending the notice to issuers.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following link, *http://www.reginfo.gov.* General comments regarding the estimated burden hours should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or by sending an e-mail to: *PRA_Mailbox@sec.gov* . Comments must be submitted to OMB within 30 days of this notice.

Dated: June 26, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16427 Filed 6–29–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29708]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 24, 2011.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June 2011. A copy of each application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202)551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 2011, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service.

[1] The records required by Rule 15c2–5 would be available only for examination purposes of the Commission staff, state securities authorities, and the self-regulatory organizations. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–8010.

Bryce Capital Funds

[File No. 811–21575]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 17, 2010, applicant transferred its assets to the Dblaine Fund, a series of Dblaine Investment Trust, based on net asset value. Expenses of $15,971 incurred in connection with the reorganization were paid by Dblaine Capital, LLC, the investment adviser to the surviving fund.

Filing Dates: The application was filed on December 17, 2010, and amended on February 18, 2011 and June 20, 2011.

Applicant's Address: 95 Allens Creek Rd., Bldg. 1, Suite 201, Rochester, NY 14618.

Master Senior Floating Rate LLC

[File No. 811–10171]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 28, 2011, applicant made a final liquidating distribution to its sole shareholder, based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on May 20, 2011.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

Endowments

[File No. 811–1884]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 1, 2011, applicant transferred its assets to Capital U.S. Equity Fund, a series of Capital Private Client Services Funds, based on net asset value. Expenses of $44,920 incurred in connection with the reorganization were paid by Capital Research and Management Company, applicant's investment adviser.

Filing Date: The application was filed on May 25, 2011.

Applicant's Address: One Market, Steuart Tower, Suite 2000, San Francisco, CA 94105–1409.

Natixis Cash Management Trust

[File No. 811–2819]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 11, 2011, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $14,340 incurred in connection with the liquidation were paid by applicant and applicant's investment adviser, Natixis Asset Management Advisors, L.P. (''Natixis''). Outstanding expenses of $351,059 will be paid by retained cash and a receivable from Natixis.

Filing Date: The application was filed on June 9, 2011.

Applicant's Address: 399 Boylston St., Boston, MA 02116.

Prudential Small-Cap Core Equity Fund, Inc.

[File No. 811–8167]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 15, 2011, applicant transferred its assets to Prudential Small Cap Value Fund, Inc., a series of Prudential Investments Portfolio 5, based on net asset value. Expenses of $276,000 incurred in connection with the reorganization were paid by Prudential Investments Portfolio 5, on behalf of the acquiring fund.

Filing Date: The application was filed on June 13, 2011.

Applicant's Address: Gateway Center Three, 100 Mulberry St., Newark, NJ 07102–4077.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16419 Filed 6–29–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29707; 812–13831]

TIAA–CREF Funds, et al.; Notice of Application

June 24, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (''Act'') and rule 17d–1 under the Act.

SUMMARY: Applicants request an order to permit certain registered open-end investment companies in the same group of investment companies to enter into a special servicing agreement (''Special Servicing Agreement'').

Applicants: TIAA–CREF Funds, on behalf of its series, Lifecycle 2010 Fund, Lifecycle 2015 Fund, Lifecycle 2020 Fund, Lifecycle 2025 Fund, Lifecycle 2030 Fund, Lifecycle 2035 Fund, Lifecycle 2040 Fund, Lifecycle 2045 Fund, Lifecycle 2050 Fund, Lifecycle 2055 Fund, Lifecycle Retirement Income Fund, Lifecycle Index 2010 Fund, Lifecycle Index 2015 Fund, Lifecycle Index 2020 Fund, Lifecycle Index 2025 Fund, Lifecycle Index 2030 Fund, Lifecycle Index 2035 Fund, Lifecycle Index 2040 Fund, Lifecycle Index 2045 Fund, Lifecycle Index 2050 Fund, Lifecycle Index 2055 Fund, Lifecycle Index Retirement Income Fund, Managed Allocation Fund, Bond Fund, Bond Index Fund, Bond Plus Fund, Emerging Markets Equity Fund, Emerging Markets Equity Index Fund, Enhanced International Equity Index Fund, Enhanced Large-Cap Growth Index Fund, Enhanced Large-Cap Value Index Fund, Equity Index Fund, Growth & Income Fund, High-Yield Fund, Inflation-Linked Bond Fund, International Equity Fund, International Equity Index Fund, Large-Cap Growth Fund, Large-Cap Value Fund, Mid-Cap Growth Fund, Mid-Cap Value Fund, Money Market Fund, Real Estate Securities Fund, Short-Term Bond Fund, Small-Cap Equity Fund; Teachers Advisors, Inc. (''Advisors'') Teachers Personal Investors Services, Inc. (''TPIS'') and each existing or future registered open-end management investment company or series thereof that is part of the same ''group of investment companies'' as TIAA–CREF Funds (the ''Trust'') under Section 12(d)(1)(G)(ii) of the Act and (i) Is advised by Advisors or any entity controlling, controlled by, or under common control with Advisors or (ii) for which TPIS and any entity controlling, controlled by or under common control with TPIS serves as principal underwriter (such investment companies or series thereof, together with the Trust and its series, the ''Funds'').[1]

Filing Dates: The application was filed on October 5, 2010, and amended on March 7, 2011. Applicants have agreed to file an amendment during the

[1] All entities that currently intend to rely on the order have been named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 18, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 730 Third Avenue, New York, NY 10017–3206.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Advisors is an investment adviser registered under the Investment Advisers Act of 1940. Advisors serves as investment adviser to the Funds. TPIS is registered as a broker-dealer under the Securities Exchange Act of 1934 and serves as distributor of the Funds.

2. The Trust is a Delaware statutory trust registered under the Act as an open-end management investment company. The Trust currently offers 51 series, 23 of which are ''Top-Tier Funds'' [2] and 22 of which are ''Underlying Funds.'' [3] The Top-Tier Funds invest substantially all of their assets in the Underlying Funds.[4] The Top-Tier Funds and certain of the Underlying Funds currently offer multiple classes of shares in reliance on rule 18f–3 under the Act.

3. Advisors and the Trust propose to enter into a Special Servicing Agreement that would allow an Underlying Fund to bear the expenses of a Top-Tier Fund (other than investment management fees, rule 12b–1 fees and class-specific administrative service fees). Under the Special Servicing Agreement, each Underlying Fund will bear expenses of a Top-Tier Fund in proportion to the estimated benefits to the Underlying Fund arising from the investment in the Underlying Fund by the Top-Tier Fund (''Underlying Fund Benefits'').

4. Applicants state that the Underlying Fund Benefits are expected to result primarily from the incremental increase in assets resulting from investment in the Underlying Funds by the Top-Tier Funds and the large size of a Top-Tier Fund's holdings of shares in a shareholder account relative to the average size of the share balances held in other Underlying Fund shareholder accounts. A Top-Tier Fund's shareholder account will experience fewer shareholder transactions and greater predictability of transaction activity than other shareholder accounts. As a result, the shareholder servicing costs to any Underlying Fund for servicing one account registered to a Top-Tier Fund will be significantly less than the cost to that same Underlying Fund of servicing the same pool of assets contributed by a large group of shareholders owning relatively small accounts in one or more Underlying Funds. In addition, by reducing Top-Tier Fund expenses, the Special Servicing Agreement may lead to increased assets being invested in the Top-Tier Funds, which in turn would lead to increased assets being invested in the Underlying Funds. Further, increased assets could enable the Underlying Funds to control and reduce their expense ratios because their operating expenses will be spread over a larger asset base.

5. No Fund will enter into a Special Servicing Agreement unless the Special Servicing Agreement: (a) Precisely describes the services provided to the Top-Tier Funds and the amount of expenses for services charged to the Top-Tier Fund that may be paid by an Underlying Fund (''Underlying Fund Payments''); (b) provides that no affiliated person of the Top-Tier Funds, or affiliated person of such person, will receive, directly or indirectly, any portion of the Underlying Fund Payments; (c) provides that the Underlying Fund Payments may not exceed the amount of actual expenses incurred by the Top-Tier Funds; (d) provides that no Underlying Fund will reimburse transfer agent expenses of a Top-Tier Fund, including out-of-pocket expenses and other expenses, at a rate in excess of the average per account transfer agent expenses of the Underlying Fund, including out-of-pocket and other expenses, expressed as a basis point charge (for purposes of calculating the Underlying Fund's average per account transfer agent expense, the Top-Tier Fund's investment in the Underlying Fund will be excluded); and (e) has been approved by the Fund's board of trustees (''Board''), including a majority of trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Independent Trustees''), as being in the best interests of the Fund and its shareholders and not involving overreaching on the part of any person concerned.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act provide that an affiliated person of, or a principal underwriter for, a registered investment company, or an affiliate of such person or principal underwriter, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the Commission has issued an order approving the arrangement. Advisors, as investment adviser, is an affiliated person of each of the Underlying Funds and Top-Tier Funds, which in turn could be deemed to be under common control of Advisors and therefore affiliated persons of each other. The Top-Tier Funds and the

[2] ''Top-Tier Funds'' refers to Lifecycle 2010 Fund, Lifecycle 2015 Fund, Lifecycle 2020 Fund, Lifecycle 2025 Fund, Lifecycle 2030 Fund, Lifecycle 2035 Fund, Lifecycle 2040 Fund, Lifecycle 2045 Fund, Lifecycle 2050 Fund, Lifecycle 2055 Fund, Lifecycle Retirement Income Fund, Lifecycle Index 2010 Fund, Lifecycle Index 2015 Fund, Lifecycle Index 2020 Fund, Lifecycle Index 2025 Fund, Lifecycle Index 2030 Fund, Lifecycle Index 2035 Fund, Lifecycle Index 2040 Fund, Lifecycle Index 2045 Fund, Lifecycle Index 2050 Fund, Lifecycle Index 2055 Fund, Lifecycle Index Retirement Income Fund and Managed Allocation Fund and any other Fund that invests substantially all of its assets in the Underlying Funds (as defined below).

[3] ''Underlying Funds'' refers to Bond Fund, Bond Index Fund, Bond Plus Fund, Emerging Markets Equity Fund, Emerging Markets Equity Index Fund, Enhanced International Equity Index Fund, Enhanced Large-Cap Growth Index Fund, Enhanced Large-Cap Value Index Fund, Equity Index Fund, Growth & Income Fund, High-Yield Fund, Inflation-Linked Bond Fund, International Equity Fund, International Equity Index Fund, Large-Cap Growth Fund, Large-Cap Value Fund, Mid-Cap Growth Fund, Mid-Cap Value Fund, Money Market Fund, Real Estate Securities Fund, Short-Term Bond Fund and Small-Cap Equity Fund.

[4] The Top-Tier Funds will not be Underlying Funds and no Top-Tier Fund will invest in another Top-Tier Fund.

Underlying Funds also may be affiliated persons by virtue of a Top-Tier Fund's ownership of more than 5% of the outstanding voting securities of an Underlying Fund. Consequently, the Special Servicing Agreement could be deemed to be a joint transaction among the Top-Tier Funds, the Underlying Funds and Advisors.

2. Rule 17d–1 under the Act provides that, in passing upon a joint arrangement under the rule, the Commission will consider whether participation of the investment company in the joint enterprise or joint arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

3. Applicants request an order under section 17(d) and rule 17d–1 to permit the proposed expense sharing arrangements. Applicants state that participation by the Top-Tier Funds, the Underlying Funds and Advisors in the proposed expense sharing arrangements is consistent with the provisions, policies and purposes of the Act, and that the terms of the Special Servicing Agreement and the conditions set forth below will ensure that no participant will participate on a basis less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. No Fund will enter into a Special Servicing Agreement unless the Special Servicing Agreement: (a) Precisely describes the services provided to the Top-Tier Funds and the Underlying Fund Payments; (b) provides that no affiliated person of the Top-Tier Funds, or affiliated person of such person, will receive, directly or indirectly, any portion of the Underlying Fund Payments; (c) provides that the Underlying Fund Payments may not exceed the amount of actual expenses incurred by the Top-Tier Funds; (d) provides that no Underlying Fund will reimburse transfer agent expenses of a Top-Tier Fund, including out-of-pocket expenses and other expenses, at a rate in excess of the average per account transfer agent expenses of the Underlying Fund, including out-of-pocket expenses and other expenses, expressed as a basis point charge (for purposes of calculating the Underlying Fund's average per account transfer agent expense, the Top-Tier Fund's investment in the Underlying Fund will be excluded); and (e) has been approved by the Fund's Board, including a majority of the Independent Trustees, as being in the best interests of the Fund and its shareholders and not involving overreaching on the part of any person concerned.

2. In approving a Special Servicing Agreement, the Board of an Underlying Fund will consider, without limitation: (a) The reasons for the Underlying Fund's entering into the Special Servicing Agreement; (b) information quantifying the Underlying Fund Benefits; (c) the extent to which investors in the Top-Tier Fund could have purchased shares of the Underlying Fund; (d) the extent to which an investment in the Top-Tier Fund represents or would represent a consolidation of accounts in the Underlying Funds, through exchanges or otherwise, or a reduction in the rate of increase in the number of accounts in the Underlying Funds; (e) the extent to which the expense ratio of the Underlying Fund was reduced following investment in the Underlying Fund by the Top-Tier Fund and the reasonably foreseeable effects of the investment by the Top-Tier Fund on the Underlying Fund's expense ratio; (f) the reasonably foreseeable effects of participation in the Special Servicing Agreement on the Underlying Fund's expense ratio; and (g) any conflicts of interest that Advisors, any affiliated person of Advisors, or any other affiliated person of the Underlying Fund may have relating to the Underlying Fund's participation in the Special Servicing Agreement.

3. Prior to approving a Special Servicing Agreement on behalf of an Underlying Fund, the Board of the Underlying Fund, including a majority of the Independent Trustees, will determine that: (a) The Underlying Fund Payments under the Special Servicing Agreement are expenses that the Underlying Fund would have incurred if the shareholders of the Top-Tier Fund had instead purchased shares of the Underlying Fund through the same broker-dealer or other financial intermediary; (b) the amount of the Underlying Fund Payments is less than the amount of Underlying Fund Benefits; and (c) by entering into the Special Servicing Agreement, the Underlying Fund is not engaging, directly or indirectly, in financing any activity which is primarily intended to result in the sale of shares issued by the Underlying Fund.

4. In approving a Special Servicing Agreement, the Board of a Fund will request and evaluate, and Advisors will furnish, such information as may reasonably be necessary to evaluate the terms of the Special Servicing Agreement and the factors set forth in condition 2 above, and make the determinations set forth in conditions 1 and 3 above.

5. Approval by the Fund's Board, including a majority of the Independent Trustees, in accordance with conditions 1 through 4 above, will be required at least annually after the Fund's entering into a Special Servicing Agreement and prior to any material amendment to a Special Servicing Agreement.

6. To the extent Underlying Fund Payments are treated, in whole or in part, as a class expense of an Underlying Fund, or are used to pay a class-based expense of a Top-Tier Fund, conditions 1 through 5 above must be met with respect to each class of a Fund as well as the Fund as a whole.

7. Each Fund will maintain and preserve the Board's findings and determinations set forth in conditions 1 and 3 above, and the information and considerations on which they were based, for the duration of the Special Servicing Agreement, and for a period not less than six years thereafter, the first two years in an easily accessible place.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16403 Filed 6–29–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 3464743; File No. SR–ISE–2011–35]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Fee Discount Pilot Program for Large-Sized Foreign Currency Options

June 24, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend for an additional year the fee discount for large-sized foreign currency (''FX'') option orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend for an additional year the fee discount for large-sized FX option orders. The Exchange initially adopted the fee discount for large-sized FX option orders in 2008.[3] The fee discount pilot program was subsequently extended [4] and is now set to expire on June 30, 2011.[5] The fee discount applies to orders of 250 contracts or more and waives fees on incremental volume above 250 contracts. Contracts at or under the threshold are charged the constituent's prescribed execution fee. The fee discount applies to all Customer [6] orders, Firm Proprietary orders, Market Maker orders and Non-ISE Market Maker orders in FX options traded on the Exchange. ISE adopted this fee discount to encourage members to execute large-sized FX option orders on the Exchange in a manner that is cost effective. The Exchange now proposes to extend this fee discount through June 30, 2012 in a continuing effort to attract more activity in large-sized FX options.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the proposed rule change is reasonable and equitable as it would extend a current fee discount, thus effectively maintaining low fees for all market participants that trade in large-sized FX options on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR–ISE–2011–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2011–35. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2011–35 and should be submitted on or before July 21, 2011.

[3] *See* Securities Exchange Act Release No. 58139 (July 10, 2008), 73 FR 41142 (July 17, 2008) (SR–ISE–2008–54).

[4] *See* Securities Exchange Act Release No. 60192 (June 30, 2009), 74 FR 32211 (July 7, 2009) (SR–ISE–2009–42).

[5] *See* Securities Exchange Act Release No. 62506 (July 15, 2010), 75 FR 42801 (July 22, 2010) (SR–ISE–2010–67).

[6] The fee discount applies to both Professional and Priority Customer orders. A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16397 Filed 6–29–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64742; File No. SR–NYSEAmex–2011–18]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Formation of a Joint Venture Between the Exchange, Its Ultimate Parent NYSE Euronext, and Seven Other Entities To Operate an Electronic Trading Facility for Options Contracts

June 24, 2011.

I. Introduction

On March 23, 2011, NYSE Amex LLC (''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] in connection with the formation of a joint venture between NYSE Amex, its ultimate parent NYSE Euronext, a Delaware corporation, and the following entities (each, a ''Founding Firm''): Citadel Securities LLC (''Citadel''); Goldman, Sachs & Co. (''Goldman Sachs''); Banc of America Strategic Investments Corporation (''BAML''); Citigroup Financial Strategies, Inc. (''Citigroup''); Datek Online Management Corp. (''TD Ameritrade''); UBS Americas Inc. (''UBS''); and Barclays Electronic Commerce Holdings Inc. (''Barclays''), to operate an electronic trading facility (''Options Facility'') that will engage in the business of listing for trading options contracts permitted to be listed on a national securities exchange (or facility thereof) and related activities. The proposed rule change was published for comment in the **Federal Register** on April 4, 2011.[3] The Commission received three comment letters on the proposal.[4] The Commission subsequently extended to July 1, 2011, 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.[5] On June 15, 2011, NYSE Amex filed Amendment No. 1 to the proposed rule change.[6] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Overview

NYSE Amex proposes to establish NYSE Amex Options LLC (''Company''), a Delaware limited liability company formed by NYSE Euronext, NYSE Amex, and the Founding Firms, and jointly owned by NYSE Amex and the Founding Firms, to operate the Options Facility. Pursuant to the proposal, the Options Facility will be operated as a facility [7] of NYSE Amex, which will act as the self-regulatory organization (''SRO'') for the Options Facility and as such have regulatory responsibility for the activities of the Options Facility.[8]

With this proposed rule change, NYSE Amex seeks the Commission's approval of the proposed governance structure of the Company as reflected in the proposed Limited Liability Company Agreement (''LLC Agreement'') for the Company and a proposed Members Agreement of the Company setting forth certain additional provisions (''Members Agreement'') relating to the proposed governance structure of the Company.[9] NYSE Amex is not proposing any changes to its listing and trading rules in connection with establishment of the Company and operation of the Options Facility.

As a limited liability company, ownership of the Company is represented by limited liability company interests in the Company (''Interests'').[10] The holders of Interests are referred to as the members of the Company (''Members'').[11] The Interests represent equity interests in the Company and entitle the holders thereof to participate in the Company's allocations and distributions. Initially, NYSE Amex will own 100% of the preferred non-voting Interests (''Preferred Interests'') and 47.2% of the Common Interests,[12] as Class A Common Interests. The Founding Firms will own the remaining 52.8% of the Common Interests, as Class B Common Interests, and no single Founding Firm (including its affiliates) will own Class B Common Interests comprising more than 19.9% of the issued and outstanding Common Interests. The 52.8% ownership of Class B Common Interests will initially be allocated as follows: 14.95% to each of Citadel and Goldman Sachs; 5.0% to each of BAML, Citigroup and TD Ameritrade; 4.9% to UBS; and 3.0% to Barclays.[13]

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64144 (March 29, 2011), 76 FR 18591 (''Notice'').

[4] *See* Letter from Andrew Rothlein, to Hon. Mary L. Schapiro, Chairman, and Hon. Kathleen L. Casey, Hon. Elisse B. Walter, Hon. Luis A. Aguilar, and Hon. Troy A. Paredes, Commissioners, Commission, dated April 14, 2011 (''Rothlein Letter''); Letter from Benjamin Kerensa, dated April 25, 2011 (''Kerensa Letter''); and Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq OMX Group, Inc. (''NASDAQ''), to Elizabeth M. Murphy, Secretary, Commission, dated April 29, 2011 (''NASDAQ Letter'').

[5] *See* Securities Exchange Act Release No. 64511 (May 18, 2011), 76 FR 29809 (May 23, 2011).

[6] *See* Amendment No. 1 dated June 15, 2011 (''Amendment No. 1''). Amendment No. 1 deletes an erroneous reference in Section 16.1(f) of the LLC Agreement; clarifies those Founding Firms that are NYSE Amex members or their affiliates; clarifies the availability of information noted ''To Come'' on certain Schedules to the LLC Agreement; and confirms the applicability of Section 4.9 of the LLC Agreement to a NYSE Amex member that is an affiliate of NYSE Amex. Amendment No. 1 is a technical amendment and is not subject to notice and comment.

[7] Pursuant to Section 3(a)(2) of the Act, 15 U.S.C. 78c(a)(2), the term ''facility'' when used with respect to a national securities exchange, includes ''its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.''

[8] NYSE Amex represented that it has adequate funds to discharge all regulatory functions related to the Options Facility. *See* Notice, *supra* note 3, 76 FR 18592.

[9] Certain portions of the Members Agreement are not considered part of the proposed rule change. *See infra* note 13.

[10] ''Interest'' means the limited liability company interest in the Company owned by each Member including any and all benefits to which such Member may be entitled as provided in the LLC Agreement or required by the Act, together with all obligations of such Member to comply with the terms and provisions of the LLC Agreement. *See* Section 1.1 of the LLC Agreement. *See infra* note 11 for the definition of Member.

[11] ''Member'' means each Person who is a signatory to this Agreement (other than NYSE Euronext) or who has been admitted to the Company as a Member in accordance with this Agreement and has not ceased to be a Member in accordance with this Agreement or for any other reason. *See* Section 1.1 of the LLC Agreement. *See infra* note 78 for definition of Person.

[12] Common Interests consist of Class A Common Interests and Class B Common Interests. *See* Section 1.1 of the LLC Agreement. ''Class A Common Interests'' means the Interests in the form of shares owned by NYSE Amex, as specified in Schedule A of the LLC Agreement, having the rights and obligations specified in the LLC Agreement. *See id.* ''Class B Common Interests'' means the Interests in the form of shares owned by each Founding Firm, as specified in Schedule A of the LLC Agreement, having the rights and obligations specified in the LLC Agreement. *See id.* Schedule A of the LLC Agreement sets forth the Interest allocations of each Member.

[13] Following the effective date of the proposed rule change, additional Class B Common Interests will be issued to the Founding Firms based, in part, on each Founding Firm's contribution to the annual volume of the Options Facility from October 1, 2009 to December 31, 2010 (*i.e.,* the ''Volume-Based Equity Plan''). *See* Notice, *supra* note 3, 76 FR at

Pursuant to Section 2.1 of the Members Agreement, for an initial period of five (5) years and three (3) months, each Founding Firm will have to satisfy certain minimum volume requirements. Under the Volume-Based Equity Plan (''Incentive Plan''),[14] for each measurement period, the Company will issue Annual Incentive Shares.[15] Each Founding Firm will be entitled to receive, for no additional consideration, a portion of the Annual Incentive Shares such that it dilutes, maintains or increases its equity interest in the Company (relative to the other Founding Firms) based on the degree to which the Founding Firm has failed to achieve, achieved or exceeded its ''Individual Target'' during the measurement period. A Founding Firm's Individual Target will be its *pro rata* portion of an aggregate Founding Firm target contribution to the annual volume of the Options Facility.[16] This *pro rata* calculation will be performed once, based on the Founding Firm's holdings of Class B Common Interests relative to the other Founding Firms at the time the Company is formed and will not change as a Founding Firm's equity holdings fluctuate as a result of the Incentive Plan. The Incentive Plan will not affect the equity holdings of NYSE Amex and it will not increase or decrease the aggregate equity interest of the Founding Firms relative to NYSE Amex. The Annual Incentive Shares not allocated to one or more Founding Firms by virtue of each such Founding Firm failing to achieve its respective Individual Target will be either partially or fully reallocated among those Founding Firms that exceed their respective Individual Targets.

III. Regulatory Structure

As an SRO, NYSE Amex has regulatory responsibility for all of its facilities, including the Options Facility. Day-to-day operations of the Company and the management of its business and affairs will be delegated to the Company's officers and to NYSE Group, Inc. (''NYSE Group''), a subsidiary of NYSE Euronext, in accordance with a services agreement (''NYSE Euronext Agreement'') between NYSE Group and the Company.[17] Under the NYSE Euronext Agreement, NYSE Group will agree to provide the Options Facility with a range of operational and support services.[18] The Board [19] will be responsible for the oversight of the Company's officers and NYSE Group's performance under the NYSE Euronext Agreement.[20] The Board initially will consist of six directors [21] designated by the Founding Firms (one by each Founding Firm), and seven directors designated by NYSE Amex.[22]

NYSE Regulation, Inc. (''NYSE Regulation''), an indirect wholly-owned subsidiary of NYSE Euronext, and NYSE Amex entered into a regulatory services agreement (''RSA'') dated October 1, 2008 pursuant to which NYSE Regulation performs all of NYSE Amex's regulatory functions on NYSE Amex's behalf. However, certain of these member and market regulatory functions, which include surveillance, examination, investigation and related disciplinary functions, are performed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') pursuant to a RSA dated June 14, 2010 among FINRA, NYSE Group, New York Stock Exchange LLC, NYSE Regulation, NYSE Arca, Inc. and NYSE Amex. FINRA and NYSE Amex have also entered into an allocation agreement pursuant to Section 17(d)(1) of the Act,[23] and Rule 17d–2 [24] thereunder, whereby FINRA assumed regulatory responsibility for specified rules that are common to FINRA and NYSE Amex and for common members. Because the Options Facility will be a facility of NYSE Amex, FINRA will perform the applicable regulatory functions and responsibilities with respect to activity on or through the Options Facility, including both general regulatory functions, as noted above, and targeted regulatory reviews as applicable.

Pursuant to the RSA between NYSE Regulation and NYSE Amex, NYSE Regulation exercises oversight, on behalf of NYSE Amex, of FINRA's performance of the regulatory functions performed by FINRA as described above. NYSE Regulation also has responsibilities with respect to the Options Facility for rule interpretation, regulatory policy and participation in rule development. NYSE Regulation periodically reports on regulatory matters to the board of directors of NYSE Amex, which has appointed a Chief Regulatory Officer (''CRO'') who is also the Chief Executive Officer of NYSE Regulation. NYSE Amex does not have a regulatory oversight committee of its board of directors, but the CRO is also an officer of NYSE Amex, and in that capacity is charged with reporting on regulatory matters to the NYSE Amex board of directors. Notwithstanding the foregoing, NYSE Amex will still retain ultimate legal responsibility for the performance of all of its regulatory obligations as an SRO, including with respect to the Options Facility, as well as the ability to take action as required to meet that responsibility.

The board of directors of NYSE Amex currently consists of five (5) directors, a majority of whom are required to be individuals domiciled in the U.S. who are classified as independent members of the NYSE Euronext board of directors. At least twenty percent (20%) of NYSE Amex's directors (currently one individual) must be ''non-affiliated'' directors who are not members of the NYSE Euronext board of directors and need not be independent under the independence requirements of NYSE Euronext. Any required non-affiliated directors of NYSE Amex are nominated and elected through a process designed to ensure fair representation of members of NYSE Amex on NYSE Amex's board of directors. NYSE Amex does not have any committees of its board of directors that perform functions relating to audit, governance and compensation. Instead, such functions are performed for NYSE Amex by related committees of the NYSE Euronext board of directors that are comprised solely of NYSE Euronext directors who meet the independence requirements of NYSE Euronext.

Decisions on the listing of options to be traded on the Options Facility will be

18594. NYSE Amex represented that this issuance of shares to the Founding Firms will not result in any Member (alone or together with its affiliates) other than NYSE Amex exceeding the 19.9% Maximum Percentage (as defined below).

[14] As stated in the purpose section of the proposed rule change, it is NYSE Amex's view that the Incentive Plan does not constitute a proposed rule change within the meaning of Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* Notice, supra *note* 3, 76 FR at 18594, n.19.

[15] Pursuant to Section 2.1(a) of the Members Agreement, ''Annual Incentive Shares'' generally are additional Class B Common Interests equal to a percentage of the amount of Class B Common Interests issued and outstanding immediately prior to such issuance and owned by the Founding Firms.

[16] *See* Notice, *supra* note 3, 76 FR at 18610. *See also* Members Agreement, Section 1.1 (defining ''Individual Target''). In determining whether a Founding Firm has achieved its individual target for a measurement period, a Founding Firm will receive one credit for each side of a transaction executed through the Options Facility, either for its proprietary account or for the account of its customers. *See* Section 2.3(a) of the Members Agreement.

Members of the LLC are entitled to distributions of the LLC's available cash, reflective of their common interest percentages. *See* Section 6.1 of the Members Agreement. *See also* Section 1.1 of the LLC Agreement (defining ''available cash'' generally as cash held by the Company that both (i) is not required for the operations of the Company based on the annual budget of the Company for the year; and (ii) the Board of Directors of the Company (''Board'') determines in good faith is not required for the payment of liabilities of the Company or the setting aside of reserves to meet the anticipated cash needs of the Company.

[17] *See* Section 8.1(b) of the LLC Agreement.

[18] *See* Notice, supra *note* 3, 76 FR at 18593.

[19] *See* Section 8.1(a) of the LLC Agreement.

[20] *See* Section 8.1(b) of the LLC Agreement.

[21] *See* Section 8.1(a) of the LLC Agreement.

[22] *See* Section 8.1(d) of the LLC Agreement.

[23] 15 U.S.C. 78q(d)(1).

[24] 17 CFR 240.17d–2.

made by the business side of NYSE Amex in accordance with NYSE Amex's rules. The business side also will continue to be responsible for new product development, participation in rule development, strategic analysis, administering NYSE Amex programs, business development and client outreach.

IV. Summary of Comment Letters

As noted above, the Commission received three comment letters on the proposed rule change. One commenter opposed the proposed rule change, asserting that he continues to own unredeemed New York Stock Exchange Option Trading Rights (''OTRs'') that were separated from full New York Stock Exchange, Inc. (''NYSE, Inc.'') seats (''Separated OTRs'').[25] All NYSE, Inc. seat ownership (with or without OTRs) was extinguished in the 2006 demutualization of NYSE, Inc.[26] The commenter believes that the owners of Separated OTRs retained their Separated OTRs, even after NYSE, Inc. exited the options business in 1997, with the expectation that their ownership of the Separated OTRs would afford them full rights to trade options under the auspices of NYSE, Inc. or its successor entity. The commenter further argues that such ownership gives him rights to effect options trades on all NYSE related or affiliated markets, including the various successor markets to NYSE, Inc. The Commission notes that the issue of the rights of owners of Separated OTRs is not before the Commission in the context of this proposed rule change and thus its consideration of the NYSE Amex proposal does not address the rights of owners of Separated OTRs.

Another commenter opposed the proposed rule change because Goldman Sachs will be a Founding Firm.[27] The commenter stated that Goldman Sachs should not be able to benefit from the proposed rule change because the firm ''recently was found by a congressional committee to have been involved [in] deceptive and potentially illegal practices.'' The Commission does not find the comment to be dispositive in its determination regarding whether to approve the proposed rule change. Moreover, the Commission believes that, as discussed more fully below, the proposed rule change is designed to provide NYSE Amex, in its capacity as an SRO, and the Commission appropriate authority and jurisdiction to oversee any issues or concerns that may arise from ownership by NYSE Amex's members of the Company, which is organized to operate a facility of NYSE Amex.

The third commenter expressly did not object to the proposal, but stated that the Incentive Plan is ''virtually indistinguishable in purpose and effect from other fee or rebate-based incentive plans operated by national securities exchanges,'' and that the Commission ''must apply the same principles to all fee and rebate plans.''[28]

NASDAQ also stated that the proposed rule change will allow NYSE Amex to make distinctions among market participants and to pre-select firms that will be rewarded for order flow. NASDAQ remarked that NYSE Amex's proposal ''seems reasonably designed to incentivize order flow and enhance the competitiveness of its market'' and that ''[m]arket participants benefit in reduced costs and improved liquidity when the Commission allows genuine competition among exchanges.'' NASDAQ further cited to data indicating that NYSE Amex's options volume generally has increased from around 6% in October 2009, which was about the time of the initial announcement of the transaction, to 15% in March 2011, when the proposal was filed with the Commission. NASDAQ drew the conclusion that such increase correlates to the Incentive Plan[29] noting that the initial volume measurement period began in October 2009.

NASDAQ noted that the Commission has been ''reluctant to endorse differential pricing for exchanges'' in the past. NASDAQ indicated that Section 6(b)(4) of the Act focuses on ''equitable'' allocation of fees, not identical fees, and that Section 6(b)(5) of the Act prohibits the ''unfair discrimination,'' not any differentiation, between customers. NASDAQ stated that, in the past, the Commission required that fees and rebates be open to all members and that transparent thresholds provide equal fees and rebates to all members that meet the threshold and contended that the Incentive Plan is a departure from this interpretation.

Finally, NASDAQ stated that exchanges should have the flexibility to offer fee incentives and rebates, and that such flexibility should not be limited to the use of equity and equity-like instruments, and that limiting such flexibility to equity incentive plans penalizes exchanges that choose to avoid the appearance of a conflict of interest when an SRO is owned by its members. NASDAQ noted, however, that the Incentive Plan includes several provisions that attempt to deal with the appearance of such a conflict of interest. The Commission discusses the Incentive Plan in light of NASDAQ's comments in Section V.E. below.

V. 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.[30] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[31] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[32] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

A. The Options Facility as a Facility of NYSE Amex

The Commission believes that the proposed rule change is consistent with Section 6(b)(1) of the Act in that, upon

[25] *See* Rothlein Letter, *supra* note 4. NYSE, Inc. is the predecessor to New York Stock Exchange LLC (''NYSE''). *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving merger of NYSE, Inc. and Archipelago, and demutualization of NYSE, Inc.) (''NYSE–Arca Merger Order'').

[26] *See* NYSE–Arca Merger Order.

[27] *See* Kerensa Letter, *supra* note 4.

[28] *See* NASDAQ Letter, *supra* note 4.

[29] *See also* Notice, *supra* note 3, 76 FR at 18592, n. 6 (explaining that additional Class B Common Interests will be issued to the Funding Firms based on their contribution to the annual volume of the options facility from October 1, 2009 to December 31, 2010).

[30] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78f(b)(1).

[32] 15 U.S.C. 78f(b)(5).

establishing the Options Facility as a facility of NYSE Amex, and entering into the relationship with the Company described above, NYSE Amex will remain so organized and have the capacity to carry out the purposes of the Act. As an SRO, NYSE Amex will have regulatory control over the Options Facility and will be responsible for ensuring its compliance with the federal securities laws and all applicable rules and regulations thereunder. Furthermore, the Company is obligated under the LLC Agreement to operate the Options Facility in a manner consistent with the regulatory and oversight responsibilities of NYSE Amex and the Act, and the rules and regulations thereunder. The Commission notes that it previously approved similar structures with respect to the operation of exchange facilities.[33]

Although the Company does not carry out any regulatory functions, all of its activities must be consistent with the Act. As a facility of a national securities exchange, the Options Facility is not solely a commercial enterprise but is an integral part of an SRO that is registered pursuant to the Act and therefore subject to obligations imposed by the Act. The Commission believes that the LLC Agreement and Members Agreement are reasonably designed to enable the Company to operate in a manner that is consistent with this principle. The LLC Agreement provides that the Company, NYSE Euronext, NYSE Group, each Member, and the officers, directors, agents, and employees of the Company, NYSE Euronext, NYSE Group, and each Member agree to comply with the federal securities laws and the rules and regulations promulgated thereunder and cooperate with NYSE Amex and the Commission, and to engage in conduct that fosters and does not interfere with the Company's and NYSE Amex's ability to carry out their respective responsibilities under the Act.[34]

The LLC Agreement likewise provides that the Board collectively, and each member of the Board individually, must comply with the federal securities laws and the rules and regulations thereunder and cooperate with NYSE Amex and with the Commission.[35] Moreover, each Director must take into consideration whether his or her actions, and each Member must take into consideration whether its actions, would cause the Options Facility or the Company to engage in conduct that fosters, and does not interfere with, NYSE Amex's or the Company's ability to carry out their respective responsibilities under the Act.[36]

The LLC Agreement stipulates that all confidential information pertaining to the self-regulatory function of NYSE Amex or the Company (including but not limited to disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of the Company will not be made available to any persons other than to those officers, directors, employees, and agents of the Company that have a reasonable need to know the contents thereof; will be retained in confidence by the Company and their respective officers, directors, employees, and agents; and will not be used for any non-regulatory purposes.[37] Nothing in the LLC Agreement, however, will limit or impede the rights of the Commission or NYSE Amex to access and examine confidential information of the Company pursuant to the federal securities laws and rules and regulations thereunder or limit or impede the ability of a member of the Board, any Member, or any officer, director, agent, or employee of a Member or the Company to disclose confidential information to the Commission or NYSE Amex.[38]

The LLC Agreement also provides that NYSE Amex will receive notice of planned or proposed changes to the Company (excluding Non-Market Matters[39]) or the Options Facility, and NYSE Amex must not object affirmatively to such changes prior to implementation.[40] In the event that NYSE Amex, in its sole discretion, determines that such planned or proposed changes to the Company or the Options Facility could cause a Regulatory Deficiency[41] if implemented, NYSE Amex may direct the Company to, and the Company shall, modify the planned or proposed changes as necessary to ensure that it does not cause a Regulatory Deficiency.[42] Likewise, in the event that NYSE Amex, in its sole discretion, determines that a Regulatory Deficiency exists or is planned, NYSE Amex may direct the Company to, and the Company shall, undertake such modifications to the Company (but not to include Non-Market Matters) or the Options Facility as are necessary or appropriate to eliminate or prevent the Regulatory Deficiency and allow NYSE Amex to perform and fulfill its regulatory responsibilities under the Act.[43]

Moreover, Section 16.1 of the LLC Agreement provides requirements regarding regulatory approvals and compliance.[44] So long as the Options Facility is a facility of NYSE Amex, in the event that NYSE Amex, in its sole discretion, determines that any action, transaction or aspect of an action or transaction, is necessary or appropriate for, or interferes with, the performance or fulfillment of NYSE Amex's regulatory functions, its responsibilities under the Act or as specifically required by the Commission, NYSE Amex shall have the sole and exclusive authority to direct that any such required, necessary or appropriate action, as it may determine in its sole discretion, be taken or transaction be undertaken by or on behalf of the Company without regard to the vote, act or failure to vote or act by any other party in any capacity.[45]

Furthermore, before any amendment to or repeal of any provision of the LLC Agreement or Members Agreement becomes effective, such amendment or repeal must be submitted to the board of directors of NYSE Amex, and if such

[33] *See* Securities Exchange Act Release Nos. 55389 (March 2, 2007), 72 FR 10575 (March 8, 2007) (order approving CBOE Stock Exchange as a facility of the Chicago Board Options Facility) (''CBSX Order''); 54399 (September 1, 2006), 71 FR 53728 (September 12, 2006) (order approving the ISE Stock Exchange as a facility of the International Securities Exchange) (''ISE Stock Order''); 54364 (August 25, 2006), 71 FR 52185 (order approving the Boston Equities Exchange as a facility of the Boston Stock Exchange) (''BeX Order''); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (order approving the Boston Options Facility as a facility of the Boston Stock Exchange) (''BOX Order''); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (order approving the New York Block Exchange as a facility of the New York Stock Exchange) (''NYSE Block Order'').

[34] *See* Section 16.1(e) of the LLC Agreement. *See also* Section 7.6 of the LLC Agreement.

[35] *See* Sections 8.1(m)(i) of the LLC Agreement.

[36] *See,* respectively, Sections 8.1(m)(ii) and 7.6 of the LLC Agreement.

[37] *See* Section 14.1(j) of the LLC Agreement.

[38] *See* Section 14.1(k) of the LLC Agreement.

[39] ''Non-Market Matters'' means matters relating solely to one or more of the following: Marketing, administrative matters, personnel matters, social or team-building events, meetings of Members, communication with Members, finance, location and timing of Board meetings, market research, real property, equipment, furnishings, personal property, intellectual property, insurance, contracts unrelated to the operation of the Options Facility and *de minimis* items. *See* Section 1.1 of the LLC Agreement.

[40] *See* Section 8.1(m)(iii) of the LLC Agreement.

[41] *See* Section 1.1 of the LLC Agreement (defining ''Regulatory Deficiency'').

[42] *See* Section 8.1(m)(iii) of the LLC Agreement.

[43] *See id.*

[44] *See* Section 16.1 of the LLC Agreement.

[45] *See* Section 16.1(a) of the LLC Agreement.

Furthermore, in its proposal, NYSE Amex represents that nothing contained in the LLC Agreement or the Members Agreement limits the ability of NYSE Amex, in its capacity as an SRO, (i) to take any action or to direct the taking of any action that it determines is necessary or appropriate for the performance or fulfillment of its obligations as an SRO or (ii) to direct that an action that it determines interferes with the performance or fulfillment of its obligations as an SRO not be taken. *See* Notice, supra *note* 3, 76 FR at 18610.

amendment or repeal is required, under Section 19 of the Act and the rules promulgated thereunder to be filed with, or filed with and approved by, the Commission before such amendment or repeal may be effective, then such amendment or repeal shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.[46]

The Commission believes that certain additional provisions in the LLC Agreement that make accommodation for NYSE Amex as the SRO for the Options Facility are consistent with the Act, because they enhance the ability of NYSE Amex to carry out its self-regulatory responsibilities with respect to the Options Facility. The LLC Agreement provides that, with written consent of NYSE Amex, the Board, by a Supermajority Vote,[47] may suspend or terminate a Member's voting privileges, including the ability to designate Board directors, if the Member materially violates any Regulatory Matters Provision[48] or any applicable law; such Member is subject to statutory disqualification;[49] or such action is necessary or appropriate in the public interest or for the protection of investors.[50] The Director designated by the Member subject to sanction will be excluded from any vote to suspend or terminate such Member's voting privileges.[51]

To reflect that the Options Facility is not solely a commercial enterprise, the LLC Agreement also stipulates that any individual designated to the Board must certify that he or she is not subject to a statutory disqualification within the meaning of Section 3(a)(39) of the Act.[52] Further, any director who becomes subject to any applicable statutory disqualification shall be deemed to have automatically resigned from the Board.[53]

B. Regulatory Jurisdiction Over the Company and Its Members

The Commission also believes that the terms of the LLC Agreement provide clarification of the Commission's and NYSE Amex's regulatory jurisdiction over the Company and its Members. The LLC Agreement provides that (i) the books, records, premises, officers, directors, agents and employees of the Company and (ii) to the extent related to the Company's business, the books, records, premises, officers, directors, agents and employees of each Member, shall be deemed the books, records, premises, officers, directors, agents, and employees of NYSE Amex for purposes of, and subject to oversight pursuant to, the Act.[54] The LLC Agreement also provides that the books and records of the Company will be subject at all times to inspection and copying by the Commission and NYSE Amex at no additional charge to the Commission or NYSE Amex.[55]

The LLC Agreement further provides that the Company, NYSE Euronext, NYSE Group, each Member and the officers, directors, agents and employees of the Company, NYSE Euronext, NYSE Group and each Member irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and NYSE Amex (in its capacity as SRO) for purposes of any suit, action, or proceeding pursuant to U.S. federal securities laws and the rules and regulations thereunder, arising out of, or relating to, activities of the Company and waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action, or proceeding, any claims that they are not personally subject to the jurisdiction of the Commission; that the suit, action, or proceeding is an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that the subject matter may not be enforced in or by such courts or agency.[56] Moreover, the Company, NYSE Euronext, NYSE Group and each Member must take such action as is necessary to ensure that the officers, directors, agents, and employees of the Company, NYSE Euronext, NYSE Group and each Member who are involved in the activities of the Company or the Options Facility consent in writing to the application to them of specified provisions in the LLC Agreement with respect to their activities relating to the Company or the Options Facility.[57]

The Commission believes that these provisions are consistent with the Act because they are reasonably designed to facilitate the Commission's and NYSE Amex's regulatory jurisdiction over the Company and the Options Facility. These provisions clarify the Commission's authority under the Act to inspect the Company's books and records by deeming them to be the books and records of a national securities exchange. Further, these provisions clarify that the Commission may exercise its authority under Section 19(h)(4) of the Act[58] with respect to the officers and directors of the Company and its Members, because such officers and directors are deemed to be officers and directors of NYSE Amex. Finally, the LLC Agreement clarifies that the books and records of the Company and, to the extent that they are related to the Company's business, the books and records of each Member, are subject to the Commission's examination authority under Section 17(b)(1) of the Act.[59]

Even in the absence of these provisions, Section 20(a) of the Act[60] provides that any person with a controlling interest in the Company will be jointly and severally liable with and to the same extent that the Company is

[46] *See* Section 16.10 of the LLC Agreement and Section 5.10 of the Members Agreement.

[47] ''Supermajority Vote'' means, with respect to matters submitted to the Board at a validly called and validly noticed meeting, (x) for so long as NYSE Amex's Common Interest Percentage equals or exceeds fifteen percent (15%), (A) the affirmative vote of more than fifty percent (50%) of the Directors designated by NYSE Amex pursuant to Section 8.1(d)(i) entitled to vote thereon and present in person or by proxy and (B) the affirmative vote of more than fifty percent (50%) of those Directors designated by Founding Firms pursuant to Section 8.1(d)(ii) entitled to vote thereon and present in person or by proxy, and (y) for so long as NYSE Amex's Common Interest Percentage is less than fifteen percent (15%), the affirmative vote of more than fifty percent (50%) of all Directors entitled to vote thereon and present in person or by proxy (which excess of fifty percent (50%) must include more than two-thirds (⅔) of those Directors designated by Founding Firms and NYSE Amex in the aggregate entitled to vote thereon and present in person or by proxy). *See* Section 1.1 of the LLC Agreement.

[48] *See* Section 1.1 of the LLC Agreement (defining ''Regulatory Matters Provision'').

[49] *See* Section 3(a)(39) of the Act, 15 U.S.C. 78c(a)(39) (defining ''statutory disqualification'').

[50] *See* Section 7.6 of the LLC Agreement.

[51] *See id.*

[52] *See* Section 8.1(h) of the LLC Agreement.

[53] *See* Section 8.1(e)(iii) of the LLC Agreement. Pursuant to Section 8.1(e)(ii), the Board, by a Supermajority Vote (excluding the vote of the Directors designated by the Member subject to sanction), may suspend or terminate a Director's service in the event such director has materially violated any Regulatory Matters Provision or any applicable law, or such action is necessary or appropriate in the public interest or for the protection of investors.

[54] *See* Section 13.2(c) of the LLC Agreement.

[55] *See id.*

[56] *See* Section 16.1(d) of the LLC Agreement.

[57] *See* Section 16.1(f) of the LLC Agreement. Specifically, the persons noted above will have to consent to the applicability of Section 13.2(c), Section 16.1(d), Section 16.1(e), Section 8.1(m), Section 14.1(i) and Section 14.1(j) of the LLC Agreement, as applicable, with respect to their activities relating to the Company or the Options Facility. *See* Amendment No. 1, which deleted from Section 16.1(f) a reference to the final sentence of Section 8.1(d)(iv).

[58] 15 U.S.C. 78s(h)(4) (authorizing the Commission, by order, to remove from office or censure any officer or director of a national securities exchange if it finds, after notice and an opportunity for hearing, that such officer or director has: (1) Willfully violated any provision of the Act or the rules and regulations thereunder, or the rules of a national securities exchange; (2) willfully abused his or her authority; or (3) without reasonable justification or excuse, has failed to enforce compliance with any such provision by a member or person associated with a member of the national securities exchange).

[59] 15 U.S.C. 78q(b)(1).

[60] 15 U.S.C. 78t(a).

liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. Moreover, NYSE Amex is required to enforce compliance with these provisions, because they are ''rules of the exchange'' within the meaning of Section 3(a)(27) of the Act.[61] A failure on the part of NYSE Amex to enforce its rules could result in suspension or revocation of its registration, pursuant to Section 19(h)(1) of the Act.[62]

C. Changes in Control of the Company

The Commission believes that the provisions in the LLC Agreement and Members Agreement relating to direct and indirect changes in control of the Company, which will operate the Options Facility are consistent with the Act. The LLC Agreement provides that the aggregate Common Interest Percentage[63] held by NYSE Amex and its affiliates will not decline below 15% unless and until NYSE Amex had delivered to the Board a notice in writing of its intention to Transfer[64] any Common Interests that will result in such a decline.[65] Furthermore, before NYSE Amex could reduce its Common Interest Percentage to less than 15%, it must first file a proposed rule change with the Commission under Section 19(b) of the Act and obtain the Commission's approval of that proposal.[66] NYSE Amex's regulatory obligations for the Options Facility will endure as long as the Options Facility is a facility of NYSE Amex, regardless of the size of NYSE Amex's ownership interest in the Company.[67]

The LLC Agreement and Members Agreement also provide that no Member may resign or voluntarily withdraw as a Member or Transfer any Common Interests other than in accordance with the applicable provisions of the LLC Agreement and the Members Agreement.[68] NYSE Amex will have an initial right of first offer to purchase Class B Common Interests that a Founding Firm intends to transfer, at a price at least equal to their fair market value.[69] In the event NYSE Amex does not exercise its right of first offer, the transferring Founding Firm will have the right, subject to certain conditions, to sell its Class B Common Interests to NYSE Amex at a price equal to their fair market value or to sell its Common Interests to a third party.[70] In addition, on or after the tenth anniversary of the effective date of the LLC Agreement, NYSE Amex will have the right to buy some or all of the Class B Common Interests from the Members at a price equal to their *pro rata* portion fair market value.[71] In the event NYSE Amex intends to transfer any of its Class A Common Interests, the Founding Firms will have certain rights of first offer to purchase these Class A Common Interests.[72] In the event that NYSE Amex acquires any Class B Common Interests, such Class B Common Interests will automatically be converted into Class A Common Interests.[73] Similarly, in the event any Founding Firms acquire Class A Common Interests, such Class A Common Interests will be automatically converted into Class B Common Interests.[74] Also, subject to certain conditions, Members will be obligated to transfer their Common Interests where another Member, acting alone or together with other Members, intends to make a transfer of 75% of the then-outstanding Common Interests and the Board, by Supermajority Vote,[75] approves the sale of the Company to a person or entity who is not an affiliate of the Company.

A person or entity may become a Member by acquiring any Interest.[76] Any new Member of the Company will be required to become a party to the LLC Agreement.[77]

The LLC Agreement also provides that no Person[78] that is not a Member either alone or together with its Affiliates,[79] may directly own (or vote) Common Interests in the Company representing more than the 19.9% of the then issued and outstanding Common Interests (''19.9% Maximum Percentage)[80] or any successive 5% ownership threshold (''Concentration Limitation'').[81] The Concentration Limitation, however, will not apply to NYSE Amex alone or together with its Affiliates.[82] Further, the LLC Agreement permits the Concentration Limitation to be waived if

[61] 15 U.S.C. 78c(a)(27).

[62] 15 U.S.C. 78s(h)(1).

[63] ''Common Interest Percentage'' means (i) with respect to NYSE Amex or a Transferee of Class A Common Interests, the product of (w) the Aggregate Class A Economic Allocation multiplied by (x) a fraction, (A) the numerator of which shall be the number of Class A Common Interests then held by NYSE Amex or such Transferee and (B) the denominator of which shall be the number of Class A Common Interests then held NYSE Amex and all such Transferees, and (ii) with respect to any Founding Firm or a Transferee of Class B Common Interests, the product of (y) the Aggregate Class B Economic Allocation multiplied by (z) a fraction, (A) the numerator of which shall be the number of Class B Common Interests then held by such Founding Firm or such Transferee, including, for the purpose of determining any economic entitlement or entitlement to designate a Director, any Non-voting Common Interests and (B) the denominator of which shall be the number of Class B Common Interests then held by all Founding Firms and all such Transferees, including, for the purpose of determining any economic entitlement or entitlement to designate a Director, any Non-voting Common Interests. *See* Section 1.1 of the LLC Agreement. *See also* Section 1.1 of the LLC Agreement (defining Transferee). *See also* Section 10.2(b) of the LLC Agreement (defining Aggregate Class A and Aggregate Class B Economic Allocation).

[64] *See* Section 1.1 of the LLC Agreement (defining ''Transfer'').

[65] *See* Section 11.8(c) of the LLC Agreement.

[66] *See id.*

[67] *See* Securities Exchange Act Release Nos. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (order approving the transfer of the Boston Stock Exchange's ownership interest in the Boston Options Facility Group, the operator of the BOX facility, to MX US 2, Inc., a wholly owned subsidiary of the Montréal Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving the establishment of Archipelago Exchange as a facility of the Pacific Exchange where Pacific Exchange's ownership interest in Archipelago Exchange, L.L.C. (''Arca L.L.C.''), the operator of Archipelago Exchange, consisted solely of a 10% interest in Archipelago Holdings, LLC, the parent company of Arca L.L.C.); 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999) (order approving electronic system operated as a facility of Philadelphia Stock Exchange (''Phlx''), which had no ownership interest in the operation of the system); and 54538 (September 29, 2006), 71 FR 59184 (October 6, 2006) (order approving Phlx's New Equity Trading system and operation of optional outbound router as a facility of Phlx, which had no ownership interest in the third-party operator).

[68] *See* Sections 11.1 and 11.2 of the LLC Agreement and Article III of the Members Agreement.

[69] *See* Section 3.2(b)(ii) of the Members Agreement.

[70] *See* Section 3.2(c) of the Members Agreement.

[71] *See* Section 3.4 of the Members Agreement.

[72] *See* Section 3.3(a) of the Members Agreement.

[73] *See* Section 11.2(c) of the LLC Agreement. *See also* Section 3.3(e) of the Members Agreement.

[74] *See id.*

[75] *See* Section 11.3(a) of the LLC Agreement.

[76] *See* Sections 10.4 and 11.1 of the LLC Agreement.

[77] *See id.*

[78] ''Person'' means an individual, partnership, limited liability company, trust, estate, association, joint stock company, unincorporated organization, governmental or regulatory body or other entity. *See* Section 1.1 of the LLC Agreement.

[79] ''Affiliate'' means, with respect to any Person, and other Person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Person. The term ''control,'' as used in this definition of ''Affiliate'' means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, through the right or power to appoint majority of the board of directors, by contract or otherwise, and ''controlled by'' and ''under common control'' have corresponding meanings. *See* Section 1.1 of the LLC Agreement.

[80] *See* Section 4.9(b) of the LLC Agreement.

[81] *See* Section 11.8(b)(i) of the LLC Agreement. *See also* Section 4.9(a). *See* Amendment No. 1, which confirmed that Section 4.9 of the LLC Agreement would prohibit a NYSE Amex member that is an affiliate of NYSE Amex to own or vote Common Interests in excess of 19.9% of the then issued and outstanding Common Interests, unless it has received Commission approval to do so pursuant to the rule filing process under Section 19(b) of the Act.

[82] *See* Section 11.8(b)(ii) of the LLC Agreement.

written notice of the intention to exceed the Concentration Limitation is delivered to the Board; prior to the acquisition of any Common Interests that will exceed the Concentration Limitation, the Board determines not to oppose the acquisition; and the notice has been filed as a proposed rule change with, and approved, by the Commission under Section 19(b) of the Act and shall have become effective thereunder.[83] Nevertheless, the Board shall oppose the ownership of Common Interests if: such ownership will impair the ability of the Company and the Board to carry out their functions and responsibilities, including but not limited to, under the Act; such ownership will impair the ability of the SEC to enforce the Act; if the acquiring Person or its Affiliates are subject to any statutory disqualification within the meaning of Section 3(a)(39) of the Act; or if such ownership would result in the Person, alone or together with its Affiliates, having an ownership of more than 20% of the aggregate Common Interests and such Person or one of its Affiliates is a member or member organization of NYSE Amex.[84]

Moreover, the LLC Agreement provides that, if any Person, alone or together with any Affiliate, acquires a direct or indirect ownership of 25% or more of the total voting power of a Member (such person, a ''Controlling Person,'' and such interest a ''Controlling Interest'' [85]), and the Member, alone or together with any Affiliate, holds an ownership interest in the Company equal to or greater than 20% of the aggregate Common Interests, then such Controlling Person must become a party to the LLC Agreement and agree to abide by all provisions relating to regulatory matters.[86] The LLC Agreement also provides that NYSE Amex must file with the Commission, pursuant to Section 19(b) of the Act, any amendment to the LLC Agreement executed to comply with the provisions of the LLC Agreement relating to indirect ownership of the Company.[87] The non-economic rights and privileges, including all voting rights, of the Member in which such Controlling Interest is acquired will be suspended until the proposed rule change has become effective under the Act or until the Controlling Person ceases to hold a Controlling Interest in such Member.[88]

A proposed rule change filed with the Commission in any of the circumstances noted above will afford the Commission an opportunity to ensure that a change to the LLC Agreement or a change in the ownership of the Company will be consistent with the Act, including whether the Commission and NYSE Amex will retain sufficient regulatory jurisdiction over the proposed indirect controlling party. The Commission understands that the LLC Agreement will apply to any ultimate parent of the Company, no matter how many levels of ownership are involved, provided that a Controlling Interest exists between each link of the ownership chain.

Finally, the LLC Agreement requires the Company to provide the Commission with written notice ten days prior to the closing date of any acquisition of an Interest by a person that results in a Member's percentage ownership interest in the Company, alone or together with any Affiliate, meeting or crossing the 5%, 10%, or 15% thresholds.[89] This notice requirement is analogous to a requirement in Form 1,[90] the application and amendments to the application for registration as a national securities exchange. Exhibit K of Form 1 requires any exchange that is a corporation or partnership to list any persons that have an ownership interest of 5% or more in the exchange.[91] Additionally, Rule 6a–2(a)(2) under the Act [92] requires an exchange to update its Form 1 within ten days after any action that renders inaccurate the information previously filed in Exhibit K.

Exhibit K imposes no obligation on an exchange to report parties whose ownership interest in the exchange is less than 5%. Similarly, Section 11.8(a) of the LLC Agreement requires the Company to notify the Commission of the acquisition of an Interest when that Interest reaches 5% or more. The Commission does not believe that a change to the LLC Agreement that reflects the acquisition of less than a 5% interest in a facility of a national securities exchange (or an increase that does not cross any of the additional thresholds) is a ''rule of the exchange'' that must be filed pursuant to Section 19(b) of the Act.

D. Ownership and Voting Restrictions on Members of the Company

Section 4.9(a) of the LLC Agreement prohibits any Member (other than NYSE Amex alone, or subject to receipt of Commission approval pursuant to the rule filing process under Section 19(b) of the Act, together with its Permitted Transferees) [93] from owning or voting (alone or together with its Affiliates), directly or indirectly more than the 19.9% Maximum Percentage.[94] In the event a Member (alone or together with its Affiliates) holds Excess Interests, such Excess Interests shall automatically and immediately constitute non-voting Common Interests and the Member shall institute remedial measures to either divest itself of such Excess Interests or retain such Excess Interests as non-voting interests, in each case as permitted by Section 4.9(c) of the LLC Agreement.[95]

The Commission has previously expressed concern regarding the potential for unfair competition and conflicts of interest where a member of an exchange owns more than 20% of that exchange or a facility thereof.[96] Although it is common for a member to have an ownership interest in an exchange or a facility of an exchange, such member's interest could become so large as to raise questions whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member. A member that has a controlling interest in the exchange or a facility might attempt to direct the exchange to refrain from diligently surveilling the member's conduct or from punishing any improper conduct. An exchange might also be reluctant to surveil and enforce its rules zealously against a member that the exchange relies on as its largest source of capital. The Company, which will operate the Options Facility, will be owned collectively by NYSE Amex and the seven Founding Firms, six of which currently are members, or affiliates of members, of NYSE Amex and a Member

[83] *See id.*

[84] *See* Section 11.8(b)(iii) of the LLC Agreement.

[85] *See* Section 1.1 of the LLC Agreement (defining ''Controlling Person'' and ''Controlling Interest'').

[86] *See* Sections 11.8(d)(i) and (ii) of the LLC Agreement.

[87] *See* Section 11.8(d)(iv) of the LLC Agreement.

[88] *See id.*

[89] *See* Section 11.8(a) of the LLC Agreement.

[90] 17 CFR 249.1 and 17 CFR 249.1a.

[91] This reporting requirement applies only to exchanges that have one or more owners, shareholders, or partners that are not also members of the exchange. *See* Form 1, Exhibit K. Exhibit K applies only to NYSE Amex itself, not to entities that operate facilities of the exchange.

[92] 17 CFR 240.6a–2(a)(2).

[93] *See* Section 11.4(a) of the LLC Agreement (defining ''Permitted Transferee'').

[94] *See* Section 4.9(a) of the LLC Agreement. Any amount in excess of the 19.9% Maximum Percentage are ''Excess Interests.''

[95] *See* Section 4.9(c) of the LLC Agreement. *See also* Section V.C. *infra* for a discussion of Section 11.8(b)(iii) of the LLC Agreement that prohibits the Board from approving ownership by a Member of more than 20% of the aggregate Common Interests and such Person or one of its Affiliates is a member or member organization of NYSE Amex.

[96] *See* NYSE Block Order, 74 FR at 5017–5018, n.65 and accompanying text. *See also* CBSX Order; ISE Stock Order; BeX Order; and BOX Order.

of the Company.[97] Initially, each of the Founding Firms will own less than 19.9% of the Company and pursuant to the LLC Agreement, and except as described above, will not be permitted to own or vote in excess of the 19.9% of the Maximum Percentage as long as they are a Member of the Company. Accordingly, the Commission believes that the ownership concentration and voting limitations in the LLC Agreement are designed to preserve the independence of NYSE Amex's self-regulatory functions and NYSE Amex's ability to fulfill its regulatory and oversight obligations.

E. The Incentive Plan

As noted above, NASDAQ did not object to the proposed rule change, but expressed the view that, by allowing NYSE Amex ''to make reasonable distinctions among market participants and to pre-select firms that will be rewarded for order flow,'' the Commission should provide comparable flexibility to fee or rebate-based plans of other exchanges that provide incentives to members to submit order flow. NASDAQ also expressed the view that the Incentive Plan is ''virtually indistinguishable in purpose and effect from other fee or rebate-based incentive plans operated by national securities exchanges,'' citing as an example NASDAQ's Investor Support Plan, and stating that the economic value to the Founding Firms is directly related to how much order flow they send to NYSE Amex.[98]

Any determination as to whether a particular plan or program provided by an exchange or to which an exchange is a party that has a component related to order flow, such as the Incentive Plan, constitutes a proposed rule change that is required to be filed with the Commission under Section 19(b) of the Act must be analyzed on a case-by-case basis and is dependent on the facts and circumstances of the particular plan's or program's features and its context.[99] Based on the facts and circumstances in this case, the Commission does not believe that the Incentive Plan constitutes a proposed rule change within the meaning of Section 19(b)(1) of the Act and Rule 19b–4 thereunder, and believes that it is distinguishable from the NASDAQ Investor Support Program.[100]

The Incentive Plan is one aspect of the equity investment and obligations of the Founding Firms as owners (Members) of the Company,[101] and reflects the commitment of each of the Founding Firms to maintain certain minimum levels of participation in the joint venture. A Founding Firm may meet or exceed its Individual Target, but may not realize an increase in its equity interest relative to the other Founding Firms depending on the extent to which the other firms meet or exceed their Individual Targets.[102] If each Founding Firm meets its Individual Target in any given year, there would be no change in its equity interest relative to any other Founding Firm. A Founding Firm cannot increase its equity interest relative to any other Founding Firm, no matter how much order flow it sends to the facility, unless one or more other Founding Firms fails to achieve its target for the year. Also, the Incentive Plan will not increase or decrease the aggregate equity interest of the Founding Firms as a group relative to NYSE Amex. The Commission therefore believes that the impact of the Incentive Plan is sufficiently attenuated from the submission of individual orders to the Options Facility by the Member that it is properly not viewed as an order flow or liquidity rebate that would constitute a proposed rule change under Section 19(b) of the Act. By comparison, the NASDAQ Investor Support Program provides a fee credit for each order in excess of a specified threshold to any member wishing to participate in the program.[103] The fee credits are directly linked to each incremental order provided and are guaranteed so long as the baseline threshold is met.[104]

For the reasons just discussed, the Commission believes that the Incentive Plan does not constitute a proposed rule change within the meaning of Section 19(b)(1) of the Act and Rule 19b–4 thereunder.

VI. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[105] that the proposed rule change (SR–NYSEAmex–2011–18), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[106]

Cathy H. Ahn,

Deputy Secretary.

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[97] *See* Amendment No. 1, which states as follows: Founding Firms Goldman Sachs and Citadel hold NYSE Amex Options Trading Permits (''ATPs'' and each entity that holds an ATP, an ''ATP Holder''). In addition, Goldman, Sachs & Co. is also an affiliate of ATP Holder Goldman Sachs Execution & Clearing LP. Founding Firm BAML is an affiliate of ATP Holders Merrill Lynch, Pierce, Fenner & Smith Inc. and Merrill Lynch Professional Clearing Corp. Founding Firm Barclays is an affiliate of ATP Holder Barclays Capital Inc. Founding Firm Citigroup is an affiliate of ATP Holders Citigroup Derivatives Markets, Inc. and Automated Trading Desk Financial Services LLC. Founding Firm UBS is an affiliate of ATP Holders UBS Financial Services Inc. and UBS Securities LLC. Founding Firm TD Ameritrade is neither an ATP Holder nor an affiliate of an ATP Holder.

[98] *See* NASDAQ Letter, *supra* note 4. *See* NASDAQ Rule 7014 for a description of NASDAQ's Investor Support Program.

[99] The Commission notes that NASDAQ in its comment letter also pointed to the issue that ''[t]he ownership of self regulatory organizations by their members can raise at least the appearance of a conflict of interest.'' In the past, and as discussed in Section V. D. above, the Commission has expressed concern regarding the potential for unfair competition and conflicts of interest where a member of an exchange owns more than a 20% interest in that exchange of a facility thereof. *See infra* note 96 and accompanying text. The Commission believes, as discussed more fully above, that the proposed structure is designed to mitigate those concerns and preserve the independence of NYSE Amex's self-regulatory obligations. *See infra* Section V. D.

[100] As noted above, the determination regarding whether a plan or program that is provided by an SRO, or to which an SRO is a party, and that has a component related to order flow is or is not a proposed rule change is based on the particular facts and circumstances of the arrangement. Consequently, the Commission recommends that an SRO consult with Commission staff as to its determination as to whether such a plan or program (or any changes to such plan or program) is a proposed rule change.

[101] The LLC Agreement establishes the rights and obligations of the Company's Members. Aside from making an initial capital contribution in exchange for equity interest, the Members, among other things, are subject to ongoing regulatory capital contributions, voluntary capital contributions, and to potential penalties for failure to make requested capital contributions. *See* Sections 4.3, 4.4, and 4.5 of the LLC Agreement.

[102] *See supra* note 16 and accompanying text for a description of what constitutes an Individual Target.

[103] For a detailed description of the Investor Support Program, *see* Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010) (SR–NASDAQ–2010–141) (notice of filing and immediate effectiveness). *See also* Securities Exchange Act Release Nos. 63414 (December 2, 2010), 75 FR 76505 (December 8, 2010) (SR–NASDAQ–2010–153) (notice of filing and immediate effectiveness); 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011) (SR–NASDAQ–2010–154) (notice of filing and immediate effectiveness); 63891 (February 11, 2011), 76 FR 9384 (February 17, 2011) (SR–NASDAQ–2011–022) (notice of filing and immediate effectiveness); and 64050 (March 8, 2011) (SR–NASDAQ–2011–034) (notice of filing and immediate effectiveness).

[104] *Id.*

[105] 15 U.S.C. 78s(b)(2).

[106] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64741; File No. SR–Phlx-2011–65]

[Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Regarding Opening Index Option Months and Series

June 24, 2011.

I. Introduction

On May 6, 2011, NASDAQ OMX PHLX LLC (''Phlx'' 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 regarding opening index option months and series. The proposed rule change was published for comment in the **Federal Register** on May 18, 2011.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The proposal seeks to harmonize the Exchange's index option and equity option listing rules that govern the opening for trading of series and expiration months for approved options classes. The Exchange proposes to eliminate prescriptive guidelines stating which expiration months may be listed and replace them with simplified rules stating that the Exchange shall open a minimum of one expiration month and series for each class of approved stock index options, and that the Exchange may open additional series as needed (subject to certain conditions). The proposed rules are substantially identical to the rules in place for the listing of expiration months and series in stock or exchange-traded-fund (''ETF'') options.[4]

III. Discussion

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.[5] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 previously approved language in exchange listing rules that provide an exchange will open at least one expiration month and one series for each class of equity and ETF options listed by the exchange.[7]

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Phlx–2011–65) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16418 Filed 6–29–11; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 64480 (May 12, 2011), 76 FR 28836 (''Notice'').

[4] *See* Phlx Rule 1012(a)(1)(A); *see also* Nasdaq Rules Chapter IV, Section 6(b) and (e).

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521.

(March 18, 2008) (SR–Nasdaq-2007–004), at 14538 (approving rules for the Nasdaq Options Market, including specifically Chapter IV, Section 6(b) and (e)).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64745; File No. SR–Phlx–2011–086]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule Regarding Co-Location Fees for Additional Power and Cable Options

June 24, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule regarding co-location fees for additional power and cable options. The text of the proposed rule change is available at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding co-location fees for additional power and cable options. The Exchange proposes to offer a new choice of a pair of power receptacles (60 amps 208 volts), which would provide enough power for a high density cabinet. The proposed fee for installation of the pair of the 60 amp 208 volt power receptacles is $3,000. There are ten other power choices already available and this new receptacle choice is being offered as more clients are requesting higher power density cabinets. Additionally, the Exchange proposes to offer a new choice of patch cable, twinaxial (otherwise known as ''Twinax'') cables, in lengths of one meter to five meters. The proposed fee for the Twinax cables is $34 + $10 per meter. The Exchange is making the Twinax cables available as a convenience to customers, and notes that use of Exchange-provided patch cords is completely voluntary, and that such patch cords may be freely obtained

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

from other vendors for use by customers in the datacenter.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange operates in a highly competitive market, in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for co-location services.

It should be noted, however, that the costs associated with operating a co-location facility, like the costs of operating the electronic trading facility with which the co-location facility is associated, are primarily fixed costs, and in the case of co-location are primarily the costs of renting or owning data center space and retaining a staff of technical personnel. Accordingly, the Exchange establishes a range of co-location fees with the goal of covering these fixed costs, covering less significant marginal costs, such as the cost of electricity, and providing the Exchange a profit to the extent the costs are covered. Because fixed costs must be allocated among all customers, the Exchange's fee schedule reflects an effort to assess a range of relatively low fees for specific aspects of co-location services, which, in the aggregate, will allow the Exchange to cover its costs and to the extent the costs are covered, allow the Exchange to earn a profit.

In the case of the proposed fees for a pair of the 60 amp power receptacles and the Twinax cables, the proposed fees cover the marginal costs of establishing and maintaining the electrical installation, the costs of obtaining the cable equipment from the Exchange's vendors, and allow the Exchange to earn a profit; to the extent the costs are covered. Accordingly, the Exchange believes that it is reasonable to use fees assessed on this basis as a means to recoup a share of fixed costs associated with the proposed power and cable options, provide a convenience for the customers and to the extent the costs are covered, provide a profit to the Exchange.

The Exchange also notes that the fees charged by the Exchange are generally lower or comparable to prices charged by other exchanges or unregulated vendors for similar services. For instance, NYSE Arca, Inc. charges for the power installation by including it in a higher install for the co-location cabinet.[5] With respect to the proposed fees for Twinax cables, the fees charged by the Exchange are generally lower or comparable to prices charged by unregulated vendors for similar products. See *http://www.google.com/products/catalog?hl=en&biw=1259&bih=813&q=Twinax+cable&um=1&ie=UTF-8&tbm=shop&cid=15023972358025904938&sa=X&ei=8tDfTaOwIcHagQeVu6DUCg&ved=0CDcQ8wIwAw#*.

Furthermore, because the proposed services are available to all members through optional co-location services, the Exchange's fees for proposed co-location services are reasonable and equitably allocated across the membership. All co-location customers are offered the same range of products and services and there is no differentiation among customers with regard to the fees charged for a particular product, service, or piece of equipment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and 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–Phlx–2011–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–86. 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

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] *See* Release No. 63275 (November 8, 2010) at page 4, 75 FR 70048 (November 16, 2010)(SR–NYSEArca–2010–100).

[6] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–86, and should be submitted on or before July 21, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16433 Filed 6–29–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64746; File No. SR–NYSEAmex–2011–45]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Operation of the Pilot Program That Allows Nasdaq Stock Market Securities To Be Traded on the Exchange Pursuant to a Grant of Unlisted Trading Privileges

June 24, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 500 to extend the operation of the pilot program that allows Nasdaq Stock Market (''Nasdaq'') securities to be traded on the Exchange pursuant to a grant of unlisted trading privileges. The pilot is currently scheduled to expire on August 1, 2011; the Exchange proposes to extend it until the earlier of Securities and Exchange Commission (''Commission'') approval to make such pilot permanent or January 31, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[1] 15 U.S.C. 78a.

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex Equities Rules 500–525, as a pilot program, govern the trading of any Nasdaq-listed security on the Exchange pursuant to unlisted trading privileges (''UTP Pilot Program'').[3] The Exchange hereby seeks to extend the operation of the UTP Pilot Program, currently scheduled to expire on August 1, 2011, until the earlier of Commission approval to make such pilot permanent or January 31, 2012.

The UTP Pilot Program includes any security listed on Nasdaq that (i) is designated as an ''eligible security'' under the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended (''UTP Plan''),[4] and (ii) has been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Securities Exchange Act of 1934, as amended (the ''Act''),[5] (collectively, ''Nasdaq Securities'').[6]

The Exchange notes that its New Market Model Pilot (''NMM Pilot''), which, among other things, eliminated the function of specialists on the Exchange and created a new category of market participant, the Designated Market Maker (''DMM''),[7] is also scheduled to end on August 1, 2011.[8] The timing of the operation of the UTP Pilot Program was designed to correspond to that of the NMM Pilot. In approving the UTP Pilot Program, the Commission acknowledged that the rules relating to DMM benefits and duties in trading Nasdaq Securities on the Exchange pursuant to the UTP Pilot Program are consistent with the Act[9] and noted the similarity to the NMM Pilot, particularly with respect to DMM obligations and benefits.[10] Furthermore, the UTP Pilot Program rules pertaining to the assignment of securities to DMMs are substantially similar to the rules implemented through the NMM Pilot.[11] The Exchange has similarly filed to extend the operation of the NMM Pilot until the earlier of Commission approval to make the NMM Pilot permanent or January 31, 2012.[12]

Extension of the UTP Pilot Program in tandem with the NMM Pilot, both from August 1, 2011 until the earlier of Commission approval to make such pilots permanent or January 31, 2012,

[3] *See* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–NYSEAmex–2010–31). *See also* Securities Exchange Act Release No. 62857 (September 7, 2010), 75 FR 55837 (September 14, 2010) (SR–NYSEAmex–2010–89) and 63601 (December 22, 2010), 75 FR 82117 (December 29, 2010) (SR–NYSEAmex–2010–124).

[4] *See* Securities Exchange Act Release No. 58863 (October 27, 2008), 73 FR 65417 (November 3, 2008). The Exchange's predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. *See* Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 27, 2007) (S7–24–89). In March 2009, the Exchange changed its name to NYSE Amex LLC. *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

[5] 15 U.S.C. 78l.

[6] ''Nasdaq Securities'' is included within the definition of ''security'' as that term is used in the NYSE Amex Equities Rules. *See* NYSE Amex Equities Rule 3. In accordance with this definition, Nasdaq Securities are admitted to dealings on the Exchange on an ''issued,'' ''when issued,'' or ''when distributed'' basis. *See* NYSE Amex Equities Rule 501.

[7] *See* NYSE Amex Equities Rule 103.

[8] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR–NYSEAmex–2009–65). *See also* Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR–NYSEAmex–2009–83); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR–NYSEAmex–2010–28); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR–NYSEAmex–2010–86); and 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR–NYSEAmex–2010–123).

[9] 15 U.S.C. 78.

[10] *See supra* note 1, at 41271.

[11] *Id.*

[12] *See* SR–NYSEAmex–2010–122.

will provide for the uninterrupted trading of Nasdaq Securities on the Exchange on a UTP basis and thus continue to encourage the additional utilization of, and interaction with, the NYSE Amex Equities market, and provide market participants with improved price discovery, increased liquidity, more competitive quotes and greater price improvement for Nasdaq Securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that its proposal is consistent with (i) Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed 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; (ii) Section 11A(a)(1) of the Act,[15] in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets; and (iii) Section 12(f) of the Act,[16] which governs the trading of securities pursuant to UTP consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities. Under the UTP Pilot Program Nasdaq Securities trade on the Exchange pursuant to rules governing the trading of Exchange-Listed securities that previously have been approved by the Commission. NYSE Amex made certain minor modifications to the operation of these rules, and added certain new rules, to accommodate the trading of Nasdaq Securities on a UTP basis; the Commission also approved all of these modifications and additions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1).

[16] 15 U.S.C. 78l(f).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[19]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2011–45 on the subject line.

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii). Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–45. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–45 and should be submitted on or before July 21, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–16448 Filed 6–29–11; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of International Poultry Co., Inc. (n/k/a Carley Enterprises, Inc.), International Thoroughbred Breeders, Inc., Internet Marketing, Inc., Intrepid Technology & Resources, Inc., Ion Technology, Inc., Ionic Fuel Technology, Inc., Ipex, Inc. (n/k/a Salus Labs International, Inc.), Itemus, Inc., and ITIS Holdings, Inc. ; Order of Suspension of Trading

June 28, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of International Poultry Co., Inc. (n/k/a Carley Enterprises, Inc.) because it has not filed any periodic reports since the period ended December 4, 1994.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of International Thoroughbred Breeders, Inc. because it has not filed any periodic reports since the period ended March 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Internet Marketing, Inc. because it has not filed any periodic reports since the period ended December 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities Intrepid Technology & Resources, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ion Technology, Inc. because it has not filed any periodic reports since it filed a registration statement on September 10, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ionic Fuel Technology, Inc. because it has not filed any periodic reports since the period ended March 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ipex, Inc. (n/k/a Salus Labs International, Inc.) because it has not filed any periodic reports since the period ended March 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Itemus, Inc. because it has not filed any periodic reports since the period ended December 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ITIS Holdings, Inc. because it has not filed any periodic reports since the period ended March 31, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 28, 2011, through 11:59 p.m. EDT on July 12, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–16567 Filed 6–28–11; 11:15 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 29, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

Medicare Part D Subsidies Regulations—20 CFR 418.3625, 418.3645, 418.3665(a), and 418.3670—0960–0702. The Medicare Prescription Drug Improvement and Modernization Act (MMA) of 2003 established the Medicare Part D program for voluntary prescription drug coverage of premium, deductible, and co-payment costs for certain low-income individuals. The MMA also mandated the provision of subsidies for those individuals who qualify for the program and who meet eligibility criteria for help with premium, deductible, or co-payment costs. This law requires SSA to make eligibility determinations and to provide a process for appealing SSA's determinations. Regulation sections 418.3625(c), 418.3645, 418.3665(a), and 418.3670 contain public reporting requirements pertaining to administrative review hearings. Respondents are applicants for the Medicare Part D subsidies who request an administrative review hearing.

Type of Request: Extension of an existing OMB-approved information collection.

Section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
418.3625(c)	2,500	1	5	208

Section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
418.3645	10	1	20	3
418.3665(a)	1,000	1	5	83
418.3670	5	1	10	1
Total	3,515			295

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–16420 Filed 6–29–11; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *E-mail address: OPLM.RCO@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 29, 2011. Individuals can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

Medical Permit Parking Application—41 CFR 101–20.104–2—0960–0624

SSA employees and contractors with a qualifying medical condition who park at SSA-owned and SSA-leased facilities may receive a medical parking permit. SSA uses three forms as part of this program: (1) SSA–3192, Physician's Report (the applicant's physician completes this to verify the medical condition); (2) SSA–3193, Application and Statement (the person seeking the permit completes this when first applying for the medical parking space); and (3) SSA–3194, Renewal Certification (medical parking permit holders complete this to verify their continued need for the permit). The respondents are SSA employees and contractors seeking medical parking permits and their physicians. **Note:** Because SSA employees are Federal workers exempt from the requirements of the Paperwork Reduction Act, the burden below is only for SSA contractors and physicians (of both SSA employees and contractors).

Type of Request: Revision to an OMB-approved information collection.

Form No.	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–3192	75	1	90	113
SSA–3193	400	1	30	200
SSA–3194	500	1	5	42
Totals	975	—	—	355

II. SSA submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than August 1, 2011. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. Electronic Benefit Verification Information (BEVE)—20 CFR 401.40—0960–0595

The electronic proof of income (POI) verification Internet service, BEVE, provides Supplemental Security Income (SSI) recipients, Social Security beneficiaries, and Medicare beneficiaries the convenience of requesting a POI statement through the Internet. Beneficiaries and SSI recipients often require POI to obtain housing, food stamps, or other public services. After verifying the requester's identity, SSA uses the information from BEVE to provide the POI statement. SSA will enhance the current BEVE Internet application with the release of the new Internet Request a Benefit Verification Letter (iBEVE) application. The implementation of iBEVE is contingent upon our release of SSA's new Public Credentialing and Authentication Process and the *MySocialSecurity.gov* initiatives. We are revising the information collection to include the release of the iBEVE application. The respondents are Social Security beneficiaries, Medicare beneficiaries, and SSI recipients.

Type of Request: Revision of an OMB-approved information collection.

Internet application method	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
BEVE	870,958	1	5	72,580
iBEVE	1,007,744	1	4	67,183
Totals	1,878,702	—	—	139,763

2. Authorization to Obtain Earnings Data From the Social Security Administration—0960–0602

SSA collects information on Form SSA–581 to identify the earnings record, verify authorized access to the earnings record, and produce an itemized statement for release to the proper party. The respondents are various private or public organizations, or agencies needing detailed earnings information.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 32,000.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 1,067 hours.

3. Teacher Questionnaire and Request for Administrative Information—20 CFR 416.1103(f)—0960–0646

When determining the effects of a child's impairment(s), SSA obtains information about the child's functioning from teachers, parents, and others who observe the child on a daily basis. SSA obtains results of formal testing, teacher reports, therapy progress notes, individualized education programs, and other records of a child's educational aptitude and achievement using Forms SSA–5665 and SSA–5666. The respondents are parents, teachers, and other education personnel.

Type of Request: Revision of an OMB-approved information collection.

Form No.	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
SSA–5665–BK (electronic)	388,581	1	40	259,054
SSA–5665–BK (paper)	11,419	1	40	7,613
SSA–5666	397,000	1	30	198,500
Totals	797,000	.....	.....	465,167

Note: This is a correction notice. On April 6, 2011, at 76 FR 19175, SSA published a notice for this collection in which we inadvertently omitted the burden hours for both the electronic and paper version of Form SSA–5665–BK.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–16421 Filed 6–29–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7512]

60-Day Notice of Proposed Information Collections: Ten Information Collections

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collections described below. The purpose of this notice is to allow 60 days for public comments in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data
- *OMB Control Number:* 1405–0003
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* DSP–5
- *Respondents:* Business and Nonprofit Organizations
- *Estimated Number of Respondents:* 2,500
- *Estimated Number of Responses:* 56,000
- *Average Hours per Response:* 1 hour
- *Total Estimated Burden:* 56,000 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Required to Obtain Benefits

- *Title of Information Collection:* Application/License for Temporary Import of Unclassified Defense Articles
- *OMB Control Number:* 1405–0013
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* DSP–61
- *Respondents:* Business and Nonprofit Organizations
- *Estimated Number of Respondents:* 240
- *Estimated Number of Responses:* 1,500
- *Average Hours per Response:* 30 minutes
- *Total Estimated Burden:* 750 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Required to Obtain Benefits

- *Title of Information Collection:* Application/License for Temporary Export of Unclassified Defense Articles
- *OMB Control Number:* 1405–0023
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* DSP–73
- *Respondents:* Business and Nonprofit Organizations
- *Estimated Number of Respondents:* 510
- *Estimated Number of Responses:* 5,000
- *Average Hours per Response:* 1 hour
- *Total Estimated Burden:* 5,000 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Required to Obtain Benefits

- *Title of Information Collection:* Non-Transfer and Use Certificate
- *OMB Control Number:* 1405–0021
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* DSP–83
- *Respondents:* Business and Nonprofit Organizations
- *Estimated Number of Respondents:* 2,600
- *Estimated Number of Responses:* 9,400
- *Average Hours per Response:* 1 hour
- *Total Estimated Burden:* 9,400 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Required to Obtain Benefits

- *Title of Information Collection:* Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data
- *OMB Control Number:* 1405–0022
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* DSP–85
- *Respondents:* Business and Nonprofit Organizations
- *Estimated Number of Respondents:* 35
- *Estimated Number of Responses:* 300
- *Average Hours per Response:* 30 minutes
- *Total Estimated Burden:* 150 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Required to Obtain Benefits

- *Title of Information Collection:* Authority to Export Defense Articles and Services Sold under the Foreign Military Sales (FMS) Program
- *OMB Control Number:* 1405–0051
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* DSP–94
- *Respondents:* Business and Nonprofit Organizations
- *Estimated Number of Respondents:* 250
- *Estimated Number of Responses:* 2,500
- *Average Hours per Response:* 30 minutes
- *Total Estimated Burden:* 1,250 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Required to Obtain Benefits

- *Title of Information Collection:* Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data
- *OMB Control Number:* 1405–0092
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Numbers:* DSP–6, DSP–62, DSP–74, DSP–84, DSP–119
- *Respondents:* Business and Nonprofit Organizations
- *Estimated Number of Respondents:* 700
- *Estimated Number of Responses:* 7,500
- *Average Hours per Response:* 30 minutes
- *Total Estimated Burden:* 3,750 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Required to Obtain Benefits

- *Title of Information Collection:* Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements
- *OMB Control Number:* 1405–0093
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* None
- *Respondents:* Business and Nonprofit Organizations
- *Estimated Number of Respondents:* 650
- *Estimated Number of Responses:* 8,200
- *Average Hours per Response:* 2 hours
- *Total Estimated Burden:* 16,400 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Required to Obtain Benefits

- *Title of Information Collection:* Statement of Political Contributions, Fees, or Commissions in Connection with the Sale of Defense Articles or Services
- *OMB Control Number:* 1405–0025
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* None
- *Respondents:* Business and Nonprofit Organizations
- *Estimated Number of Respondents:* 800
- *Estimated Number of Responses:* 2,000
- *Average Hours per Response:* 1 hour
- *Total Estimated Burden:* 2,000 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Mandatory

- *Title of Information Collection:* Maintenance of Records by Registrant
- *OMB Control Number:* 1405–0111
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC
- *Form Number:* None
- *Respondents:* Business and Nonprofit Organizations
- *Estimated Number of Respondents:* 9,600
- *Estimated Number of Responses:* 9,600
- *Average Hours per Response:* 20 hours
- *Total Estimated Burden:* 192,000 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Mandatory

DATES: The Department will accept comments from the public up to 60 days from June 30, 2011.

ADDRESSES: Comments and questions should be directed to Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, who may be reached via the following methods:

- *E-mail: memosni@state.gov.*
- *Fax:* (202) 261–8199.

You must include the information collection title in the subject line of your submission.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collections listed in this notice, including requests for copies of the information collection and supporting documents, to Nicholas. Memos, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2804, or via e-mail at *memosni@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collections: The export, temporary import, and temporary export of defense articles, defense services and related technical data are licensed by the Directorate of Defense Trade Controls in accordance with the International Traffic in Arms Regulations (22 CFR parts 120–130) and Section 38 of the Arms Export Control Act. Persons desiring to engage in the export or temporary import of defense articles, defense services, and related technical data must submit an application or written request to conduct the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Additionally, registered manufacturers and exporters must maintain records of defense trade activities for five years.

Methodology: These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: Electronically, mail, personal delivery, and/or fax.

Dated: June 23, 2011.

Robert S. Kovac,

Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2011–16455 Filed 6–29–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 7511]

Culturally Significant Object Imported for Exhibition Determinations: ''King Amenemhet II''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the object to be included in the exhibition ''King Amenemhet II,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, New York, New York, from on or about July 15, 2011, until on or about July 15, 2021, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: June 22, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–16453 Filed 6–29–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2011–0001–N–9]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, (FRA), Department of Transportation (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 Requirement (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on April 20, 2011 (76 FR 22165).

DATES: Comments must be submitted on or before August 1, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE, 3rd Floor, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On April 20, 2011, FRA published a 60-day notice in the **Federal Register** soliciting comment on this ICR for which the agency was seeking OMB approval. 76 FR 22165. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirement (ICR) and the expected burden for the ICR being submitted for clearance by OMB as required by the PRA.

Title: Implementation for Capital Grants for Rail Line Relocation and Improvement Projects.

OMB Control Number: 2130–0578.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Abstract: Section 9002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005) amends chapter 201 of Title 49 of the United States Code by adding section 20154. Section 20154 authorizes—but does not appropriate—$350,000,000 per year for each of the

fiscal years (FY) 2006 through 2009 for the purpose of funding a grant program to provide financial assistance for local rail line relocation and improvement projects. Section 20154 directs the Secretary of Transportation (Secretary) to issue regulations implementing this grant program, and the Secretary has delegated this responsibility to FRA. On July 11, 2008, FRA published the final rule intended to carry out that statutory mandate.

Congress did not appropriate any funding for the Program for FY 2006 or FY 2007. In FY 2008, Congress appropriated $20,145,000 for the Program, reduced by rescission to $20,040,200, $14,905,000 of which was available for discretionary (competitive) grants. After evaluating and scoring 37 applications, FRA awarded $14,315,300 to seven different projects, leaving $589,700. In FY 2009, Congress appropriated $25,000,000 and directed that $17,100,000 be awarded to 23 specific projects, with $7,900,000 left over discretionary grants. Subsequently, in FY 2010, Congress appropriated $34,532,000 for the Program, and directed that $24,519,200 go to 27 specifically enumerated projects. FRA combined the remaining $10,012,800 with $589,700 that was not awarded from the FY 2008 competition, $2,000,000 that was awarded to one of the FY 2008 projects but which the project sponsors ultimately turned down, and the $7,900,000 in FY 2009 discretionary funding for a total of $20,502,500. These funds were the subject of a Notice of Funding Availability FRA published in the **Federal Register** on September 10, 2010. The application period closed on October 29, 2010, and FRA is currently evaluating applications submitted. The information collected will be used by FRA to determine whether or not it is appropriate to provide financial assistance to State and local governments looking to undertake either rail relocation or rail improvement projects.

Form Number(s): N/A

Annual Estimated Burden Hours: 26,083 hours

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: 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.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on June 24, 2011.

Arnel Rivera,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–16475 Filed 6–29–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0049]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 3, 2011, the American Short Line and Regional Railroad Association (ASLRRA), on behalf of fifteen of its member railroads has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal hours of service laws contained at 49 U.S.C. 21103(a)(4). FRA assigned the petition Docket Number FRA–2011–0049.

In their petition, ASLRRA, on behalf of fifteen of its member railroads, seeks to allow train employees working a 5 day a week regular schedule the identical relief granted in FRA's March 5, 2010, decision in Docket Number 2009–0078.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 15, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on June 23, 2011.

Robert C. Lauby,

Deputy Associate Administrator, for Regulatory & Legislative Operations.

[FR Doc. 2011–16407 Filed 6–29–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0038]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated May 3, 2011, Penn Valley Railroad LLC, has petitioned the Federal Railroad

Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Parts 215 and 223. FRA assigned the petition Docket Number FRA–2011–0038.

The Penn Valley Railroad LLC seeks a waiver of compliance from certain provisions of the Railroad Freight Car Safety Standards, 49 CFR 215.303, which requires stenciling; and Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all windows.

This request is for a caboose, Car Number PRR 478044 (built in April, 1951). The Penn Valley Railroad LLC states that this caboose is operated in irregular seasonal events for community-sponsored excursion service on the lines owned by the SEDA COG joint Rail Authority. Specifically, this caboose will be operated on the following SEDA COG Joint Rail Authority lines of NBER (64 miles), LVRR (34 miles), NSHR (38 miles), and SVRR (25 miles).

The Penn Valley Railroad LLC states that this caboose is completely restored with a sound car body, including ABDX airbrakes and roller bearings. The car had a thorough mechanical inspection and COT&S performed by the Strasburg Railroad in November, 2010. The car will not be interchanged with any other railroad, and will be operated at a speed limit of 30 miles per hour.

This caboose is painted and stenciled to reflect its historic appearance. Stenciling the car to meet Section 215.303 requirements would detract from the historical and educational impression this car is intended to preserve.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 15, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on June 23, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–16409 Filed 6–29–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0171]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated March 31, 2011, the California State Railroad Museum (CSRM) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215, 223 and 224. FRA assigned the petition Docket Number FRA–2010–0171.

Specifically, CSRM seeks a waiver of compliance from the Railroad Freight Car Safety Standards, 49 CFR 215.303, which requires stenciling on restricted freight cars for caboose (UP 25256) and box car (PFE 300001); Safety Glazing Standards, 49 CFR 223.13, which requires safety glazing for caboose (UP 25256); and Reflectorization of Rail Freight Rolling Stock, 49 CFR 224.3, which requires application of reflective materials for freight cars and locomotives for caboose (UP 25256), box car (PFE 300001) and two locomotives (Sacramento Northern No. 402 and Klamath Northern No. 206).

As information, CSRM also requests continued in service of the freight car caboose (UP 25256), box car (PFE 300001) and gondola car (SSRR 6102 and SSRR 6108). The ages of these cars are more than 50 years from their original construction date.

CSRM states that the caboose (UP 25256) was a gift to CSRM. CSRM desires to retain and restore the original paint job, lettering and markings. The caboose is an historical artifact. This car is used for primarily for static display and is seldom moved or switched over highway grade crossings. Likewise, it is seldom, if ever, used for revenue passenger service or night time operations. The required stenciling and application of reflective material would detract from its overall historical appearance. Concerning the glazing requirement, CSRM obtained a recent estimate for twenty-one compliant windows at $4,861.79. CSRM stated that it will incur additional costs associated with the purchase and installation of new window frames. Considering the caboose's use mentioned above, CSRM believes it would not be cost effective or necessary to upgrade the glazing fully to part 223 standards.

CSRM cited the same reason for seeking waivers under 49 CFR 215.303 and 49 CFR 224.1 for box car PFE 30001.

In support of its petition for waiver of 49 CFR 224.1073 and 224.107(b) for locomotives SN 402 and KN 206, CSRM states that it operates weekend passenger excursion and occasional freight and work train service on 3 miles of privately owned track with a 20 miles per hour (mph) speed restriction. Included in this operation are five public grade crossings (25 mph vehicle speed limit) through commercially developed areas. All grade crossings are protected with automatic warning devices with gates and flashing red lights. Operational hours are generally 11 a.m. to 5 p.m. during the months of April to September. There are some night time train operations during the months of October, November and December. These two locomotives are used primarily for yard switching, freight service, and rarely in passenger

(excursion) train service, but only in cases of steam locomotive failure.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 15, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on June 23, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–16414 Filed 6–29–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Numbers FRA–2003–14565 and FRA–2006–24216]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated October 12, 2010, the Sacramento Regional Transit District (SRTD) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 229.125 (Headlights and auxiliary lights) and 234.105(c)(3) (Activation failure flagging). FRA assigned the petitions Docket Numbers FRA–2003–14565 and FRA–2006–24216.

By letters dated October 12, 2010, and February 24, 2011, SRTD has petitioned FRA to extend the terms and conditions of the shared use waivers applicable to portions of its light rail Blue and Gold Lines that share corridors, including highway-rail grade crossings, with the Union Pacific Railroad. The relief granted in Docket Number FRA–2003–14565 was granted to SRTD in September of 2003, and by its terms expired in 2008. SRTD, however, failed to seek an extension of this relief until the filing of its October 12, 2010, petition.

For administrative purposes, FRA is closing Docket Number FRA–2003–14565 and consolidating both of SRTD's applicable requests for relief into Docket Number FRA–2006–24216. A copy of SRTD's October 12, 2010, petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

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

Communications received by August 1, 2011 will be considered by FRA. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on June 23, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–16413 Filed 6–29–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2006–24216]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated May 27, 2011, the Sacramento Regional Transit District (SRTD) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 221–Rear End Marking Devices; Part 223–Safety Glazing Standards-Locomotives, Passenger Cars, and Cabooses; Part 238–Passenger Equipment Safety Standards; and Part 239–Passenger Rail Emergency

Preparedness. FRA assigned the petition Docket Number FRA–2006–24216.

SRTD is building its Green Line to the River District Project, a 1.1-mile extension to the existing 37.5-mile rail fixed guideway transit system. This extension features an at grade rail-rail diamond limited connection to the Union Pacific Railroad (UPRR) at its Industrial Lead Track 150 at 7th Street in Sacramento, California. UPRR operates 1–2 freight trains per month across this Lead Track location. SRTD states in its petition that this is a very limited but fully interlocked connection and that relief from certain provisions of the CFR is justified. Lastly, SRTD is seeking this relief from the aforementioned CFR parts because it is under the safety oversight provided by the California Public Utilities Commission and sanctioned by the Federal Transit Administration. *See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000); see also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000).*

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

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

Communications received by August 15, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on June 23, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–16412 Filed 6–29–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0048]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 2, 2011, the Tri-County Metropolitan Transportation District of Oregon (TriMet) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 219 Control of Drug and Alcohol Use; Part 220 Subpart B—Radio and Wireless Communication Procedures; Part 228.11 Hours of Safety Recordkeeping Requirements; and Part 229.125 Headlights and Auxiliary Headlights Candela Requirements. FRA assigned the petition Docket Number FRA–2011–0048.

TriMet has petitioned FRA for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained in the CFR for the new 7.3-mile Orange Line extension of its rail fixed guide way transit system, which features limited connections to the general railroad system. These limited connections consist of a fully interlocked rail-rail at grade diamond crossing with Oregon Pacific Railroad and seven shared highway-rail grade crossings with the Union Pacific Railroad Company (two) and the Portland and Western Railroad (five). TriMet submits that the waivers are in the public interest and are consistent with railroad safety. Further, TriMet states that as a rail fixed guide way system under the oversight of the Oregon Department of Transportation, it will provide a level of safety equivalent to that provided by compliance with FRA regulations. *See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000); see also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000).*

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by August 15, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on June 23, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–16411 Filed 6–29–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2006–24647]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 11, 2011, the Hoosier Valley Railroad Museum, Inc. (HVRM) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 219. FRA assigned the petition Docket Number FRA–2006–24647.

HVRM requests that its existing waiver dated October 23, 2006, be extended. The existing waiver grants relief from the requirements of *Control of Alcohol and Drug Use,* 49 CFR Part 219 Subparts D through J, which require a railroad to conduct reasonable suspicion alcohol and/or drug testing, pre-employment drug testing, random alcohol and drug testing, and to have voluntary referral and co-worker report policies, and which also specify drug and alcohol testing procedures and recordkeeping requirements.

In addition, HVRM seeks a modification to the existing waiver's Condition Number 1 to extend their tourist train's operation 0.4 miles west from the LaCrosse wye at Milepost (MP) 223 to MP 223.4 (Wade) to the site of a former C&O cabin; and to extend their tourist train's operation 6.1 miles north from the LaCrosse wye at MP 223 to MP 6.1 (South Thomaston) to a pumpkin patch pasture-picnic area. HVRM tourist trains would occasionally operate the additional 0.4 miles to Wade and the additional 6.1 miles to South Thomaston

HVRM has less than 16 hours of service employees, and presently operates tourist trains on 10 miles of the 33 miles of track owned by the Incorporated Town of North Judson, Indiana between North Judson and LaCrosse, IN. The Chesapeake & Indiana Railroad (CKIN) conducts freight operations on 23 miles of this 33-mile rail line; and presently the only common track use is the wye track in LaCrosse. HVRM's tourist train operations are normally conducted on weekends and would not operate at the same time as CKIN freight trains. The new petition states that the modifications requested above would follow the existing protocols such as good communication between HVRM and CKIN prior to the occasional weekend visits to the sites of Wade at MP 223.4 and/or South Thomaston at MP 6.1. CKIN maintains the involved trackage to Class I track conditions and the operation of trains is under Yard Limit Rules with good visibility conditions. The new petition states that HVRM operates on specific dates and times and communicates with CKIN with its schedules to avoid conflicts.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

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

Communications received by August 15, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on June 23, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–16410 Filed 6–29–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

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 has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 30, 2011 [76 FR 17746].

DATES: Comments must be submitted on or before August 1, 2011.

FOR FURTHER INFORMATION CONTACT: Anetris Campbell at the National Highway Traffic Safety Administration, Office of Rulemaking (NVS–100), 202–366–0933, 1200 New Jersey Avenue, SE., Room W43–331, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Replaceable Light Source Information Collection, 49 CFR part 564.

OMB Number: 2127–0506.

Type of Request: Extension of a currently approved collection.

Affected Public: Business or other-for-profit organizations.

Abstract: 49 U.S.C. 30111, 30112, and 30117 of the National Traffic and Motor Vehicle Safety Act of 1996, authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS). The Secretary is authorized to issue, amend, and revoke such rules and regulations as she/he deems necessary.

Using this authority, the agency issued FMVSS no. 125, ''Warning Devices'', which applies to devices, without self contained energy sources, that are designed to be carried mandatory in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 pounds and voluntarily in other vehicles. These devices are used to warn approaching traffic of the presence of a stopped vehicle, except for devices designed to be permanently affixed to the vehicles

Estimated Total Annual Burden: 1 hour.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer. *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 collected; 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. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued: June 24, 2011.

Nathaniel Beuse,

Director, Office of Crash Avoidance Standards.

[FR Doc. 2011–16374 Filed 6–29–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Submission for OMB Review, Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Consumer Financial Protection Bureau Consumer Response Intake Fields.

SUMMARY: The Department of the Treasury, on behalf of itself and the Consumer Financial Protection Bureau (CFPB), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3507) on or after the date of publication of this notice. The CFPB is soliciting comments regarding forms for questions, complaints, and other information about consumer financial products and services.

DATES: Written comments are encouraged and must be received on or before August 1, 2011 to be assured of consideration.

ADDRESSES: Comments regarding this information collection should be addressed to the OMB Reviewer listed below and to the Treasury Department PRA Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by contacting Darian Dorsey, Consumer Financial Protection Bureau, Consumer Response, 1801 L Street, NW., Washington, DC 20036, by telephone at (202) 435–7070 or by e-mail at *darian.dorsey@treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Consumer Financial Protection Bureau Consumer Response Intake Fields.

OMB Control Number: New.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, Title X, established the CFPB. Among the CFPB's functions is to facilitate the centralized collection of, monitoring of, and response to complaints concerning consumer financial products and services. In order to collect data about the consumer financial market and facilitate the appropriate routing of, handling of, and response to complaints, questions, and other information concerning consumer financial products and services, the CFPB is developing online and paper intake methods which will have fields for persons to complete. The forms will help document information such as the type of contact; the substance of the complaint, question, or other information; contact information for the person making the contact and/or related persons; information about any subject incident and institution; and identifying information about the consumer or consumer's household.

Type Of Review: New collection.

Affected Public: Individuals and households with questions, complaints, and other information about consumer financial products and services.

Estimated Number of Respondents: Approximately 1–3 million per year. The CFPB's intake of complaints, questions, and other information relating to consumer financial products and services is a new collection that may centralize intake now performed by existing agencies. As such, the projections of the number of respondents have a high level of uncertainty.

Estimated Average Time per Respondent: 7 to 10 minutes per response. The time to complete the form will depend on the nature of the contact and the intake method. Simple feedback may take as little as a few minutes to complete while more complicated complaints could take longer to describe.

Estimated Total Annual Burden Hours: Approximately 387,500 burden hours.

Treasury Department PRA Clearance Officer: Robert Dahl, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Robert Dahl,

Treasury Department PRA Clearance Officer.

[FR Doc. 2011–16382 Filed 6–29–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Redomestication and Change in Business Address; National Farmers Union Property and Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 10 to the Treasury Department Circular 570, 2010 Revision, published July 1, 2010, at 75 FR 38192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given by the Treasury that, National Farmers Union Property and Casualty Company (NAIC # 16217) has re-domesticated from the state of Colorado to the state of Wisconsin, effective October 1, 2010. In addition, National Farmers Union Property and Casualty Company (NAIC #16217) has formally changed its ''Business Address'' to, ''One General Drive, Sun Prairie, Wisconsin 53596'', effective October 1, 2010. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2010 Revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: June 22, 2011.

Laura Carrico,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 2011–16205 Filed 6–29–11; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; Termination American Reliable Insurance Company

AGENCY: Fiscal Service, Department of the Treasury, Financial Management Service.

ACTION: Notice.

SUMMARY: This is Supplement No. 14 to the Treasury Department Circular 570; 2010 Revision, published July 1, 2010, at 75 FR 38192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to American Reliable Insurance Company (NAIC# 19615) under 31 U.S.C. 9305 to qualify as an acceptable surety on Federal bonds is terminated effective July 1, 2011. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2010 Revision, to reflect this change.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: June 22, 2011.

Laura Carrico,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 2011–16203 Filed 6–29–11; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Rough Diamonds Reporting Requirements

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's requirements to report information about the shipment of rough diamonds on an ongoing and annual basis.

DATES: Written comments must be received on or before August 29, 2011 to be assured of consideration.

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

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Fax: Attn: Request for Comments (Rough Diamonds Reporting) (202) 622–1657

Mail: Attn: Request for Comments (Rough Diamonds Reporting). Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. Comments received will be made available to the public via regulations.gov or upon request, without change and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Assistant Director, Policy, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: *Title:* Requirement to report information about the shipment of rough diamonds.

OMB Number: 1505–0198.

Abstract: The ultimate consignee of a rough diamond shipment, identified on Customs Form 7501 Entry Summary, is required to report specified information about the shipment of rough diamonds imported into the United States to the foreign exporting authority within 15 calendar days of the date that the shipment arrived at a U.S. port of entry pursuant to § 592.301(a)(3) of the Rough Diamonds Control Regulations, 31 CFR part 592 (the ''Regulations''). In addition, persons who import rough diamonds into the United States or export rough diamonds from the United States are required to file an annual report identifying total rough diamond import and/or export activity during the reporting year, as well as information on stockpiles of rough diamonds, if any, as of the end of the reporting year, pursuant to § 592.502 of the Regulations. This collection of information is needed to monitor the

integrity of international rough diamond shipments, and the information collected will be used to further the compliance, enforcement, and civil penalty programs of the Office of Foreign Assets Control of the Department of the Treasury.

Type of Review: Extension of a currently approved collection.

Affected Public: Business organizations and individuals engaged in the international diamond trade.

Estimated Number of Respondents: 250.

Estimated Annual Responses: 250.

Estimated Hours per Response: 0.54.

Estimated Total Annual Burden Hours: 1,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–16589 Filed 6–29–11; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of period during which individuals may apply to be appointed to certain voting memberships of the Practitioners Advisory Group; request for applications.

SUMMARY: Because the terms of certain voting members of the Practitioners Advisory Group are expiring as of October 2011, the United States Sentencing Commission hereby invites any individual who is eligible to be appointed to succeed such a voting member to apply. The voting memberships covered by this notice are two circuit memberships (for the Sixth Circuit and Seventh Circuit). Applications should be received by the Commission not later than August 29, 2011. Applications may be sent to the address listed below.

DATES: Applications for voting membership of the Practitioners Advisory Group should be received not later than August 29, 2011.

ADDRESSES: Send applications to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, *Attention:* Public Affairs.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Office of Legislative and Public Affairs, 202–502–4502.

SUPPLEMENTARY INFORMATION: The Practitioners Advisory Group of the United States Sentencing Commission is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the advisory group, the purpose of the advisory group is (1) To assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments; (3) to disseminate to defense attorneys, and to other professionals in the defense community, information regarding federal sentencing issues; and (4) to perform other related functions as the Commission requests. The advisory group consists of not more than 17 voting members, each of whom may serve not more than two consecutive three-year terms. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members.

To be eligible to serve as a voting member, an individual must be an attorney who (1) Devotes a substantial portion of his or her professional work to advocating the interests of privately-represented individuals, or of individuals represented by private practitioners through appointment under the Criminal Justice Act of 1964, within the federal criminal justice system; (2) has significant experience with federal sentencing or post-conviction issues related to criminal sentences; and (3) is in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. Additionally, to be eligible to serve as a circuit member, the individual's primary place of business or a substantial portion of his or her practice must be in the circuit concerned. Each voting member is appointed by the Commission.

The Commission invites any individual who is eligible to be appointed to a voting membership covered by this notice to apply.

Authority: 28 U.S.C. 994(a), (o), (p), § 995; USSC Rules of Practice and Procedure 5.2, 5.4.

Patti B. Saris,

Chair.

[FR Doc. 2011–16494 Filed 6–29–11; 8:45 am]

BILLING CODE 2211–40–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0014]

Proposed Information Collection (Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status) Activity: Comment Request

AGENCY: Department of Veterans Affairs, Veterans Benefits Administration.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This

notice solicits comments for information needed to determine to claimants training program attendance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 29, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0014'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status, VA Form 28–1905.

OMB Control Number: 2900–0014.

Type of Review: Extension of a currently approved collection.

Abstract: VA case managers use VA Form 28–1905 to identify program participants and provide specific guidelines on the planned program to facilities providing education, training, or other rehabilitation services. Facility officials certify that the claimant has enrolled in the planned program and submit the form to VA. VA uses the data collected to ensure that claimants do not receive benefits for periods for which they did not participate in any rehabilitation, special restorative or specialized vocational training programs.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 90,000.

Dated: June 27, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–16506 Filed 6–29–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Housing and Urban Development

24 CFR Parts 30 and 3400

SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 30 and 3400

[Docket No. FR–5271–F–03]

RIN 2502–A170

SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities

AGENCY: Office of the Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule sets forth the minimum standards for the state licensing and registration of residential mortgage loan originators, requirements for operating the Nationwide Mortgage Licensing System and Registry (NMLSR), and HUD's Federal oversight responsibilities pursuant to the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act or Act), to ensure proper monitoring and enforcement of states' compliance with statutory requirements. This 2008 law directs states to adopt loan originator licensing and registration requirements that meet the minimum standards specified in the SAFE Act.

In addition to codifying the minimum licensing standards and HUD's oversight responsibilities under the SAFE Act, this rule also clarifies or interprets certain statutory provisions that pertain to the scope of the SAFE Act's licensing requirements, and other requirements that pertain to the implementation, oversight, and enforcement responsibilities of the states.

DATES: Effective Date: August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Kevin L. Stevens, SAFE Act Office, Office of Housing; Room 3151; telephone number 202–708–6401 (this is not a toll-free number). For legal questions, contact Paul S. Ceja, Assistant General Counsel, or Joan L. Kayagil, Deputy Assistant General Counsel, SAFE–RESPA Division, Room 9262; telephone (202) 708–3137. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339. The address for the above listed persons is: Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Overview of the SAFE Act

The Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008) (HERA) is comprised of several significant housing laws that address the dramatic rise in mortgage delinquencies and foreclosures in the residential mortgage market. Included among these new laws is the SAFE Act. The SAFE Act establishes the minimum standards for state licensing of residential mortgage loan originators in order to increase uniformity, improve accountability of loan originators, combat fraud, and enhance consumer protections. The SAFE Act also requires states to participate in the NMLSR. As noted earlier, the SAFE Act encourages CSBS and AARMR to establish and maintain the NMLSR, and these organizations have established such a system, which is being used by states to license and register residential mortgage loan originators. The CSBS and AARMR system is available online,[1] and consumers will soon be able to access free information regarding the status and employment history of all state-licensed and federally loan originators, as well as any disciplinary and enforcement actions against them on an additional Web site.[2]

The SAFE Act, as enacted in 2008, charged HUD with oversight of states' compliance with the Act. The SAFE Act also charged HUD to establish and maintain a licensing and registration system for a state or territory that does not have a system in place for licensing loan originators that meets the requirements of the SAFE Act, or that fails to participate in the NMLSR. To operate in any state where HUD (or subsequently, the Bureau) has had to establish such a licensing and registration system (a Federal SAFE Act-compliant licensing system), a loan originator would have to comply with the requirements of the Federal SAFE Act-compliant licensing system for that state, as set forth in this final rule, as well as with any applicable state requirements. A license for a loan originator in a particular state issued under a Federal SAFE Act-compliant licensing system would be valid only for that state, even if a Federal SAFE Act-compliant licensing system must be established in several states. Additionally, if a determination is made that the NMLSR is failing to meet the requirements and purposes of the SAFE Act, HUD or the new Bureau must establish a nationwide licensing and registration system that meets the requirements of the Act.

In addition to developing the NMLSR, CSBS and AARMR developed model legislation[3] to aid states' compliance with the requirements of the SAFE Act. CSBS and AARMR requested that HUD review the model legislation, and that HUD advise of the model legislation's sufficiency in meeting the applicable minimum requirements of the SAFE Act. HUD reviewed the model legislation and advised the public that the model legislation offers an approach that meets or exceeds the minimum requirements of the SAFE Act and that states that adopt and implement a state licensing system that follows the provisions of the model legislation, whether by statute or regulation, will be presumed to have met the applicable minimum statutory requirements of the SAFE Act. In advising the public of its assessment of the model legislation, HUD also presented its views and interpretations of certain statutory provisions that required consideration and analysis in determining whether the model legislation meets the minimum requirements of the SAFE Act. These views and interpretations, referred to as HUD's Commentary (or Commentary),[4] were discussed in HUD's December 2009 proposed rule and are referenced in this final rule, with further elaboration and clarification as determined appropriate and in response to public comment.

The SAFE Act also requires the Office of the Comptroller of the Currency of the Department of the Treasury, the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision of the Department of the Treasury, the Farm Credit Administration (FCA), and the National Credit Union Administration (collectively, the Federal banking agencies), through the Federal Financial Institutions Examination Council (FFIEC) and the FCA, to develop, implement, and maintain a Federal registration system for employees of an institution regulated by one (or more) of the Federal banking agencies. The Federal banking agencies published their final rule to implement this registration system on July 28, 2010 (75 FR 44656; corrected and republished at 75 FR 51623, August 23, 2010). The SAFE Act specifically prohibits, with certain exceptions, an individual employed by an agency-regulated institution from engaging in the business of a residential mortgage loan originator without first obtaining a unique identifier and registering and annually maintaining registration as a

[1] *http://www.stateregulatoryregistry.org.*

[2] *http://www.nmlsconsumeraccess.org.*

[3] *http://www.hud.gov/safe.*

[4] HUD's Commentary can be found at *http://www.hud.gov/safe.* (See also HUD's **Federal Register** notice published on January 5, 2009, at 74 FR 312, advising of the availability of the model legislation and HUD's Commentary.)

registered mortgage loan originator. The Federal banking agencies published their final rule to implement this registration system on July 28, 2010 (75 FR 44656).

The SAFE Act was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, approved July 21, 2010) (Dodd-Frank Act), and the authorities and duties delegated to HUD by the SAFE Act will be transferred on July 21, 2011, to the new Consumer Financial Protection Bureau (the Bureau) established by the Dodd-Frank Act. Accordingly, references to HUD's authorities and duties throughout this final rule should be understood to refer to the authorities and responsibilities of the Bureau once the transfer occurs.

II. HUD's December 2009 Proposed Rule

On December 15, 2009, at 74 FR 66548, HUD published a proposed rule to clarify HUD's responsibilities under the SAFE Act and the minimum standards that the SAFE Act provides for states to meet in licensing loan originators. The proposed rule provided proposed clarifications and interpretations of certain statutory provisions that pertain to the scope of the SAFE Act licensing requirements, and other requirements that pertain to the implementation, oversight, and enforcement responsibilities of the states. In addition, the proposed rule provided the procedure that would be used to determine whether a state's licensing and registration system is SAFE Act compliant, the actions that HUD would take if it determined that a state has not established a SAFE Act-compliant licensing and registration system or that the NMLSR established by CSBS and AARMR is not SAFE Act compliant, the minimum requirements for the administration of the NMLSR, and enforcement authority to be utilized in the administration of a Federal licensing and registration system.

Through the proposed rule, HUD solicited public comment and suggestions on the proposed clarifications and regulations. On February 17, 2010, HUD published a notice [5] extending the public comment period until March 5, 2010, due to severe inclement weather conditions and closures of government and private organizations that may have prevented many members of the public from submitting comments.

A more detailed discussion of HUD's December 15, 2009, proposed rule can be found at 74 FR 66548 through 66562 of the December 15, 2009, edition of the **Federal Register**.

III. Overview of Final Rule—Key Clarifications

After reviewing issues raised by the commenters, which are discussed in Section IV of this preamble, and upon HUD's further consideration of issues related to this final rule, the following highlights key clarifications made by this final rule.

An individual required to be licensed under the SAFE Act is an individual who is engaged in the ''business of a loan originator''; that is, an individual who acts as a residential mortgage loan originator with respect to financing that is provided in a commercial context and with some degree of habitualness or repetition. The SAFE Act defines ''loan originator'' to mean ''an individual who takes a residential mortgage loan application; and offers or negotiates the terms of a residential mortgage loan for compensation or gain.'' Section 1504(a) of the SAFE Act requires licensing of those individuals who ''engage in the business'' of a loan originator. It is HUD's view that the SAFE Act's distinction between individuals who may meet the definition of ''loan originator'' (because of the activities they carry out) versus those individuals who ''engage in the business'' of a loan originator, means that not every individual who acts as a loan originator is necessarily subject to the SAFE Act's licensing and registration requirements. A basic definition of ''business'' is ''a commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain.'' (See Black's Law Dictionary 211 (8th ed. 2004).) It is HUD's view that to engage in the ''business'' of a loan originator and be subject to licensing under the SAFE Act, an individual must act or hold oneself out as acting as a loan originator with respect to mortgage loan origination activities that are carried out in a commercial context and with some degree of habitualness or repetition. To act in a commercial context, the individual who acts as a loan originator must do so for the purpose of obtaining profit for an entity or individual for which the individual acts (including, *e.g.*, a sole proprietorship or other entity that includes only the individual), rather than exclusively for public, charitable, or family purposes. The requisite habitualness or repetition of the mortgage loan origination activities may be met if either the individual who acts as a loan originator does so with a degree of habitualness or repetition, or if the source of the prospective financing provides such financing or performs other phases of originations of residential mortgage loans with a degree of habitualness or repetition. The absence of either a commercial context or a degree of habitualness or repetition means that the activity in which the individual is engaged does not constitute the ''business'' of a loan originator. This final rule codifies this distinction at § 3400.103(b)(1) and in an appendix and identifies instances where such absence indicates that an individual is not subject to SAFE Act licensing requirements.

An overarching purpose of the SAFE Act is to enhance consumer protection and support anti-fraud measures through establishment of state licensing systems that will ensure that loan originators have the necessary integrity and knowledge needed to perform their functions properly. To accomplish this purpose, the SAFE Act requires, among other things, that an applicant for a state license must provide information demonstrating that he or she will act honestly and fairly, complete courses, and pass a written test on Federal and state laws governing loan origination, ethics, consumer protection, fraud, fair lending, and standards in the nontraditional mortgage product marketplace.

Once licensed, a loan originator is required: (1) To continue to meet the minimum licensing standards; (2) to complete continuing education courses; and (3) to ensure the submission of periodic reports on the loans that he or she originates. The SAFE Act seeks to protect consumers from incompetency, fraud, and other abuses by ensuring that individuals who act as a loan originator with the purpose of obtaining profit for another entity and with respect to financing that is provided with some degree of habitualness have received training on and have demonstrated understanding of the applicable legal and ethical obligations. In contrast, consumers are unlikely to need the protections provided by loan originator licensing when an individual acts as a loan originator in a purely public or charitable context, without the purpose of obtaining profit, or who acts as a loan originator with respect to financing that is provided only once or very rarely.

The SAFE Act's purposes and licensing requirements apply to individuals who act as loan originators with respect to financing that is provided in a commercial context and with some degree of habitualness or repetition. This final rule includes discussion of a number of cases where the requisite commercial context or habitualness may be absent.

[5] 75 FR 7149.

The SAFE Act does not cover employees of government agencies or housing finance agencies who act as loan originators in accordance with their duties as employees of such agencies. Individuals who act as loan originators as employees of government agencies or of housing finance agencies, as defined [6] by this rule, are not subject to the licensing and registration requirements of the SAFE Act. Many government agencies and housing finance agencies provide direct housing assistance to low- and moderate-income people through residential mortgage loans with favorable terms. The entities that administer such government housing assistance include Federal, state, and local governments and housing finance agencies.

These government entities are generally granted authority and funding and are overseen by Congress, state legislatures, or municipal councils, and are presumed to carry out their activities for the benefit of the borrowers they serve. Their employees act as loan originators in accordance with strict agency policies and pursuant to highly prescriptive statutory and regulatory requirements that Federal, state, and local government public officials or elected representatives have determined are consistent with the public interest and provide adequate protections for borrowers. An individual's status as an employee of a government agency or housing finance agency ensures that the agency has the power to ensure that all aspects of the individual's conduct are consistent with the public purposes of the agency.

Another key distinction between loan originators covered by the SAFE Act and government employees administering government assistance is the pecuniary purpose for acting as a loan originator. Loan originators working in a commercial context undertake their activities in order to further the financial interests of the entity for which they work. In contrast, government agencies and housing finance agencies that carry out housing finance programs generally do so without the purpose of obtaining profit for any entity.

For these reasons, the requisite commercial context is lacking and, as a result, these individuals do not engage in the ''business'' of a loan originator. Consequently, the SAFE Act definition of a loan originator does not encompass governmental employees, and governmental employees are not required to obtain a state license and registration for any loan origination under a government housing assistance program. To ensure that all of the individual's actions in the course of acting as a loan originator are subject to the control of the agency or housing finance agency and are consistent with the agency's public or government mission, the individual must be an employee of the agency.

However, the fact that a prospective residential mortgage loan is to be insured or guaranteed under a government program does not mean that the individual acting as a loan originator with respect to the loan is not covered by the SAFE Act. For example, loan originators working for entities that originate residential mortgage loans under the mortgage insurance programs or loan guarantee programs of the Federal Housing Administration or the Department of Veterans Affairs are generally covered by the licensing and registration requirements of the SAFE Act. While these mortgage insurance and loan guarantee programs were created by Federal statute, and are governed by Federal regulations, the individuals who act as loan originators with respect to these government-insured loans generally do so in the commercial context, in part because they generally do so for the purpose of obtaining profit for the entity for which they work (including, *e.g.,* a sole proprietorship or other entity that includes only the individual). Since these loans are originated in a commercial context, the loan originators are generally subject to state licensing and registration requirements.

The SAFE Act does not cover employees of bona fide nonprofit organizations who act as loan originators with respect to residential mortgage loans outside a commercial context. Individuals who act as loan originators with respect to certain kinds of loans as employees of ''bona fide'' nonprofit organizations, as defined by this final rule, are not subject to the licensing and registration requirements of the SAFE Act. Under the circumstances defined in this final rule, such individuals are similar to government employees who act as loan originators pursuant to government-funded and regulated housing assistance programs, in that employees of a bona fide nonprofit organization who act as loan originators do so for public or charitable purposes, and not for the profit of another individual or entity. Employees of bona fide nonprofit organizations who act as loan originators do not act in a commercial context and consequently are not covered by the SAFE Act.

HUD recognizes that the mere fact of an organization's 501(c)(3) status is insufficient to conclude that its employees who act as loan originators necessarily do so for the benefit of the borrower and for public or charitable purposes, rather than for the profit of the organization or another entity or individual. Instead, the organization's activities, purpose, incentive structures, and loan products must be considered in order to determine that its employees who act as loan originators do so outside of a commercial context. Accordingly, this final rule provides that an organization is considered to be a ''bona fide'' nonprofit organization if the organization demonstrates to the satisfaction of the applicable regulator that the organization:

(1) Maintains tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986;

(2) Promotes affordable housing or provides homeownership education, or similar services;

(3) Conducts its activities in a manner that serves public or charitable purposes;

(4) Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients;

(5) Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(6) Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and

(7) Meets such other standards that the state determines appropriate.

With respect to whether particular mortgage terms are favorable to borrowers, the applicable regulator should examine the interest rate that the home loan would carry; the charges that are imposed on the borrower for origination, application, closing and other costs; whether the mortgage includes any predatory characteristics; the borrower's ability to repay the loan; and the term of the mortgage.

Finally, to ensure that all of the individual's actions in the course of acting as a loan originator are subject to the control of the bona fide nonprofit organization and are consistent with the organization's mission and practices,

[6] ''Housing finance agency'' means any authority that is chartered by a state to help meet the affordable housing needs of the residents of the state, is supervised directly or indirectly by the state government, is subject to audit and review by the state in which it operates, and whose activities make it eligible to be a member of the National Council of State Housing Agencies.

the individual must be an employee of the organization and must be acting within the scope of his or her employment on behalf of the organization. (Applicability of SAFE Act licensing requirements to volunteers is addressed below under the section of this preamble that addresses ''for compensation or gain.'')

An individual selling his or her own residence is not engaged in the business of loan originator. As the foregoing clarifications highlight, the SAFE Act requires licensing of individuals engaged in the ''business'' of a loan originator, and the statutory phrasing of who is required to be licensed reflects a habitualness and commercial context, both of which are likely absent in the case of a homeowner financing the sale of his or her own residence, whether such residence is the homeowner's principal residence or a vacation property. As HUD stated in the proposed rule, the frequency with which a particular seller provides financing to a buyer to facilitate the sale of the seller's own residence is so limited that Congress could not have intended to require such sellers to obtain loan originator licenses. This final rule confirms and more clearly applies this point by adding the concept of habitualness or repetition expressly into the language on ''engages in the business of a loan originator'' in § 3400.103(b) of the rule.

However, as discussed later in this preamble, a remaining issue with respect to seller financing is when the infrequency with which an owner finances the sale of properties other than his or her residence, along with other factors, indicate that an individual is not ''engaged in the business'' of a loan originator, either because the transactions' requisite commercial context or habitualness, or both, are absent. HUD received a large number of public comments suggesting that an individual should be able to provide financing pursuant to the sale of any property the individual owns, regardless of whether property served as the seller's residence. As further discussed below, some commenters stated that seller financing should be permitted for a limited number of such properties, while others stated that financing the sales of an unlimited number of such properties should be permitted, without subjecting the provider of the financing to SAFE Act licensing requirements.

HUD appreciates the concerns of the commenters and agrees that there may be cases where the seller of a property or properties in which the seller has never lived may provide financing for the sale without the seller's acts arising to ''engag[ing] in the business'' of a loan originator. While the fact that the seller has not lived in the properties makes it more likely that financing is provided in order to obtain a profit, and therefore makes it more likely that a commercial context is present, the infrequency with which a particular seller undertakes such actions, combined with the fact that it is the individual who is providing the financing (rather than a business entity that regularly provides financing), may mean that the requisite habitualness needed to constitute ''engage[ing] in the business'' of a loan originator is absent. However, HUD is unable to state how often an individual may undertake such transactions before the requisite habitualness is met. Despite the requests of many commenters, HUD has no authority under the SAFE Act to exempt from licensing requirements individuals who engage in the business of a loan originator. For example, HUD has no authority under the SAFE Act to establish a ''de minimis'' exemption that would shield individuals who do engage in the business of a loan originator from the SAFE Act's licensing requirements, but who do so infrequently. The SAFE Act expressly provides the Federal banking agencies with such authority but does not provide comparable authority to HUD. Accordingly, although HUD agrees that an individual must act as a loan originator with respect to financing that is provided or other origination activities that are performed with some degree of habitualness in order to engage in the ''business'' of a loan originator, HUD is unable to state how frequently an individual, including an individual providing financing for the sale of a property, must so act in order to meet the requisite degree of habitualness.

HUD lacks statutory authority to grant exemptions to licensing under the SAFE Act. As also discussed later in this preamble, many commenters sought exemption from licensing under the SAFE Act for various reasons. HUD has no authority under the SAFE Act to exempt individuals engaging in the business of a loan originator.

Removal of activities that are not specified in statute as activities exempt from licensing under the SAFE Act. HUD is removing from § 3400.103(e), which pertains to individuals who do not need to be licensed under the SAFE Act, references to individuals who offer and negotiate terms of a residential mortgage loan with or on behalf of a family member, an individual who only offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence, and a licensed attorney who only negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of a client. HUD's position remains that these activities do not constitute engaging in the business of a loan originator and are not subject to licensing under the SAFE Act. HUD believes that the inclusion of these activities in the regulation as activities not covered by the SAFE Act triggered the high volume of comments that addressed issues such as how many residences an owner may sell and finance before the owner may need to be licensed under the SAFE Act, and what HUD means by ''immediate family member.'' Accordingly, a discussion of these activities, which includes examples of activities that do not fall under SAFE Act coverage, as well as activities that serve as examples of activities that do fall under SAFE Act coverage, has been moved to an Appendix of this final rule. This approach is consistent with that of the Federal banking agencies in their SAFE Act final rule, which included an analogous appendix that address activities that do or do not subject an individual to SAFE Act requirements.

Activities, not the label of the transaction or professional title of an individual, determine SAFE Act coverage. As also discussed later in this preamble, many commenters submitted the titles of various professions and asked whether such professions had to be licensed under the SAFE Act. It is the activities that an individual undertakes, not the individual's title, that determines coverage under the SAFE Act. If one is engaged in the business of a loan originator, then regardless of what other title one may have, the individual is subject to licensing under the SAFE Act.

Deferral to the Bureau for a determination of coverage of individuals involved in material mortgage modifications. The final rule does not include licensing of those individuals engaged in material or significant modifications to residential mortgage loans or those individuals working as third-party loan modification specialists. Although HUD considered licensing of such individuals, and specifically solicited comment on coverage of loan modifications that result in material modifications to homeowners' mortgages, HUD, in this final rule, does not define ''loan originator'' or ''business of a mortgage loan originator'' to include individuals who engage in loan modifications or are third-party loan modification

specialists. HUD leaves to the Bureau the issue of whether such individuals should be licensed under the SAFE Act. HUD notes that the new Bureau has independent authority under the Dodd-Frank Act to regulate loan modification and loan servicing practices.

However, it is important to note that those individuals involved in refinance transactions are subject to licensing under the SAFE Act. A refinancing results in a new loan, not a modified loan.

Appendix of activities that constitute or do not constitute ''engag[ing] in the business of a loan originator.'' As noted earlier, HUD includes in this final rule an appendix that provides examples of activities that would subject an individual to licensing under the SAFE Act, or that do not fall under coverage of the SAFE Act.

Technical and additional clarifying changes. In addition to the clarifications highlighted above, this final rule also includes technical and minor clarifying changes to certain definitions and provisions. These changes are in response to ambiguities raised by commenters, and are further discussed below in section IV of this preamble. Among them are technical changes to the regulatory provisions clarifying ''takes an application,'' ''offers or negotiates,'' ''employee,'' ''state,'' the requirement to pass a test after a lapse of a loan originator license of five or more years, the requirement to authorize the NMLSR to obtain required information, and the full name of the accreditation program for state supervisory authorities. A definition is provided for the term ''origination of a residential mortgage loan,'' which is, in turn, included in the definition of ''loan processor or underwriter.''

Section 30.69 is also revised to clarify that HUD would not impose civil money penalties for violations of state law, in a state where HUD has established a system for the licensing and registration of loan originators.

IV. Discussion of Public Comments

A. The Comments, Generally

The public comment period on this proposed rule closed on March 5, 2010, and HUD received 5,132 public comments in response to the December 2009 proposed rule. Comments were submitted by individuals; state regulatory agencies; other units of state and local government; industry associations; mortgage-lending institutions; mortgage loan servicers; nonprofit housing counseling, lending, and community development organizations; broker-dealers that employ financial advisors; manufactured housing retailers, lenders, and community owners; and attorneys and law firms. The overwhelming majority of the comments were directed to various types of residential mortgage loan transactions and asked HUD to clarify whether the individuals involved in those transactions are required to be licensed under the SAFE Act. This Section IV of the preamble sets out significant comments raised by the public commenters and HUD's responses to these comments, and identifies where HUD has made technical changes to the regulations as set forth in the proposed rule.

B. Key Definitions: ''Taking an Application,'' ''Offers or Negotiates,'' ''Compensation or Gain,'' and ''Engaging in the Business of a Loan Originator''

Comment: More detailed or revised definitions are needed for key terms that determine whether an individual is covered. Several commenters requested that HUD elaborate on its definitions of ''takes an application,'' ''offers or negotiates,'' and ''for compensation or gain.'' Commenters stated that without further refinement, these terms, as presented in the proposed rule, capture or appear to capture: (1) Activities that are not loan origination activities, or (2) individuals who are not loan originators. A number of commenters asserted that the proposed definition changes the statutory definition of ''loan originator,'' which requires that an individual take a residential mortgage loan application *and* offer or negotiate the terms of a residential mortgage loan for compensation or gain, into an ''or'' definition, thus requiring satisfaction of only one of the two prongs noted above. Another commenter stated that HUD should not include the provision that an individual engages in the business of a loan originator by representing to the public that such an individual can or will perform the activities of a loan originator.

With respect to the term ''takes an application,'' a commenter stated that the definition of ''application'' needs to be more precise to clarify that taking an application does not encompass the mere physical handling or transmitting of a completed form to a lender. Another commenter stated that HUD should clarify that the ''and'' in the proposed definition of ''application'' is conjunctive; that is, an application consists of both the request for an offer of a loan and the information about a borrower that is customary or necessary. Another commenter stated that deciding whether to extend an offer of credit, or ''influencing'' the decision of another, is not part of the origination function and could be viewed as inappropriate for a loan originator. This commenter states that taking an application and collecting information from the applicant that will be used to determine whether or not to grant the mortgage loan should be the only stated factors in proposed § 3400.103(c)(1). Another commenter urged HUD to withdraw its interpretation of the term ''application'' set forth in the proposed rule, and instead retain the definition of ''application'' that is found in the Real Estate Settlement Procedures Act (RESPA), Regulation X (24 CFR 3500.2).

With respect to the term ''offers or negotiates,'' commenters identified activities that occur in the context of the manufactured housing retail industry or other contexts and asked HUD to clarify that they do not constitute offering or negotiating, such as: (a) The mere sharing of general information about a financing source; (b) acting as a conduit between the homebuyer and the financing source without engaging in specific discussion of financing options from a particular funding source; (c) discussing hypothetical financing options, *i.e.,* options not related to a specific financing source; (d) presenting a spectrum of options; (e) giving the homebuyer a list of available financing sources without recommending any of the sources; (f) discussing a buyer's ability to afford a home; (g) discussing various alternative financing options; (h) presenting or discussing generic facts sheet or generic rate sheets; and (i) closing personal property transactions. The commenters reasoned that these activities are not covered because under HUD's proposed first prong in the provision on ''offer[ing] or negotiate[ing],'' an individual can present loan terms to a borrower for acceptance only if the terms are capable of being accepted under contract law. The commenters stated that similarly, under HUD's proposed second prong in the provision on ''offer[ing] or negotiate[ing],'' an individual communicates with a borrower to reach a mutual understanding only if the activity amounts to achieving mutuality under contract law.

Several commenters believed that the proposed provisions clarifying the terms ''offer[ing] or negotiate[ing]'' left too much ambiguity or risked coverage of activities that the commenters believed should not be covered. Commenters specifically questioned HUD's proposed third prong, which provided that an individual offers or negotiates terms of a residential mortgage loan by referring the prospective borrower to a particular

lender or set of loan terms in accordance with a duty to or incentive from any person other than the prospective borrower. Some commenters worried that under this third proposed prong, licensing requirements could be triggered by a casual conversation in which an individual recommends a lender, by indicating the name of a lender on the individual's business card, or implying generically that a particular lender may be able to meet a prospective borrower's needs. Another commenter stated that HUD's third prong does not cover a manufactured home retailer who forwards an application to a limited number of lenders, and that the duty or incentive refers only to duties to or incentives from a financing source, and not to a commission that the individual may receive as a result of selling the home.

With respect to the term ''for compensation or gain,'' as in the case of the comments submitted on ''taking an application,'' and ''offers or negotiates,'' commenters generally did not offer a definition for this term but offered examples of activities that the commenters believe should fall outside of the scope of ''for compensation or gain.'' Some commenters stated that ''for compensation or gain'' requires a nexus between the compensation or gain and the ''offering or negotiating activity, or should include only a commission that is contingent on the closing of a loan or sale, and not salary. Commenters stated that the following should be clarified as not constituting activities that are undertaken ''for compensation or gain'' under the SAFE Act: (a) A salesperson's commission for the sale of a manufactured home to the extent that the commission is the same in a cash transaction and in a financed transaction; and (b) any benefit that is the same in a financed transaction as in a cash transaction. Other commenters recommended that the term ''for compensation or gain'' be defined to exclude an employee of a 501(c)(3) or government organization that will receive no gain or benefit from the transaction.

The majority of commenters who provided suggestions on how these terms should be revised or clarified did so in the context of various categories of professions that should be excluded from coverage under the SAFE Act.

HUD Response: The definitions of ''tak[ing] a residential mortgage loan application,'' ''offer[ing] or negotiate[ing] terms of a residential mortgage loan,'' and ''for compensation or gains'' largely determine whether or not a particular individual is subject to licensing requirements, and HUD specifically solicited comment on the definitions provided in the proposed rule.

Takes an application. HUD's proposed rule provided that ''application'' includes any request from a borrower, however communicated, for an offer (or in response to a solicitation of an offer) of residential mortgage loan terms, as well as the information from the borrower that is typically required in order to make such an offer. The proposed rule provided that HUD views the phrase ''tak[ing] an application'' to mean receipt of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower, whether the application is received directly or indirectly from the borrower. HUD stated that it generally would not be possible for an individual to offer or negotiate residential mortgage loan terms without first receiving the request from the borrower, as well as the information typically contained in a borrower's application. Accordingly, the provision retained in § 3400.103(c)(1) of this final rule, which provides that an individual takes an application, whether he or she receives it ''directly or indirectly'' from the borrower, means that an individual who offers or negotiates residential mortgage loan terms for compensation or gain cannot avoid licensing requirements merely by having another person physically receive the application from the prospective borrower and then pass the application to the individual.

HUD disagrees that this clarification converts the statutory two-pronged ''and'' definition into an ''or'' definition that is met by satisfying only one prong. (The commenter may be confusing the Model State Law with HUD's proposed rule.) Instead, the clarification merely prevents subversion of the SAFE Act's licensing regime through use of a ''straw man,'' and recognizes that it is the act of offering or negotiating residential mortgage loan terms for compensation or gain in conjunction with receipt of an application that subjects an individual to licensing requirements. An individual who merely takes an application, but never offers or negotiates loan terms, is not required to be subject to licensing by the SAFE Act. Similarly, a person who makes an offer of loan terms without ever receiving, directly or indirectly, an application from the borrower, is not required to be covered by the SAFE Act.

The proposed rule also provided that HUD interprets the term ''takes a residential mortgage loan application'' to exclude an individual whose only role with respect to the application is physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower. This interpretation is consistent with the definition of ''loan originator'' in section 1503(3)(A)(ii) of the SAFE Act, and with HUD's above discussion of ''takes an application.''

Organizational change. The corresponding provision, regarding ''administrative or clerical tasks,'' has been moved to § 3400.103(e)(4) in this final rule for organizational clarity. It is HUD's view that the provisions in the final rule clearly exclude these activities, and that changes requested by some commenters for further clarification are unnecessary.

HUD agrees with a commenter's observation that an application consists of both the request for an offer of loan terms and the information about the borrower, as more specifically provided in the definition. HUD's view is that this is made clear by the definition's use of the word ''and.'' HUD also agrees that a loan originator's duties generally do not include ''deciding'' whether to offer credit, and that use of the word ''influencing'' could be read to imply an activity that is generally not appropriate for a loan originator.

Rule clarification. To clarify that this was and is not HUD's intended meaning, § 3400.103(c)(1) is revised slightly to clarify that the application is received for the purpose of ''facilitating a decision'' whether to extend an offer.

Offers or negotiates. HUD advised in the proposed rule that it views the terms ''offers or negotiates'' broadly. HUD views these terms as encompassing interactions between an individual and a borrower with respect to prospective loan terms where the individual is likely to seek to further his or her own interests or those of a third party. Accordingly, the proposed rule, in § 3400.103(c)(2), stated that the terms include interactions that are typical between two parties in an arm's length relationship to facilitate the formation of a contract, such as presenting loan terms for acceptance by a prospective borrower and communicating with the borrower for the purpose of reaching an understanding about prospective loan terms. The proposed rule specifically clarified that the third prong of ''offers or negotiates'' encompasses actions by an individual that make a prospective borrower more likely to accept a particular set of loan terms or an offer from a particular lender, where the individual may be influenced by a duty to or incentive from any party other than the borrower. Such actions may be functionally equivalent to and have the same effect on the borrower's decision

as a direct offer or negotiation, but without the borrower's knowledge or understanding that other options may be available. HUD generally agrees with the commenters' observation that HUD's proposed first prong of the provision clarifying ''offers or negotiates,'' under which an individual presents, for acceptance by a borrower, residential mortgage loan terms, has similarities with an extension of an offer under contract law.

Rule clarification. However, to prevent any confusion that might arise as a result of this analogy, HUD is clarifying in this final rule that the offer need not be capable of acceptance at the time it is presented, as an offer typically would be under contract law.

As the Federal banking agencies clarified in their final rule, the loan terms presented may be conditional or subject to additional verification, and other steps may remain in completing the loan process. (See, *e.g.,* Appendix A to subpart F of Part 34—Examples of Mortgage Loan Originator Activities, paragraph (b), at 75 FR 44687–88.) In addition, the individual typically lacks authority to bind the entity that would provide the prospective loan, which is another distinction from an agent-principal relationship under contract law.

Rule clarification. To clarify these distinctions, this final rule provides at § 3400.103(c)(2)(i)(A) that under the first prong, an individual presents the loan terms for ''consideration'' rather than for ''acceptance'' by a borrower. To prevent any misunderstanding that the prong covers an individual who presents merely generic or illustrative loan terms for general consideration by the borrower, this final rule further clarifies that the individual must present ''particular'' residential mortgage loan terms. Through this change, HUD intends to cover the presentation of loan terms that are identified as being prospectively available from one or more lenders to similarly situated prospective borrowers.

Similarly, HUD generally agrees with the commenters' observation that the proposed second prong of the provision clarifying ''offers or negotiates,'' under which an individual communicates with a borrower for the purpose of reaching an understanding about prospective loan terms, is analogous to communications between parties to a prospective transaction that have the purpose of reaching ''mutuality,'' as under contract law.

Rule clarification. Accordingly, HUD is clarifying at § 3400.103(c)(2)(i)(B) that the purpose of such communications is ''mutual understanding.'' However, the individual need not have authority to alter the rate in the course of such communications, and this second prong can be satisfied by communicating with the purpose of reaching mutual understanding, even if such understanding is never in fact achieved.

With these clarifications, HUD agrees that in general, the following activities described by the commenter—(a) the mere sharing of general information about a financing source; (c) discussing hypothetical financing options, *i.e.,* options not related to a specific financing source; (e) giving the homebuyer a list of available financing sources without recommending any of the sources; (f) discussing a buyer's ability to afford a home; (h) presenting or discussing generic facts or generic rate sheets; and (i) closing personal property transactions—would not be covered under ''offers or negotiates.'' Whether the commenter's examples of the following activities—(b) acting as a conduit between the homebuyer and a financing source without engaging in specific discussion of financing options from a particular funding source; (d) presenting a spectrum of options; and (g) discussing of various alternative financing options—would be covered would require additional facts and analysis under the provisions, as explained above. For example, ''acting as a conduit between the homebuyer and a financing source'' could constitute a mere administrative task, if the activity consists of merely physically handling or faxing a document in accordance with the unsolicited request of the borrower or of a licensed loan originator, or it could constitute taking an application or offering or negotiating loan terms, depending on the facts and circumstances.

HUD disagrees with the commenters who characterized as inappropriate the proposed third prong, which provides that an individual offers or negotiates terms of a residential mortgage loan by referring the prospective borrower to a particular lender or set of loan terms in accordance with a duty to or incentive from any person other than the prospective borrower. HUD cautions that each of the prongs clarifying ''offers or negotiates'' must be read in conjunction with the statutory and regulatory provision that an individual must also ''take an application'' and that there must be a nexus between the two activities. An individual's generic referral to or recommendation of a particular lender, divorced from any receipt and consideration by the individual of the prospective borrower's application (*i.e.,* his or her request and information that is customary in a decision on whether to extend an offer of loan terms), would not likely trigger the third prong. Instead, it would be triggered by an individual's referral to a particular lender or set of loan terms in conjunction with the individual's receipt and consideration of the information received from the borrower.

Properly understood in this context, the third prong is simply a specific application of the first prong, under which an individual directly presents for the borrower's consideration particular loan terms that are identified as being available from one or more lenders to similarly situated borrowers. The third prong merely clarifies that, just as with ''taking an application,'' the individual cannot avoid applicability of the SAFE Act by bifurcating the function; *e.g.,* by directing the prospective borrower to another individual or entity that will reveal the details of the terms that the first individual has identified as prospectively available to similarly situated borrowers. However, the third prong is further qualified to provide that it applies only to an individual who performs the described function in accordance with a duty to or incentive from a person other than the prospective borrower. This qualification ensures that it does not inadvertently cover individuals who merely provide advice to prospective borrowers in a wholly charitable or disinterested manner.

Accordingly, coverage of the commenter's example of a manufactured home retailer who forwards an application to a limited number of lenders would require additional facts and analysis. HUD understands that there may be a limited number of such lenders that serve a particular geographical area, and even fewer that provide financing for a particular class of transaction. While HUD disagrees with the commenter's assertion that the referenced ''duty to or incentive from'' refers only to duties to, or incentives directly from a financing source, the inquiry would not end there. Even if an individual faced the prospect of earning a commission or other incentive in connection with the sale of the home, coverage would depend on whether the range of prospective lenders to whom the individual forwarded the application was shaped by, or was ''in accordance with,'' the commission or other incentive. If the individual forwarded the application to all prospective lenders known to the individual to provide prospective financing, or a fair sampling of them that is not skewed based on such incentives, then the individual would likely not be covered.

For compensation or gain. With respect to the term ''for compensation or gain,'' the proposed rule defined this term in § 3400.103(c)(2) to include any circumstances in which an individual receives or expects to receive anything of value in connection with offering or negotiating terms of a residential mortgage loan. The term would not be limited to payments that are contingent upon closing a loan. HUD agrees that there must be some nexus between the receipt of money or anything of value and the activity that constitutes offering or negotiating, since HUD has provided that the former must be ''in connection with'' the latter. However, HUD disagrees that ''for compensation or gain'' should be defined to cover only those transactions that involve a commission that is contingent on the transaction. HUD construes the term broadly to ensure that consumers receive the full protection of the licensing requirements of the SAFE Act, and HUD notes that the Federal banking agencies have followed the same approach in their final rule. (See, *e.g.,* Appendix A to subpart F of Part 34—Examples of Mortgage Loan Originator Activities, paragraph (c)(1), at 75 FR 44688.) An individual who acts as a loan originator purely as a volunteer, such that the individual does not receive or expect to receive anything of value in connection with offering or negotiating terms of a residential mortgage loan, is not subject to SAFE Act licensing requirements.

Accordingly, the example of a sales commission received by an individual in the manufactured home retail industry would likely meet the definition of ''for compensation or gain'' if it is received or expected to be received ''in connection with'' activities that constitute ''offering or negotiating.'' However, as discussed above, physically handling an application or other documents or engaging in generic discussions do not necessarily constitute offering or negotiating and, accordingly, may not subject the individual to coverage even if they would otherwise be acting for compensation or gain. Similarly, as discussed below, HUD's analysis of whether employees of certain bona fide nonprofit organizations and government agencies are subject to coverage depends on considerations other than whether they undertake activities ''for compensation or gain.''

Rule clarification. For purposes of clarification, HUD adds to § 3400.23 (Definitions), a definition for ''for compensation or gain,'' which cross-references to the discussion of this term in § 3400.103(c)(2)(ii).

Engaging in the business of a loan originator. HUD disagrees with the commenters who asserted that HUD may not define ''engag[ing] in the business of a loan originator'' to include representing to the public that an individual can or will perform the services of a loan originator. HUD is aware that a version of a bill that preceded enactment of the SAFE Act contained a similar provision in the definition of ''loan originator,'' and that the SAFE Act as enacted did not include the provision in the definition of ''loan originator.'' Congress opted to provide that the test that determines whether an individual is subject to licensing requirements is different from merely whether one meets the definition of a ''loan originator.'' Rather, one must ''engage in the business of a loan originator.''

HUD declines to ignore this distinction and instead construes the statute's undefined provision in a common-sense manner. As further discussed below, in consideration of applicability of the SAFE Act to government agencies and certain bona fide nonprofit organizations, it is possible for one's activities to meet the literal definition of a loan originator without amounting to ''engag[ing] in the business of'' a loan originator. Concomitantly, as is the case in the regulation of other professions such as the practice of law and medicine, this final rule provides that an individual may ''engage in the business of a loan originator'' by representing to the public that one can provide the services of a loan originator, even if the individual is lying, otherwise fails to provide such services, or has not yet done so. HUD's position is that the SAFE Act does not require a state supervisory authority to sit idly by until such an individual actually receives all of a prospective borrower's confidential and financial information, disseminates it, and presents loan terms to the borrower, before the individual becomes subject to licensing or enforcement actions.

Organizational change. Similar to the approach taken by the Federal banking agencies in their rulemaking, this final rule includes an Appendix that provides examples of activities of someone who is engaged in the business of a loan originator.

C. Scope of State Licensing Requirements and the Definition of ''Employee''

1. Comment: Community banks should be distinguished from nondepository mortgage lenders. A commenter states that community banks should be distinguished from nondepository mortgage lenders because community banks are already highly regulated and are more invested in the communities they serve.

HUD Response: The SAFE Act distinguishes between depository institutions and nondepository mortgage lenders. The SAFE Act requires the licensing and registration, or just registration, of anyone who engages in the business of a loan originator. The determination of whether a loan originator falls under the Federal banking agencies rules for registration of loan originators, or the requirements for state licensing and registration of loan originators, is determined by whether or not the individual is an employee of a depository institution or subsidiary of a federally regulated depository institution, as that term is defined in the Act. (See 12 U.S.C. 5102(2), incorporating the definition of ''depository institution'' from section 3 of the Federal Deposit Insurance Act (FDI Act), and including credit unions.) Therefore if an institution (such as a community bank, as cited by the commenter) meets the definition of a depository institution under the FDI Act, then an individual who meets the definition of a loan originator and is an employee of that institution would be subject to the registration requirements under the final rule recently issued by the Federal banking agencies, rather than the licensing and registration requirements of this final rule.[7]

2. Comment: HUD's provision of a default definition of ''employee'' and deference to any definition provided by the Federal banking agencies—support and opposition. The majority of commenters who commented on the definition of ''employee'' supported HUD's approach of providing a default definition of ''employee'' while subjecting the default definition to any binding definition promulgated by the Federal banking agencies for purposes of the SAFE Act. One industry association stated that HUD should not cede authority to the banking agencies to craft any definition they determine appropriate.

Other commenters urged HUD to alter its default definition to provide that an ''employee'' includes an independent contractor who is a loan originator for a federally regulated depository institution. Some commenters suggested

[7] HUD notes that some employees of federally regulated institutions may also be subject to the state licensing and registration regime. For example, employees who act as mortgage loan originators for a bank and a nondepository subsidiary of a bank holding company that is not a subsidiary of a depository institution would be subject to both the Federal and state regimes.

that the definition be expanded to include only independent contractors who are exclusive agents of a federally regulated banking institution. One commenter supported the default definition's ''right to control'' test, but urged HUD to clarify that the W–2 form on which an individual's income must be reported is to be issued by the person with the right to control the individual. Others urged HUD to eliminate the W–2 requirement from its definition. One commenter asserted that because one bank has extensive in-house training for its independent contractor loan originators, who are subject to performance review and discipline by the bank, such state licensing would be unnecessary.

HUD Response: HUD is maintaining, in this final rule, its approach of providing a default definition of employee and then subjecting that definition to any binding definition issued by the Federal banking agencies. HUD's approach ensures that there is no gap or overlap between the jurisdictions of state supervisory authorities or confusion over which jurisdiction governs a loan originator.

Under the terms of this final rule, a state must require an individual who engages in the business of a loan originator to be state licensed, unless the individual meets HUD's definition of an employee of a federally regulated depository institution or of such an institution's federally regulated subsidiary, a credit union, or Farm Credit System institution. The Federal banking agencies final rule states that ''Pursuant to section 1503(11) of the SAFE Act, Agency-regulated institutions and their employees who are acting within the scope of their employment with the Agency-regulated institutions are not subject to State licensing or registration requirements for mortgage loan originators.'' [8] Should the Federal banking agencies provide a different binding definition, then individuals who meet that definition will be subject to registration as loan originators, and other loan originators will be subject to state licensing. While HUD's default definition reflects HUD's views about how to best define employee and thereby delineate state supervisory authorities' jurisdiction, HUD's view is that it is more important to ensure that there are no gaps, overlap, or confusion concerning which jurisdiction applies to a given individual.

As stated earlier in this preamble, it is HUD's position, as it was for the Federal banking agencies in their rulemaking, that the common law ''right to control'' test and the W–2 income reporting requirements are important elements in determining who is and who is not an employee. Use of both elements is common in Federal agency practice, including HUD's practice under other programs. The depository institution's right to control the manner and means of all the loan originators work (not just those activities expressly governed by Federal banking agency regulations) is an important provision in the definition. It ensures that if a federally regulated depository institution does not have the right to control and is not responsible for every aspect of a loan originator's interactions with a consumer, then the consumer whose financial well-being is at stake will be assured that the loan originator has satisfied the more rigorous state licensing requirements, which include character and fitness, education, and testing. The W–2 requirement is important to ensure that state supervisory authorities are able to readily and efficiently determine which loan originators are subject to their state licensing requirements, and which are not, without having to undertake an extensive analysis for each individual under common law doctrine.

Although the Federal banking agencies have not provided a definition of employee in their regulatory text, they stated in the preamble to their final rule (language which HUD cited earlier in this preamble) that they intend ''employee'' to have the common law meaning that includes the ''right to control'' test. They also stated that the Internal Revenue Service uses the same test to determine whether an individual is an employee and, accordingly, whether an institution must file a W–2 form for the individual. The Federal banking agencies provide for registration only of loan originators who are employees of the institutions they regulate. If HUD were to follow the suggestion of some commenters by defining ''employee'' more broadly than the meaning intended by the Federal banking agencies, such as by including independent contractors or exclusive agents, then the anomalous result would be that such individuals would be subject to neither state licensing requirements nor the Federal banking agency registration requirements.

The Federal banking agencies are in a better position than HUD to evaluate whether the activities of an independent contractor working on behalf of a depository institution they regulate are subject to sufficient control and regulation such that consumers would be as protected as if such an individual is subject to state licensing. In the event they define ''employee'' to include such individuals, HUD's definition by its own terms defers to such a banking agency definition.

Rule clarification. As also noted earlier, HUD agrees with the commenter's suggested language clarifying that the W–2 form must be provided by the person that has the right to control the individual. The suggested language clarifies HUD's intended meaning, and HUD has made the suggested change in the definition of ''employee'' in § 3400.23.

3. Comment: Each banking agency may promulgate its own definition. Several commenters asked HUD to clarify that each Federal banking agency retains authority to define the term ''employee'' for institutions subject to its jurisdiction, rather than jointly through the Federal Financial Institutions Examination Council (FFIEC).

HUD Response: The SAFE Act provides for the Federal banking agencies, jointly through the FFIEC, to develop the rules for registering employees of depository institutions and their federally regulated subsidiaries. Such an approach to promulgating regulations helps ensure for uniformity and clarity regarding which individuals are subject to registration and which are not, and HUD's definition is phrased accordingly. Although HUD defers to the Federal banking agencies to determine whether the SAFE Act permits each agency to promulgate disparate definitions of the term ''employee,'' HUD notes that the Federal banking agencies have affirmed that they all intend ''employee'' to have the common law meaning that is also used for purposes of W–2 reporting. (See Federal banking agencies final rule at 75 FR 44664.)

D. Individuals Requiring Licensing Under the SAFE Act

1. Comment: Exclude seller financing of several seller-owned properties from SAFE Act mortgage licensing. A significant portion of the comments submitted on HUD's SAFE Act proposed rule pertained to the issue of a property owner selling and financing the sale of his or her own property. Many of the comments were duplicative of one another, making the same or similar point why individuals who provide seller financing should not be subject to licensing under the SAFE Act. The following provides the various issues and situations pertaining to seller financing raised by the commenters, and

[8] See Federal banking agencies final rule published on July 28, 2010, at 75 FR 44657, column 3, footnote 1.

for which clarification was sought with respect to licensing coverage or noncoverage under the SAFE Act.

Commenters identified special situations where licensing should not be required, including: Retirees selling a limited number of investment properties; heirs selling an inherited property; sales of vacant lots; sales of homes in floodplains; property transfers resulting from divorce and health issues; sales required by natural disasters; the sale of a former residence; the sale of a home of a relative going into assisted care; persons who take back a deferred purchase money mortgage in connection with the sale of residential real property owned by, and titled in the name of, those persons; investors who provide a service to the community by providing a housing option that buyers could not otherwise obtain; home renovators who perform a valuable service by improving homes and making them available to communities; entities whose primary function is the acquisition, improvement, and sale of residences through seller-financed mortgages; and any person or company that originates and services a loan for which that person or company holds the note and does not resell the loan in the open market.

Commenters stated there are negative tax consequences to not being able to finance the sale of investment properties. One commenter stated that section 453 of the Internal Revenue Code allows for the incremental reporting of gain using the installment sale method. The commenters stated that this option may no longer be available for residential investment properties if HUD's proposed rule is not clarified to exclude owner extended financing (of these properties). A commenter stated that in the case of tax foreclosure properties, many banks will not lend on the properties for the first 2 years after the foreclosure sale so that owner financing is the best way to sell them.

Commenters stated that requiring seller-financers to become licensed will hamper the recovery of the housing market or harm the economy. Some commenters stated that there is a high percentage of unsold homes on the market and that many buyers are having difficulty obtaining financing from banks and institutional lenders; some of these commenters specified that an estimated 4.5 percent of Americans own three or more properties, many purchased solely as investment properties, that 40 percent of non-owner occupied residences are mobile homes, which are more difficult to sell with bank financing, and that approximately 5 percent of homes in the United States are for sale or for lease, stating that seller financing may be key to liquidating this inventory. Commenters stated that approximately 10 percent of home sales are some form of seller financing.

Commenters stated that seller financing could help revitalize declining neighborhoods, and that the liquidity of the investor market depends on seller financing, and that without this exit strategy, distressed properties will not be purchased but will sit and decay, depressing neighborhoods and home values. A commenter stated that the rule will place property owners at risk of prosecution, of financial penalties, and of court revocation of equitable agreements, if they finance the sale of their own property. Some commenters stated that owner financing of nonowner-occupied properties encourages employment for tradesmen to fix the properties, provides an opportunity for older people who may want to move to get equity from their houses, and allows workers who may have to move a way to quickly sell their houses.

Other commenters asked that individuals be allowed to use seller financing without being licensed for some limited number of properties in addition to their personal residence. Commenters proposed limited exceptions to the proposed rule, such as including investment properties (or a limited number of such properties) in the exclusion from licensing; allowing sales of specified numbers of seller-financed properties without licensing, ranging from 5 to 20 properties; exempting sellers who occasionally provide financing, with one commenter mentioning 8 or fewer properties in any 12-month period; and allowing seller financing for a limited period of time, up to 5 years, while some commenters suggested shorter periods such as 6 to 12 months, at the end of which the loan would have to be transferred to a traditional lender; this would give the buyer time to repair credit and arrange bank financing. A commenter stated that there should be an exemption for sellers who provide financing for a vacation home, second home, or rental property even if they never resided in the home, where the financing is provided for the purpose of rehabilitating and flipping the property for resale. As precedents for this proposal, this commenter cited the Truth in Lending Act (TILA) and its implementing Regulation Z, RESPA, and several state laws.

Other commenters suggested that seller financing should be allowed, but with safeguards for the buyer, such as an interest rate ceiling, a clear summary of payment terms and totals, training materials on mortgage loans, or a summary of best practices, that would be required to be provided to the borrower. A commenter stated that instead of this regulation, HUD should create a grievance committee for buyers who have been defrauded and punish individuals and reverse bad contracts. A commenter stated that HUD should set legal guidelines for all residential mortgages, whether institutional or not, to ensure that the mortgage contract and the buyer meet the same criteria institutional lenders must follow, with some ''wiggle room'' for a seller that institutions will not handle because of their internal guidelines. A commenter suggested that the rule should require a half-day class on the pros and cons of seller financing. Another commenter stated that there should be a full disclosure of the nature of the loan in all origination documents, and litigation against predatory or negligent lenders should be a ''black and white issue'' so that lenders are forced to disclose their full intentions and expected outcomes with complete transparency.

HUD Response: As an initial statement, HUD confirms the commenters' observation that a ''residential mortgage loan'' includes an installment sales contract, which the commenters advise is frequently involved in seller financing. ''Residential mortgage loans,'' as defined by section 1503(8) of the SAFE Act, refers to typical financing mechanisms such as mortgages and deeds of trusts. In addition, the SAFE Act definition also includes ''other equivalent consensual security interest on a dwelling (as the term 'dwelling' is defined by section 103(v) of TILA) or residential real estate upon which is constructed or intended to be constructed a dwelling,'' which has the potential for including a broad range of other financing mechanisms. For the purposes of this rule, ''equivalent consensual security interests'' specifically include installment sales contracts, consistent with the treatment by many states of such contracts in the same manner as mortgages and purchase money mortgages offered by sellers of residential real estate. While there is no formal recorded lien held by the provider of financing, the fact that the seller holds title to the property until the contract has been paid in full is the practical equivalent of a lien for purposes of the SAFE Act and its purposes and is comparable to the status of a mortgage in a state that follows title

theory under mortgage law. Inclusion of installment sales contracts in the scope of the definition of ''residential mortgage loan'' is also consistent with section 103(w) of TILA and 12 CFR 226.2(a)(24) of the Federal Reserve Board's implementing regulations (Regulation Z), both of which include in the definition of ''residential mortgage transaction,'' a purchase money security interest arising under an installment sales contract.

As a second matter, HUD notes that nothing in the SAFE Act rule prohibits an individual property owner from financing the sale of his or her own property, nor does the SAFE Act require an individual to become a licensed loan originator in order to provide financing in the sale of his or her property. It is equally important to note that who owns a property and who is selling a property is not determinative in deciding who is subject to licensing by the SAFE Act and who is not. The SAFE Act requires that an individual who engages in the business of a loan originator with respect to the financing be licensed. Accordingly, it is the individual who has the described interaction with the borrower or prospective borrower in regard to the financing who is subject to licensing, not the funding source, that is subject to SAFE Act licensing. A seller financing the sale of his or her own property completely avoids the issue of licensing by retaining the services of a licensed loan originator and having that individual carry out the functions that constitute engaging in the business of a loan originator.

While the SAFE Act does not exclude from licensing sellers who finance the sale of properties they own, it is HUD's position, as stated earlier in this preamble, that, absent evidence to the contrary, the sale and financing of one's own residence, vacation home or property, or inherited property, such as through an installment sales contract, does not constitute engaging in ''the business of a loan originator'' and therefore generally would not require licensure under the SAFE Act. As HUD stated in the proposed rule, the frequency with which a particular seller provides financing to a buyer to facilitate the sale of the seller's own residence is so limited that Congress could not have intended to require such sellers to obtain loan originator licenses. The final rule affirms this point by adding the concept of habitualness or repetition expressly into § 3400.103(b) of the rule. HUD recognizes, as stated earlier in this preamble, that the difficulty for states is with a situation raised by many commenters where a property owner is providing seller financing in conjunction with sales of his or her own properties in such numbers and perhaps at such frequency that the owner appears to be engaged in the business of a loan originator. While the fact that the seller has not lived in the properties being sold would make it more likely that financing is provided in order to obtain a profit, and would therefore make it more likely that a commercial context is present, the infrequency with which a particular seller undertakes such actions, combined with the fact that it is the individual who is providing the financing (rather than a business entity that regularly provides financing), may mean that the requisite habitualness needed to constitute engag[ing] in the ''business'' of a loan originator is absent. On the other hand, for example, a builder who repeatedly acts as a loan originator in the course of selling homes he or she has constructed would almost certainly satisfy the requirements of a commercial context and habitualness or repetition and, accordingly, would be subject to SAFE Act licensing requirements.

Rule change and clarification. HUD removes from § 3400.103(e) (which pertains to individuals not required to be licensed by states) reference to individuals who offer or negotiate terms of a residential mortgage loan only on behalf of an immediate family member of the individual and reference to an individual who only offers or negotiates terms of a residential mortgage loan that is secured by a dwelling that served as the individual's residence. HUD will move reference to individuals engaged in these activities to the Appendix that is being added to this final rule, which provides examples of individuals who should and should not be licensed under the SAFE Act.

With respect to the issue of favorable tax treatment, the fact that a loan originator must be licensed does not, as far as HUD is aware, prevent anyone from taking advantage of favorable tax treatment, as suggested by a commenter. An individual who wants to sell using the installment sale method, if allowed under state law, may become licensed or work with a licensed loan originator. As far as foreclosure properties are concerned, states can take such situations into account when determining, for example, fees for licensing.

With respect to the suggestions to establish borrower safeguards in lieu of loan origination licensing, nothing in the SAFE Act suggests that Congress intended to substitute borrower safeguards for licensing of loan originators. Additionally, HUD notes that the SAFE Act is designed to establish the minimum requirement for the licensing of individuals, not entities. Therefore, licensing requirements for entities are outside of the scope of the SAFE Act.

2. Comment: Exclude financing of mobile/manufactured homes, recreational vehicles, and house boats from SAFE Act mortgage licensing. Some commenters cited mobile home, house boat, and recreational vehicle sales as a special category of transactions that, because of the difficulties of obtaining bank financing in that industry, should be exempt from any requirement for individual sellers offering financing to be licensed. Commenters stated that mobile home sellers should not be included in licensing requirements, because many state laws treat these loans as chattel mortgages and traditional mortgage requirements do not apply, the manufactured home industry is in decline and requiring licensing would hurt it more, many manufactured home sellers do a minimal amount of business, and many manufactured home sellers do nothing more than transmit paperwork between the buyer and lender.

Other commenters suggested that there should be an exception for sales in small manufactured housing communities because it is difficult to obtain institutional loans, because such communities often deal in very few sales per year, and because the staff often has to discuss loan terms with buyers. A commenter stated that sometimes the manufactured housing community itself acquires title to a manufactured home and needs to be able to carry back a chattel mortgage in order to be able to resell it.

Another commenter stated, to the contrary of the preceding comments, that there should be no exemption in the manufactured housing context, because the financing available to manufactured home purchasers today is through ''captive'' loan programs offered by home dealers or community owners. The commenter further stated that since these homes are not considered real property in most states, no RESPA disclosures are required, no appraisal based on comparables takes place, and no realtor advises the buyer, and that these factors underscore the importance of buyers dealing with licensed and trained professionals.

Other commenters stated that originating five or fewer manufactured home loans per year should be exempt; one of these noted that the Federal banking agency rule exempts five or

fewer originations per year. Some commenters stated that an individual ''infrequently'' helping consumer obtain a home loan should be exempt from SAFE Act coverage.

HUD Response: As noted in a response to an earlier comment, the SAFE Act defines the term ''residential mortgage loan'' to mean ''any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the TILA) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).'' (See section 1503(8) of the SAFE Act.) Section 103(v) of TILA defines the term ''dwelling'' as follows: ''a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.'' Section 103(v) of TILA is implemented in Regulation Z, at 12 CFR 226.2(a)(19), which states as follows: ''Dwelling means a residential structure that contains 1 to 4 units, whether or not that structure is attached to property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.'' HUD does not have authority to alter the meaning of ''dwelling'' in section 103(v) and its implementing regulations. Accordingly, an individual engaging in the business of a loan originator with respect to a loan that is to be secured by a manufactured home, mobile home, recreational vehicle, house boat, or trailer that is to be used as a residence is subject to licensing under the SAFE Act. Even if a state categorizes loans secured by such residential structures as chattel mortgages, the SAFE Act covers these loans and such states must ensure that individuals engaging in the business of a loan originator with respect to these loans are licensed under the SAFE Act. As discussed above under Section B, ''Key Definitions: 'Taking an Application,' 'Offers or Negotiates,' 'Compensation or Gain,' and 'Engaging in the Business of a Loan Originator,' the determination of whether an individual involved in the sale of a manufactured home is covered by the SAFE Act depends upon the particular activities of the individual.

In regard to the request for a de minimis exemption for manufactured home loans, as noted in HUD's response to the earlier comments on seller financing, HUD has no authority to establish a de minimis exemption for individuals who are engaged in the business of a loan originator. Unlike the provisions of the SAFE Act applicable to the Federal banking agencies, section 1505 of the SAFE Act, which involves state registration and licensing, makes no allowance for any de minimis exception.

3. Comment: Individuals involved in loan modification do not engage in the business of a loan originator under the SAFE Act. HUD specifically requested comment on whether individuals who perform loan modifications that involve offering or negotiating loan terms that are materially different from the original loan require licensing under the SAFE Act. The Federal banking agencies, in their proposed rule, also specifically requested comment on whether the definition of ''mortgage loan originator'' should cover individuals who modify existing residential mortgage loans, engage in approving loan assumptions, or engage in refinancing transactions and, if so, whether these individuals should be excluded from the definition.

While a few commenters submitted that individuals engaged in mortgage loan modification and assumption transactions should be subject to SAFE Act mortgage licensing, the majority of commenters on this issue stated that these individuals should not, and do not, fall under SAFE Act coverage. In general, they stated that mortgage loan modifications and assumptions are very different from mortgage loan originations, and that employees engaged in these transactions do not meet the SAFE Act's definition of mortgage loan originator. Specifically, several commenters indicated that these employees do not take residential mortgage loan applications because, the commenters asserted, an ''application'' implies a new loan. Some commenters argued that they do not negotiate the terms of a new residential mortgage loan, because the institution or investor sets the parameters for permissible modifications and the individual has no authority to alter the terms of permitted modifications. Similarly, commenters stated that modification programs, including the Administration's Home Affordable Modification Program (HAMP), are highly prescriptive and that terms are derived by using a set percentage of gross income that applies to every borrower. Some commenters stated that in a modification the terms of a mortgage loan are not negotiated but are merely adjusted based on calculations that accommodate the borrower and mitigate the investor's losses. Other commenters stated that in a modification, an existing loan is renegotiated with the goals of mitigating any loss to the institution and, in the case of modifications, providing the borrower with a more affordable payment option or other type of modification or, in the case of assumptions, replacing the party responsible for repaying the mortgage loan.

Some commenters stated that some form of safeguard needs to be in place to protect homeowners seeking modifications, but that licensing is excessive. Commenters stated that if servicers and loss mitigation specialists had to be licensed, the costs would be high. Commenters stated that the cost to license one person in all 50 states, according to the American Financial Services Association, would be approximately $27,000. The cost of compliance for a company with 500 employees would therefore be approximately $13.5 million. Licensure would also alter the organization of loan modification activity (*e.g.,* first-available agent), requiring that the company direct individuals to employees licensed in the state of the individual seeking the modification. Commenters also stated that the courses and examinations required to be licensed have little relevance to the tasks associated with loan modification.

Commenters indicated that their employees who engage in modifications and assumptions do not ever originate mortgage loans, and that modifications and assumptions are performed in different departments of the institution. Commenters also noted that applying the SAFE Act's requirements to employees engaged in loan modifications and assumptions could significantly hamper loan modification efforts.

HUD Response: HUD appreciates the many comments submitted on this issue. HUD recognizes the competing concerns raised by this issue—the need to ensure that homeowners undergoing material modifications to their mortgages (*i.e.,* generally modifications that can include a change in interest, principal, and term of loan) are assisted by individuals of integrity, experience, and competency, and the need to avoid burdening such individuals and possibly deterring assistance to troubled homeowners by placing additional requirements on loan modifiers at the very time their assistance to provide material modifications to troubled homeowners is in significant demand.

HUD therefore has determined not to address this issue in this final rule, but to defer to the Bureau. If the Bureau determines that individuals engaged in modifications of loans should be required by states to be licensed under the SAFE Act, the Bureau may determine that it has authority to

impose such licensing requirements. As noted earlier in this preamble, the Bureau also has independent authority under the Dodd-Frank Act to regulate individuals who engage in loan modifications and loan servicing. States may also determine that such individuals are required to be licensed under the terms of state legislation.

The decision to defer the issue of licensing of mortgage modifications and assumptions to the Bureau does not affect HUD's determination that refinances are covered by the SAFE Act. The Federal banking agencies, in their final rule, also provide that refinance transactions are covered by the SAFE Act.

4. Comment: Exclude from SAFE Act coverage third-party loan modification specialists. In the preamble to HUD's proposed rule, HUD also sought comment on whether third-party loan modification specialists, who offer to act as intermediaries between borrowers and their existing lenders to negotiate modifications to existing loan terms, should be required to be licensed under the SAFE Act. While several commenters expressed support for licensing of third-party loan modification specialists, others were opposed to these proposals. Some commenters argued that third-party loan modification specialists should be covered if they receive compensation directly from the borrower or if they are employed by for-profit entities, but not if they are employed by nonprofit, HUD-approved housing counseling agencies.

HUD Response: HUD appreciates the many comments submitted on this issue of coverage of third-party loan modification specialists. As with loan modifications generally, HUD is leaving to the Bureau to decide whether such individuals are covered by the SAFE Act and should be licensed under the SAFE Act.

5. Comment: Clarify whether certain financial advisors are subject to SAFE Act loan originator licensing. Commenters representing securities broker-dealer companies urged HUD to withdraw the third prong defining what is included in ''offers or negotiates'' (*i.e.,* referring or steering a borrower to a particular lender or set of terms) because, combined with some states' ''or'' definition of loan originator, it would arguably subject some companies' financial advisors to the SAFE Act's requirements. The commenters stated that financial advisors, as part of their employment, routinely refer clients to mortgage lenders affiliated with the advisors' companies, though the advisors do not take applications. The commenters state that licensing of financial analysts who undertake the described activities goes well beyond the intent of the SAFE Act and would bring no benefit, because financial advisors are already licensed and required to pass tests that are directly relevant to their work. The likely result is that securities brokerage firms would cease their limited marketing activity of informing their customers of the availability of home financing options. Commenters stated that financial advisors who merely make their customers aware of (or refer to) a lender should not be considered loan originators under the SAFE Act.

HUD Response: As explained in the above discussion of comments on the meaning of ''offers or negotiates,'' HUD declines to withdraw the third prong of its proposed definition. However, as also discussed above, HUD cautions that each of the prongs clarifying ''offers or negotiates'' must be read in conjunction with the statutory and regulatory provision that an individual must also ''take an application.'' An individual's generic referral to or recommendation of a particular lender, divorced from any receipt and consideration by the individual of the prospective borrower's application (*i.e.,* his or her request for an offer of loan terms and information that is customary in a decision on whether to extend an offer of loan terms), would not likely trigger the third prong. Determination of whether the SAFE Act requires licensing of individuals described by the commenter would depend, in part, on whether the individual takes an application, either directly or indirectly, from the borrower or prospective borrower in conjunction with making the referral.

HUD reiterates that this final rule interprets and implements the SAFE Act. HUD does not purport to interpret state laws, which may exceed the requirements of the SAFE Act, even if the state law uses language identical to that found in the SAFE Act. Accordingly, HUD cannot issue a blanket statement that all financial advisors are subject or are not subject to licensing under the SAFE Act. The activities of the individual financial advisor would need to be examined to determine whether the individual is engaged in the business of a loan originator, as a loan originator is defined in the SAFE Act and this rule.

6. Comment: Clarify the exclusion of real estate brokerage activities. A commenter asked whether a licensed real estate practitioner, who would otherwise be exempt from licensing, but receives a real estate commission from a lender selling property owned due to foreclosure or otherwise, loses the exemption from the loan originator registration requirements. Other commenters asked whether HUD's discussion of loan modifications, which may involve a write-down of principal, means that short sales would be covered.

HUD Response: Section 1503(3)(A)(iii) of the SAFE Act definition of loan originator exempts individuals performing real estate brokerage activities ''unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator; * * *.'' Without additional information, it is difficult for HUD to provide a definitive response to this question. However, the scenario described by the commenter would appear to be one in which ''the person or entity is compensated by a lender,'' and thus not included in the exemption for real estate brokerage activities. The fact that the lender is the owner of the property being sold and financed is not sufficient to fall under the exception for real estate brokerage activities provided by the SAFE Act.

Nonetheless, even if an individual does not meet the requirements of the exemption for real estate brokerage activities, as a result of receiving compensation from the lender, it must still be determined whether the individual meets the definition of engaging in the business of a loan originator. In particular, it would have to be determined whether the individual ever ''takes an application'' and ''offers or negotiates terms of a residential mortgage loan'' (as opposed to the terms of a sale) within the meaning of the SAFE Act.

7. Comment: Government employees working in mortgage loan-related areas should be exempt from SAFE Act coverage. Commenters stated that there should be an exemption for employees of state and Federal agencies who provide mortgage loans to consumers from resources appropriated by the Federal or state government (including housing finance agencies (HFAs)), or who engage in loan origination as part of their government employment. A commenter stated that individuals employed by or under the direct supervision of state or local government agencies that deliver consumer programs, including affordable mortgages, closing cost assistance, down payment loans, and home equity loans, should not be covered. Commenters stated that Federal employees administering Federal housing loan programs and public housing homeownership programs should be exempt.

Commenters stated that HUD should clarify in its final rule that municipal employees originating loans with Community Development Block Grant (CDBG) or HOME Investment Partnership (HOME) funds are not covered under the SAFE Act, and cited either the government source of the money or the existing extensive regulations in these programs. Some commenters stated that whenever an entity funds residential mortgage loans with government funds, that activity should be exempt.

Several commenters stated that, in the governmental context, ''compensation or gain'' under the SAFE Act should not include repayment of administrative costs paid by Federal, state, or local governmental agencies to offset costs incurred by grantees or contractors in carrying out government-funded affordable housing programs. Other commenters stated that ''compensation or gain'' should not include wages or hourly compensation of government workers administering housing programs. A state housing and community development agency recommended that HUD clarify the terms ''compensation or gain'' to exclude administrative costs paid out by Federal, state, or local governmental agencies to offset costs incurred by grantees or contractors in carrying out government-funded affordable housing programs. Some commenters stated that the definition of ''compensation or gain'' should exclude anything of value, including reasonable administrative fees retained by government agencies, costs to reimburse for the provision of services, or that future servicing income be excluded from the definition of ''compensation or gain.'' A commenter stated that such exclusion should apply to all foreclosure prevention, downpayment assistance, and property improvement financing activities.

Another commenter suggested that an element of the definition of ''takes a residential mortgage loan application'' in § 3400.103(c)(2)(i)(A) be revised to ''Presents for acceptance by a borrower or prospective borrower residential mortgage loan terms of a non-governmental residential mortgage.''

HUD Response: As discussed earlier in this preamble, HUD agrees that employees of Federal, state, and local governments and HFAs providing various forms of housing assistance do not ''engage in the business'' of a loan originator, because they do not act in a commercial context. Rather, these employees act in a public or government context, and are not covered by the SAFE Act.

HUD's determination is based on the distinction that even if an individual's activities are those described in the SAFE Act's definition ''loan originator,'' they may nonetheless not constitute ''engag[ing] in the business of a loan originator,'' which is the statutory standard for activities that a state is required to subject to state licensing. Specifically, the activities may not arise to ''engage[ing] in the business'' of a loan originator if they take place in a wholly public or government context, rather than in a commercial context. To ensure that all of the individual's actions in the course of acting as a loan originator are subject to the control of the agency or housing finance agency and are consistent with the agency's public or government mission, the individual must be an employee of the agency. Furthermore, if the employee acts as a loan originator in a commercial context in addition to his or her activities undertaken as an employee of the governmental agency or housing finance agency, the individual must be licensed under the SAFE Act.

Some commenters have suggested that HUD's determination of whether the SAFE Act covers governmental employees should turn on the meaning of ''for compensation or gain,'' and sought to exclude the receipt of certain kinds of remuneration from the meaning of ''for compensation or gain.'' However, as discussed above, HUD construes ''for compensation or gain'' broadly and does not view as relevant distinctions about how payments or prospective payments are described or characterized by the payor or payee. HUD's determination that the SAFE Act applies to individuals who act as loan originators in a commercial context makes the distinction requested by the commenters unnecessary. In addition, it is HUD's position that the ''for compensation or gain'' test under the definition of ''loan originator'' plainly includes compensation or gain received (or expected to be received) by an individual. Accordingly, characterizations of payments made by a borrower or by a government entity to the individual's employer are not dispositive of whether the individual offers or negotiates residential mortgage loan terms for compensation or gain.

8. Comment: Exclude from coverage individuals who undertake loan origination for nonprofit organizations. Commenters stated that 501(c)(3) nonprofit organizations that help low- and moderate-income individuals obtain financing to purchase homes would not be able to continue to provide such assistance if their loan originators had to be licensed under the SAFE Act. Commenters stated that such nonprofit organizations cannot utilize third-party brokers to originate their loans due to liability issues and that any training required to be provided to loan originators will not address the special financial and planning needs of low-income borrowers. Commenters asserted that the SAFE Act's licensing requirements are onerous and threaten the ability of nonprofit organizations to engage in loan modification and mortgage brokering, thus depriving low-income people of these services.

Commenters requested that HUD exempt all nonprofit organizations engaged in loan origination for low-income individuals and families that do not receive compensation for originating loans, and therefore, that such organizations be excluded from the definition of ''mortgage loan originator'' according to HUD's own interpretation of the SAFE Act. Commenters stated that these organizations have a fundamentally different mission than the commercial residential mortgage industry that the SAFE Act was meant to regulate. The commenters stated that these organizations produce affordable housing with limited resources and that compliance with the SAFE Act would be unduly burdensome. Other commenters suggested that organizations that act in the borrower's best interest to originate home loans for low-income households be exempt from SAFE Act's provisions, which would impose additional burdens on these lenders. Another commenter stated that HUD's discussion in the Commentary about noncommercial activities also applies to the lending activities of bona fide nonprofit organizations that fulfill a public, rather than commercial, purpose. The commenter suggested factors that HUD may consider in distinguishing nonprofit organizations that truly perform a public service from those that may have a commercial interest and have a commercial context to their loan origination transactions: section 501(c)(3) status, loan terms and rates offered to a borrower, compensation structure of the organization's employees, whether fees are charged to a borrower, whether the organization in fact earns a profit, whether financial literacy programs are provided along with loans, whether employees are trained, and whether the organization's primary purpose is to serve the public by helping low- to moderate-income borrowers.

HUD Response: As stated earlier in this preamble, HUD has determined that employees of a bona fide nonprofit organization are outside of the range of individuals that the SAFE Act requires

states to subject to licensing requirements. The regulatory text provides a definition of bona fide nonprofit organization that adopts many of the factors suggested by the commenters to distinguish a bona fide nonprofit organization from other organizations. HUD's determination is based on the distinction that even if an individual's activities are equivalent to those in the SAFE Act's definition ''loan originator,'' they may nonetheless not meet the statutory requirement that one must ''engage in the business'' of a loan originator, in order for a state to be required to subject the individual to state licensing. Specifically, the activities may not arise to ''engage[ing] in the business'' of a loan originator if they take place in a wholly public or charitable context, rather than in a commercial context, as is the case with employees of government organizations and bona fide nonprofit organizations.

Regulatory change. Accordingly, this final rule adds a definition of ''bona fide nonprofit organization'' that provides that a state supervisory authority may determine that an organization is a bona fide nonprofit organization, under criteria specified in the definition. The criteria include an examination of the mortgage terms offered to the borrower by an employee of a bona fide nonprofit organization and whether such terms are favorable to borrowers.

If the nonprofit organization meets the criteria in HUD's definition, then the organization's employees who act as loan originators would not be engaging in the ''business'' of a loan originator, and therefore would not be subject to state licensing. HUD's definition of ''loan originator'' provides that in determining whether a nonprofit organization is a bona fide nonprofit organization, a state supervisory authority must consider, at a minimum, the following: Federal tax exempt status, purpose, incentive structure, manner of operation, and loan products offered.

Finally, HUD reiterates that individuals, not entities, are subject to licensure under the SAFE Act. Therefore, any requirement in state law for the licensure of entities involved in loan origination is outside the scope of and not affected by the SAFE Act and this final rule.

9. Comment: Exclude housing counselors from SAFE Act coverage. Many commenters requested that HUD exempt from coverage of the SAFE Act individuals engaged in housing counseling activities. One commenter stated that there should be a definition distinguishing the roles of loan originators and housing counselors. Other commenters expressed concern about HUD's discussion in the proposed rule of the applicability of SAFE Act licensing to third-party loan modification specialists. These commenters worried that the result would be that a housing counselor could not contact the existing lender on behalf of a troubled borrower in order to pursue or follow up on a loan modification.

Commenters recommended that the definition of loan originator explicitly exclude a counselor assisting a borrower in filling out an application, or an educator providing general information about loan applications, including helping borrowers understand their credit report. A commenter also recommended that the definition exclude lender personnel who address a homebuyer education class about how applications are reviewed and evaluated. Other commenters stated that individuals who are employed by a nonprofit and tax-exempt credit counseling organization that is approved or seeking approval for housing counseling by HUD (under 24 CFR part 214) are not covered, while individuals such as foreclosure consultants or individuals working for for-profit debt relief service providers should be covered.

Commenters expressed concern that even though the housing counselors do not take applications or offer or negotiate mortgage terms, state agencies use highly fact-based and unpredictable analyses and may determine that they are covered, absent a statement to the contrary by HUD. A commenter asked HUD to clarify that a lender contributing to a homebuyer education class sponsored by a HUD counseling agency are not direct contributions to ''loan originator'' but rather to the education of future borrowers.

HUD Response: HUD reiterates its lack of authority under the SAFE Act to exempt individuals engaged in the business of a loan originator. However, an individual engaging solely in traditional housing counseling services generally does not ''take a residential mortgage application and offer or negotiate terms of a residential mortgage loan for compensation or gain'' within the meaning of the SAFE Act, and this final rule and therefore would not have to be licensed under the SAFE Act.

HUD has emphasized that it is the substance of an individual's activities, and not the label, profession, or job title of the individual that determines whether an individual is engaged in the business of a loan originator. Therefore, if a housing counselor is in fact engaged in the business of a loan originator, then despite the individual's professional label as a housing counselor, the individual must be state licensed.

In general, traditional housing counseling activities, such as those described in 24 CFR part 214, do not involve either taking a residential mortgage loan application or offering or negotiating residential mortgage loan terms for compensation or gain within the meaning of the SAFE Act and this final rule. For example, 24 CFR 214.3 describes the provision of counseling or advice to individual clients on how to overcome specific obstacles to achieving a housing goal, as well as educational classes on the home-buying process and other topics. In addition, 24 CFR 214.300 describes referrals to local, state, and Federal resources.

On the other hand, it is possible that some housing counselors engage in additional activities that could subject the housing counselor to SAFE Act licensing requirements. For example, the activities of a housing counselor who acts as an intermediary between a borrower or prospective borrower and a financing source, or who presents to a prospective borrower particular loan terms identified as being prospectively available from one or more lenders to similarly situated prospective borrowers, may in some circumstances constitute taking a residential mortgage loan application or offering and negotiating terms of a residential mortgage loan. (See Section B of this preamble, Key Definitions: ''Taking an Application,'' ''Offers or Negotiates,'' ''Compensation or Gain,'' and ''Engaging in the Business of a Loan Originator,'' above.) As further discussed in Section B, merely advising or assisting a prospective borrower to properly complete a loan application, faxing documentation upon a borrower's request, or following up to ensure documentation has been received would not amount to taking an application. Similarly, a mere referral to another provider of resources would not likely amount to offering or negotiating, absent other factors as provided in this final rule. Furthermore, even if the activities of a housing counselor constitute taking a residential mortgage loan application and offering or negotiating residential mortgage loan terms for compensation or gain within the meaning of the SAFE Act and this final rule, a state may determine that the housing counselor's employer is a bona fide nonprofit organization, as discussed above in this preamble under Section D.8. Alternatively, the housing counselor's employer may be a government agency or housing finance agency. If so, the individual would not be ''engaging in the business'' of a loan originator and,

accordingly, a state would not have to require licensing of the individual.

Finally, in accordance with HUD's decision to defer to the Bureau on whether modifications of existing loans should be covered under the SAFE Act or otherwise, this final rule would not affect a housing counselor who contacts an existing lender on a behalf of a borrower in connection with the modification of an existing loan.

10. Comment: Clarify exclusion of attorneys from SAFE Act coverage. A commenter requested that HUD expand upon and clarify the proposed rule's provision pertaining to the SAFE Act's inapplicability to ''a licensed attorney who only negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client * * *''. The commenter requested a definition of the term ''ancillary,'' especially with respect to attorneys' representation of clients in loan modification matters. The commenter stated that it appears that such attorneys would need to be licensed as loan originators. An additional clarification is requested for ''licensed attorney,'' as well as a discussion of whether employees working under an attorney's supervision are exempt from the licensing requirement.

Another commenter stated that the ''carve out'' for attorneys is not broad enough. The commenter stated that often an attorney will be in the negotiation process in ways that are more than ''ancillary'' to the representation of a client. In fact, the negotiation of the loan may be the primary reason for the involvement of the attorney. Both commenters recommended that attorneys be completely exempt from licensing under the SAFE Act.

Other commenters stated that licensed attorneys and those acting under their direction to provide effective legal representation to their clients in connection with the negotiation or modification of residential mortgage loans (regardless of whether the representation is ancillary or central to the transaction) should be exempt from SAFE Act coverage. Another commenter stated that a lawyer owes the same fiduciary and confidentiality duties to the client whether or not the attorney's representation is ''central'' or ''ancillary,'' and argued that the narrow exemption proposed by HUD will adversely affect many lawyers and their ability to represent their clients effectively. Another commenter submitted that the definition of ''loan originator,'' which includes someone who negotiates terms of a mortgage for gain, would allow HUD and state agencies to regulate legal advice and other core legal services.

HUD Response: HUD's proposed rule did not provide an exemption for attorneys who engage in loan origination activities, but rather recognized that the core functions of an attorney, such as providing legal advice and drafting legal documents, do not typically include acting as a loan originator. The proposed provision sought to recognize, however, that attorneys may from time to time negotiate the terms of a residential mortgage loan with a prospective lender on behalf of a client as an ancillary matter to the attorney's representation of the client. HUD stated that, for example, an attorney might assist a client in the origination of a new or refinance loan, or loan modification, as an ancillary matter to the attorney's representation of the client in a divorce. HUD emphasized that the attorney's duties to the client require the attorney to further only the client's interest and that an attorney's activities in such cases would normally be distinguishable from those of a loan originator.

HUD recognizes that state authorities traditionally regulate the practice of law, rather than actions by the Federal Government. *Leis* v. *Flynt,* 439 U.S. 438, 442 (1979). The issue of whether a Federal statute may be interpreted as extending to activities that have traditionally been regulated by the states rather than the Federal Government (including the general practice of law by attorneys) has been the subject of significant legal controversy, especially when the statute does not expressly provide for extending Federal regulation into the traditionally state-regulated field. (See, *e.g., Milavetz, Gallop, & Milavetz, P.A,* v. *United States,* 130 S. Ct. 1324, 1332–33 (2010); *BFP* v. *Resolution Trust Corp.,* 511 U.S. 531, 543 (1994); *Will* v. *Mich. Dep't. of State Police,* 491 U.S. 58, 65 (1989); *American Bar Association* v. *Federal Trade Commission,* 430 F.3d 457, 471–72 (DC Cir. 2005). In requiring the licensing of individuals who ''engage in the business'' of a loan originator, Congress did not state an intention to regulate activities that constitute the practice of law by a licensed attorney. HUD is concerned that construing ''engaging in the business of a loan originator'' to encompass activities that constitute the practice of law could have negative consequences, such as interfering with regulation of the practice of law by state supreme courts, undermining important aspects of the attorney-client relationship, including the attorney-client privilege, and hindering consumers from being able to obtain legal representation in residential mortgage loan transactions.[9] Accordingly, doing so would undermine the statutory purposes of the SAFE Act, which include enhancement of consumer protections and reduction of regulatory burden. However, HUD is equally concerned about individuals who engage in the business of a loan originator escaping SAFE Act licensing requirements simply because they happen to be licensed as an attorney or work for a licensed attorney. The referenced provision in the proposed rule was HUD's initial approach to balancing these competing concerns, but HUD has determined that identification of an attorney's activity as ''ancillary'' to a representation is unnecessary, so long as the attorney's activity is in fact regulated by the state supreme court or other state authority as part of the practice of law.[10] Therefore, as explained in Appendix D of the rule, to the extent a licensed attorney undertakes activities that are covered by the statutory definition of ''loan originator,'' such activities do not constitute ''engage[ing] in the business of a loan originator,'' provided that: (1) Such activities are considered by the state's court of last resort (or other state governing body responsible for regulating the practice of law) to be part of the authorized practice of law within the state, (2) such activities are carried out within an attorney-client relationship, and (3) the attorney carries them out in compliance with all applicable laws, rules, ethics, and standards.

Rule change and clarification. HUD removes from § 3400.103(e) (which pertains to individuals not required to be licensed by states) reference to a

[9] Congress identified very similar concerns in setting forth the Consumer Financial Protection Bureau's authorities, which will include implementation of the SAFE Act, when it enacted the Dodd-Frank Act. (See 156 Cong. Rec. E1347–49 (July 15, 2010).) In enacting the Dodd-Frank Act, however, Congress declined to provide any further clarity as to whether or not the SAFE Act is intended to apply to attorneys engaged in the practice of law. Section 1027(e) of the Dodd-Frank Act prohibits the Bureau from exercising any supervisory or enforcement authority with respect to any activity engaged in by an attorney as part of the practice of law, but also provides that this limitation on the Bureau does not apply ''to the extent that an attorney is otherwise subject'' to certain existing consumer laws, including the SAFE Act.

[10] The legislative history of the Dodd-Frank Act reflects a desire to achieve a similar balance in emphasizing a determination ''to avoid any possible overlap between the Bureau's authority and the practice of law,'' but also clarifying that activities of an attorney or an individual working for an attorney that fall outside the practice of law must not be shielded from regulation by the new Bureau. 156 Cong. Rec. E1347–49.

licensed attorney. In light of the considerations discussed above, HUD will move reference to licensed attorneys to the Appendix that is being added to this final rule. Accordingly, further elaboration or clarification of ''ancillary matters'' engaged in by a licensed attorney is no longer necessary.

11. Comment: Other requested exclusions from coverage. Commenters stated that there should be exclusions from coverage for the following: Individuals originating loans to buyers who lack capacity to meet institutional lender criteria; small, nondepository lenders who have good legal compliance records; FHA direct endorsement lenders; wholesale account executives who are not acting as loan originators; mortgage insurers; and Spanish-speaking loan originators in Puerto Rico, because many applicable legal concepts do not apply in Puerto Rico and because the loan originator exam is given in English only. One commenter said that states should be allowed to develop an expedited process for individuals who possessed a valid loan originator license or equivalent license prior to enactment of the SAFE Act.

A local government agency stated that there should be additional exemptions under the SAFE Act for the following persons, who are exempt under state mortgage licensing law: persons acting as fiduciaries with Internal Revenue Code-qualified employee pension-benefit plans, persons acting in a fiduciary capacity conferred by authority of a court of competent jurisdiction, and employees of corporate instrumentalities of the Federal Government who are not required to be registered.

In contrast to these comments, a commenter stated that the target of the regulation should be private escrow officers who often do not have the requisite training or experience and who are not insured or bonded.

HUD Response: The SAFE Act requires licensing and registration of any individual who engages in the business of a loan originator as defined in the Act, and, as HUD has already noted, HUD does not have authority to grant exemptions for individuals covered by the SAFE Act. The fact that a buyer may lack capacity does not render his or her loan originator exempt from licensing requirements of the SAFE Act.

With respect to a Spanish loan originator exam for use in Puerto Rico, nothing in the SAFE Act or HUD's regulation precludes Puerto Rico from using such an exam, provided it is approved by the NMLSR. With respect to an expedited process, states can expedite or otherwise reduce the burdensomeness of the process for individuals registered under a predecessor loan originator licensing law, so long as a state supervisory authority finds that there is sufficient evidence that all of the requirements for licensing and registration, including the educational requirements, of the SAFE Act are met. However, nothing in the SAFE Act would allow for any exception to the basic statutory requirements of the Act.

With respect to exclusions for various fiduciaries, HUD reiterates that it has no authority to exempt covered individuals, but urges states to apply the statutory criteria, as clarified by this rule, to determine whether the cited individuals are in fact engaged in the business of a loan originator.

In the case of employees of a federally chartered corporation that does not meet the definition of a housing finance agency, loan origination activities would be covered by the SAFE Act. With respect to escrow officers, the issue, again, is whether such individuals are engaged in the business of a loan originator as defined in the SAFE Act. Coverage is determined by the activities rather than by the professional title of the individual involved.

12. Comment: De minimis exemption requested. A commenter encouraged HUD to follow the recommendation of the Federal banking agencies and consider a de minimis exception. The commenter noted that the Federal banking agencies, in their draft final rule, provide that a person who does not regularly or principally function as a loan originator, for example has acted as a loan originator for five or fewer residential mortgage loans in the past 12 months, is not subject to the SAFE Act. HUD should also consider exempting small manufactured housing communities that may take very few applications in a 12-month period.

HUD Response: As discussed above, the SAFE Act authorized the Federal banking agencies to provide a de minimis exemption for individuals engaged in the business of a loan originator, but did not grant such authority to HUD.

E. Other Definitions

1. Comment: Revise the definition of ''State.'' A commenter stated that the definition of ''State'' should be revised by removing the reference to the Trust Territory of the Pacific Islands.

HUD Response: Although the term ''State'' is defined in the SAFE Act to include the ''Trust Territory of the Pacific Islands,'' HUD has removed reference to the Trust Territory of the Pacific Islands since this is no longer a U.S. territory or jurisdiction and HUD therefore has no jurisdiction to enforce compliance with the SAFE Act.

2. Comment: Expand definition of ''family.'' A commenter stated that the term ''immediate family member'' in § 3400.103(e)(4) should be revised to state simply ''family member'' and be defined to include an individual's spouse, child, child's spouse, parent, sibling, grandparent, grandchild, or grandchild's spouse. The commenter stated that the result of such a change would be to expand the category of relatives to whom, or on whose behalf, an individual may offer or negotiate loan terms without having to be subject to state licensing requirements.

HUD Response: Since HUD is no longer including in § 3400.103(e) reference to individuals who are not statutorily exempt from licensing under the SAFE Act, there is no longer a need to define ''family.''

F. License Eligibility: Felonies

1. Comment: Felony conviction within 7 years limits employment opportunities. Several commenters stated that the prohibition on issuing licenses to individuals who have been convicted of felonies within the preceding 7 years, even felonies that are unrelated to fraud, may significantly limit employment opportunity.

HUD Response: Section 1505(b)(2) of the SAFE Act explicitly prohibits the issuance of a license to an applicant who has been convicted of a felony within 7 years prior to submission of an application. This limitation is a statutory restriction, so elimination of the requirement is beyond the scope of HUD's authority.

2. Comment: Pardoned convictions are not generally treated as legal nullities. A commenter disagreed with HUD's assertion that pardoned convictions are generally treated as legal nullities. The commenter states that this is a misunderstanding, citing case law, and asserts that a pardon merely relieves legal disabilities and stigma that result from convictions. The commenter also notes that other Federal agencies have taken an approach to state relief that differs from HUD's, and questions the policy implications of limiting HUD relief to pardons. The commenter recommends that HUD withdraw § 3400.105(b)(2)(ii) of the proposed rule, or that it expand it to include other forms of state relief, similar to the provision in the Federal Firearms Act, 18 U.S.C. 921(a)(20). Other commenters suggested that § 3400.105(b)(2)(i) be removed and the effect of expungement

of a felony should be determined by the states. Several industry associations state that HUD should simply repeat the minimum requirements and leave it to the states to determine how they are to treat expungements. However, HUD could urge uniform treatment. Other commenters suggested that due to significant state oversight of the expungement process, expungements should receive the same treatment as pardons under the Act. A commenter states that in many states, an expungement is viewed to completely eliminate the occurrence of the criminal incident, as well as any punishment incurred as a result of the act. As raised by one commenter, in some states the submission of an expunged conviction could cause the individual to incur state sanctions. The commenter urged HUD to adopt FDIC's policy with regard to expunged and juvenile convictions as provided in the FDIC Statement of Policy for Section 19 of the FDIC Act, 63 FR 66177 (Dec. 1, 1998).

HUD Response: The case law cited by the commenter provides that a pardon relieves the convicted from punishment for the conviction rather than eliminating any issue of guilt for the underlying conduct. The case law further states that the pardoning of a conviction does not prohibit a state from evaluating whether the conduct that led to the conviction renders the individual unfit for the profession in question, so long as denial is not based on the mere fact of a conviction alone. Section 3400.105(b)(2)(ii) has been revised to provide that in the case of a pardoned conviction, the fact of the conviction alone does not automatically disqualify the individual under the SAFE Act's felony provisions at 12 U.S.C. 5104(b)(2). A state supervisory authority, however, may still consider the conduct underlying the conviction when it makes the required determination of financial responsibility, character, and general fitness. Therefore, under HUD's final rule, a state will not be required to provide that a pardoned conviction renders an individual ineligible for licensing. HUD leaves that determination to the states.

Additionally, HUD will not consider an expunged conviction to render an individual ineligible to be licensed under the SAFE Act. In general, an expungement is viewed to completely eliminate the conviction in the eyes of the law and to prevent further legal consequences of the conviction. As raised by one commenter, in some states the submission of an expunged conviction could cause the individual to incur state sanctions. Section 3400.105(b)(2) is revised accordingly. As in the case of pardoned convictions, the revised regulatory provision does not prohibit a state that becomes aware of the conduct that led to the conviction from evaluating whether the conduct renders the individual unfit for the profession in question.

Rule change. To reflect this distinction, § 3400.105(b)(2) is revised to provide that pardoned and expunged convictions do not ''in themselves'' render an individual ineligible.

3. Comment: Question of authority to create any exemption for disqualification of individuals with felony convictions. A commenter questioned HUD's authority to create any exemption under section 1505 regarding the categorical disqualification of individuals with felony convictions. The commenter noted that the SAFE Act does not provide authority to HUD to create an exemption to the unambiguous ban in section 1505(b)(2), and HUD does not claim any inherent authority to create one. Some commenters suggested that the exemption section should either be removed from the rule or modified in some way, such as by seeking authority for a legislative waiver to be triggered by an application from a state licensing board.

HUD Response: HUD is not exercising any exemption authority, but rather seeks to clarify meaning to terms used in the SAFE Act to ensure that the type of licensing contemplated by the SAFE Act is instituted as uniformly as possible across the states. Expunged and pardoned convictions are often not considered to be disqualifying convictions or convictions of record under analogous requirements governing other professional licensing and consumer protection regimes. As stated in response to an earlier comment, HUD's position is that pardoned and expunged convictions do not ''in themselves'' render an individual ineligible.

G. License Eligibility: Credit Reports, Credit Scores, Financial Responsibility, and Character and Fitness

1. Comment: Authorize NMLS to obtain credit report. A commenter stated that the proposed rule should be revised at the final rule stage to allow applicants to authorize NMLS to obtain a credit report and information on administrative, civil, or criminal findings.

HUD Response: Rule change. In the final rule, HUD has revised § 3400.105(h) to allow applicants to submit authorizations for NMLS to obtain credit reports and records of administrative, civil, and criminal findings. This revision reflects the specific requirements of section 1505(a) of the SAFE Act.

2. Comment: Credit scores should not be a licensing requirement. Some commenters stated that credit scores should not be a requirement for licensing, or should not be determinative of license eligibility.

HUD Response: The SAFE Act requires license applicants to authorize the NMLS to obtain an independent credit report of the applicant. The final rule reflects this requirement. If a credit report includes a credit score, a state supervisory authority may decide that it is appropriate to consider the score and other information in the credit report as factors in its overall character and fitness determination.

3. Comment: Public release of credit reports will subject individuals to identity theft. One commenter expressed concern that if credit reports are made public, individuals could be vulnerable to identity theft.

HUD Response: HUD is maintaining its approach to confidentiality of information in the final rule, in § 3400.3. This approach is consistent with section 1512 of the SAFE Act, which addresses the applicability of state and Federal privacy laws to materials submitted to state regulators and the NMLSR. The SAFE Act does not provide for public disclosure of an individual's credit report or credit score. The information that the SAFE Act requires to be made available to the public includes employment history and publicly adjudicated disciplinary and enforcement actions.

4. Comment: Testing requirements need to be clarified. One commenter stated that proposed rule's description of testing requirements is ambiguous. First, the commenter noted that the number of times an individual may retake a licensing test is unclear. Second, the commenter indicated that language covering retesting for loan originators with lapsed licenses is ambiguous, in that an individual with a lapsed license is not a ''state licensed loan originator,'' but rather a ''formerly'' state licensed loan originator.

HUD Response: HUD is maintaining the restrictions on the timing of retests in the final rule. HUD agrees that the SAFE Act is confusing on this point, in that it states under ''Initial Retests'' that an individual may ''retake a test three consecutive times,'' with each consecutive test occurring at least 30 days after the preceding test, but then under ''Subsequent retests'' states that after failing three consecutive ''tests,'' the individual must wait 6 months

before retaking the test. HUD resolved this confusion in the proposed rule by providing in § 3400.105(e)(2) that an individual may take a test three times (*i.e.,* the first taking plus two retests), with each retest occurring at least 30-days after the preceding test. If the individual fails three consecutive tests, the individual must wait 6 months before taking the test again. (That is, the third ''retake'' must satisfy both the individual 30 day waiting period of SAFE Act section 1505(d)(3)(B) and the 6-month waiting period of section 1505(d)(3)(C), which is to say it cannot occur until after a 6-month waiting period.) HUD believes that the rule is clear on the number of times a test can be taken.

Rule change. To address the second comment, HUD has modified the language covering retesting for loan originators with lapsed licenses. Additionally, the regulatory text of the proposed rule inadvertently omitted reference to time spent as a registered loan originator and the final rule inserts such reference. In the final rule, § 3400.105(e)(3) provides that if a ''formerly'' state licensed loan originator fails to maintain a valid license for 5 years or longer, and not taking into account any time during which the individual is a registered loan originator, the individual must retake the test and achieve a test score of not less than 75 percent correct answers.

5. Comment: Provide flexibility with respect to credit for continuing education courses. A commenter stated that the final rule should authorize state officials to allow continuing education courses to be credited for the previous year when an applicant seeks to renew his or her license during an authorized license reinstatement period. The commenter notes that this would match provisions in the CSBS/AARMR Model State Law.

HUD Response: In order to avoid any confusion that may have arisen from the phrasing of the subject provision in the proposed rule, HUD is revising the language in the final rule to include the statutory language and then provide additional clarifying language.

Rule change. Accordingly, § 3400.107(b) now provides that a state must provide that ''a state-licensed loan originator may only receive credit for a continuing education course in the year in which the course is taken.'' HUD understands the statutory provision to mean that a state-licensed loan originator who fails to meet the continuing education requirements before the expiration of his or license may not renew his or her license until he or she meets the requirement. That is, the loan originator cannot renew his or her license based on a promise to take the required classes in a future year, on the theory that it does not matter when the classes are taken, so long as they are taken at some point. Similarly, the provision means that an individual cannot claim that excess classes taken in a past year relieve the individual of having to take classes required for a future year.

Rule clarification. Accordingly, § 3400.107(b) now also clarifies that ''a state-licensed loan originator may not apply credits for education courses taken in one year to meet the continuing education requirements of subsequent years.'' Provided that a state does not permit an individual to renew his or her license prior to taking the required continuing education classes, HUD does not believe the provision prohibits a state from allowing an individual to make up a deficiency from a past year by taking classes in a present or future year.

H. Reciprocity and Promoting Uniformity

Comment: Permit or require recognition of other state licensing of loan originators. Several commenters suggested that HUD should permit or require recognition of the licensure of other states to facilitate competition and ultimately lower consumer costs, without compromising the standards demanded under the SAFE Act. Commenters also noted that HUD should call for uniformity in its rules and require in the rules a regular process of consultation with trade associations and state and Federal regulators to develop solutions where uniformity is lacking.

HUD Response: HUD's final rule does not require reciprocity, given the current variability in state laws. The SAFE Act sets the minimum requirements for the licensing of ''loan originators'' and does not allow HUD to preempt any state law requirements or to establish a maximum requirement. This final rule provides that a state must require an individual to obtain and maintain a license from that state in order to engage in the business of a loan originator with respect to any dwelling or residential real estate in that state. This final rule further provides that in order to grant a license to an individual, the state might find that the individual has satisfied the minimum eligibility requirements. HUD believes this approach is consistent with the SAFE Act's preference that states implement their respective licensing regimes and the SAFE Act's establishment of minimum, rather than preemptive and uniform requirements. The approach also avoids incentivizing a ''race to the bottom'' among states. However, this final rule does not limit the extent to which a state may take into consideration or rely upon the findings made by another state in determining whether an individual is eligible under its own laws.

HUD will seek to promote uniform minimum standards in accordance with its overall responsibility for interpretation, implementation, and compliance with the SAFE Act. However, the SAFE Act's preference that states implement and enforce licensing, combined with the absence of preemptive authority over states that opt to exceed the minimum requirements, means that there will inevitably be a diversity of approaches among states. HUD has worked extensively with the CSBS and AARMR in this process, and will remain accessible to state regulators, other Federal regulators, and trade associations.

I. State Agency Performance Standards and Other Minimum Requirements

1. Comment: Not all state authorities will be able to participate in the NMLSR. Commenters stated that not all states or state authorities that oversee mortgage lending participate in the NMLSR. Therefore, § 3400.113(a)(1) should be revised to reference ''applicable supervisory authorities,'' or to require that all authorities participate in the NMLSR. One commenter suggested that HUD consider a system that could be tracked by Freddie Mac/Fannie Mae and individual lenders using CHUMS and SAR ID numbers given to underwriters by FHA and the Department of Veterans Affairs and tied to individual's Social Security Numbers and tracked through Neighborhood Watch for default trends, etc.

HUD Response: The SAFE Act provides in section 1508 that, in a case where ''the Secretary determines that a state does not have in place by law or regulation a system for licensing and registering loan originators that meets the requirements of sections 1505 and 1506 and subsection (d) of this section, or does not participate in the Nationwide Mortgage Licensing System and Registry,'' HUD shall provide for a system of licensing and registration of loan originators operating in the state. Thus, the statute requires the use of the NMLSR or a HUD-established backup system for loan originator licensing and registration, rather than miscellaneous local authorities. In addition, section 1508(d) of the SAFE Act establishes the minimum requirements that a state licensing law must meet. Because HUD

must implement the SAFE Act as enacted, HUD declines to adopt the commenters' alternate suggestions. In regard to the use of the term ''applicable supervisory authority,'' HUD notes that the SAFE Act uses the term ''a state loan originator supervisory authority.'' HUD does not construe this statutory term to mean that a state may have only one supervisory authority, or that if it has multiple such supervisory authorities supervising various categories of loan originators, only one supervisory authority must comply with the SAFE Act.

2. Comment: HUD should recognize that examinations on the level of the mortgage company may satisfy the requirement to examine and investigate loan originator licensees. A commenter states that many states conduct examinations on a company level and that such examinations include examinations of the company's loan originators. HUD should recognize that this approach satisfies the requirement to examine loan originators at § 3400.113(a)(4).

HUD Response: HUD agrees that nothing in the SAFE Act or this final rule requires dual or separate examinations of loan originators, if a state already examines loan originators in the course of examining companies, provided that the state's approach ensures that no loan originators are systematically left out of the scope of examinations.

3. Comment: Reports of condition may be submitted at the company level. A commenter observed that the SAFE Act requires ''licensees'' to submit reports of condition (call reports), rather than ''loan originators.'' Since ''licensee'' is not defined in the SAFE Act, the commenter states that it should be understood to refer to companies and asks HUD to recognize that call reports may be submitted at the company level.

HUD Response: HUD understands that reports of condition, or ''call reports,'' are customarily produced and submitted to regulators at the company level. The only persons who are subject to licensing under the SAFE Act are individuals, not companies. Accordingly, this final rule requires states to require licensed loan originators (*i.e.,* the only ''licensees'' under the SAFE Act) to ensure that loans that close as a result of the loan originator's activities ''are included'' in the reports of condition that ''are submitted'' to the NMLSR. HUD believes this language permits and even anticipates that the reports are submitted by a person other than the loan originator, such as at the company level. The regulatory provision at § 3400.111(f) requires states to impose responsibility for inclusion of loans in the report on the individual loan originator, but it does not prohibit a state from imposing concurrent or even primary responsibility for the inclusion and submission on a company, provided that the state's approach ensures that no loan originator's closed loans are systematically left out of the reporting requirement.

J. Delayed Effective Date or Moratorium on Enforcement

Comment: Provide for significant delayed effective date for regulations. Commenters asked HUD to delay the effective date of the proposed regulations or to approve a temporary moratorium on enforcement. Some commenters requested moratoriums for specific industries on a national basis. As justifications for a delay or moratorium, commenters referenced the timing of HUD's regulations, the barriers to compliance facing particular industries, and the need to amend state laws. Some commenters requested expanding proposed rule § 3400.109(d), which allows states to delay the effective date for persons solely performing certain loan modifications, to include persons conducting loan modifications outside the Making Home Affordable program.

HUD Response: HUD is maintaining the proposed rule's approach to the approval of delays in the effective date of state requirements. Under the proposed rule, a state may request a later effective date by demonstrating that a substantial number of loan originators, or a particular class of loan originators, will face unusual hardship. HUD believes this process will appropriately address hardships faced by the concerned industries. The process is also consistent with the SAFE Act's goal of establishing state-based mortgage licensing systems.

However, HUD recognizes there has been uncertainty regarding the meaning of certain terms that affect the scope of the SAFE Act's coverage, and that coverage of certain classes of individuals may not have been determinable prior to the issuance of this final rule. To the extent this final rule clarifies coverage of individuals who previously did not have a reasonable basis for determining whether they were covered, HUD will work with states to establish reasonable time frames for implementing coverage of such individuals, and for such individuals to meet eligibility requirements.[11] Section 3400.109(c) of this final rule provides a method for states to request extensions for such individuals or classes of individuals. As stated above, a state may request a delayed effective date by demonstrating that a substantial number of loan originators, or a particular class of loan originators, will face unusual hardship in meeting SAFE Act requirements. Additionally, HUD's ability to grant extensions for good-faith efforts to comply with SAFE Act requirements may have applicability.

Rule change. HUD is withdrawing the proposed delayed effective date for loan originators participating in the Home Affordable Modification Program (HAMP). That delay was proposed in combination with HUD's inclination to cover material modifications of existing residential mortgage loans. In accordance with HUD's decision to defer to the new Bureau on the question of covering material modifications, the delayed effective date for loan originators participating in the HAMP program is unnecessary. In addition, the proposed rule's dates by which states were to require individuals to obtain licenses have since passed. Accordingly, the dates for such compliance in § 3400.109(a) and (b) have been replaced with the effective date of this final rule. As discussed above, however, § 3400.109(c) provides for the possibility of extended compliance dates for individuals who could not reasonably have anticipated that they would be covered until publication of this final rule.

K. HUD's Regulation and Review of States for Compliance

1. Comment: HUD must prohibit states from exceeding the SAFE Act's minimum requirements. Some commenters asked HUD to ensure that states not overreach their SAFE authority by, for example, imposing licensing requirements that go beyond the SAFE Act's minimum requirements by using credit reports to make licensing decisions.

HUD Response: As discussed previously, the SAFE Act establishes minimum standards for licensing of loan originators, and does not prohibit states from exceeding these requirements.

2. Comment: Expand enforcement procedures for states' noncompliance. A commenter suggested that HUD expand the proposed regulations to include

[11] See HUD's Frequently Asked Questions on this issue at *http://hud.gov/offices/hsg/rmra/safe/sfacimpdel.pdf.*

additional informal and formal procedures for states in noncompliance.

HUD Response: HUD's regulation at § 3400.115 provides many procedural safeguards, including notification to a state if it is in noncompliance, publication in the **Federal Register** of the initial finding of noncompliance, and an opportunity for comment of a period of no less than 30 days. Any state, like other members of the public, would have the chance to submit written comments and could request a meeting as well. In addition, HUD's final determination of noncompliance would include the rationale for its determination in response to issues raised in the comments.

Finally, the absence of a provision for an informal procedure in the regulations does not mean that HUD would simply follow the formal procedure upon any suggestion of noncompliance. On the contrary, HUD anticipates that it would make reasonable attempts to work with a state to help bring it into compliance before proceeding with the formal procedures. The absence of regulations governing such an informal approach maximizes flexibility for the state and HUD in attempting to bring about full compliance. For example, such procedures could include informal telephone communications, meetings, letters, or other approaches.

3. Comment: Revise § 3400.101 pertaining to HUD's determination of a state's compliance with the SAFE Act. A commenter stated that the phrasing of § 3400.101 makes it appear to be a foregone conclusion that HUD will determine that a state's licensing system does not meet the minimum standards. The commenter recommended that this section be rephrased to ''procedures HUD will follow to determine whether or not ''a state has in place a system.''

HUD Response: HUD has not adopted the suggested rephrasing of § 3400.101. It is not HUD's intent to imply that it presumes state systems are not in compliance. Rather, the language comports with the statutory provision that HUD is authorized to act when it determines that a state is not in compliance. The SAFE Act does not provide for HUD to make formal, affirmative determinations of compliance.

4. Comment: Good-faith effort to meet compliance may be satisfied by a state commitment to make a good-faith effort. A commenter urged HUD to revise § 3400.115(d) to provide that HUD may grant a state a 24-month period to come into compliance upon a state's commitment to make a good-faith effort, in addition to HUD's finding that the state is in fact making a good-faith effort to come into compliance.

HUD Response: HUD declines to make the suggested change, in part because it is difficult to predict the range of circumstances under which a state supervisory authority, legislative committee chair person, other legislator, or other state official might purport to be making a commitment on behalf of a state. However, this decision does not mean that a commitment alone will never constitute a good-faith effort. HUD understands that in some cases compliance may be achieved through administrative means by the state supervisory authority, while in other cases compliance may require that steps be taken by multiple actors in the state's executive, legislative, and even judicial branches. HUD will consider a commitment made by a state official along with all the facts and circumstances to determine whether such a commitment and any steps already taken amount to a good-faith effort to comply.

5. Comment: HUD's authority to regulate states under the SAFE Act is limited. A number of commenters state that HUD's authority over states is limited to specific sections of the SAFE Act. Several commenters state that HUD's review of state compliance is limited to sections 5104 (licensing and registration requirement), 5105 (state application and issuance procedures), and 5107(d) [*sic*] of SAFE. Other commenters identified the three sections as 5105, 5106 (standards for state license renewal), and 5108(d) (state licensing law requirements). These commenters state that, as a result, HUD does not have authority to approve or deny state definitions of loan originators or exclusions for individuals traditionally regulated by the states, and that HUD does not have authority to preempt states in this area. States have the right to interpret the SAFE Act to create their own exceptions and exclusions.

One commenter states that HUD's authority with regard to loan originator licensing would not be triggered until such time as a state failed to comply within the afforded timeline, and such authority would be limited to the scope of these three sections of the SAFE Act. Accordingly, the commenter, along with others, stated that HUD does not have authority to define the scope of state provisions regarding loan originator licensing or to deny exclusions from such provisions as set forth by the states.

Several commenters, including banking trade associations, stated that HUD may only: (1) Provide a backup licensing and registration system if a state fails to do so, (2) establish a backup tracking system if the NMLSR fails to do so, and (3) determine whether a particular state's system meets the minimum SAFE Act requirements. The ''purpose'' provisions of the rule should expressly state HUD's role of reviewing compliance with minimum standards and should not indicate that HUD has overall responsibility for interpretation, implementation, and compliance with the SAFE Act. The rule should also state that HUD will only evaluate states to determine whether the minimum statutory requirements have been met.

Some commenters stated that HUD violated the Administrative Procedure Act and its own rules on rulemaking, in that the agency did not provide an opportunity for public comment before it issued its own Commentary and Frequently Asked Questions (FAQs).

HUD Response: HUD disagrees with the assertion that it may not enforce, interpret, or issue regulations clarifying, for example, terms that are defined outside of 12 U.S.C. 5103, 5104, and 5107(d) (*i.e.,* SAFE Act sections 1504, 1505, and 1508(d)). If the assertion were true, it would mean that a state could, for example, interpret the definition of ''loan originator'' (which is used in section 1504 in the course of providing which individuals are subject to licensing requirements) so narrowly that no individual would be covered. Under the commenter's theory, HUD would be powerless to act in such a situation, or to issue regulations in advance clarifying the meaning of ambiguous terms that HUD must rely on in carrying out its statutory obligations under the SAFE Act.

HUD also disagrees that it violated the Administrative Procedure Act in posting the Commentary and Frequently Asked Questions, without following prior notice and comment procedures. The Commentary and Frequently Asked Questions provided guidance on HUD's interpretations and tentative views at the time, in anticipation of approaching deadlines. Notice and comment procedures apply to legislative rules. The Commentary and Frequently Asked Questions were not legislative rules.

L. NMLSR Requirements

Comment: Consider alternative systems to NMLSR or additional systems. A commenter recommended that HUD consider a system that could be tracked by Freddie Mac and Fannie Mae and individual lenders using CHUMS and SAR ID numbers given to underwriters by FHA and the Department of Veterans Affairs and tied to individual's Social Security Numbers

and tracked through Neighborhood Watch for default trends, etc.

Other commenters cited concerns with the NMLSR with respect to the manufactured housing industry. The commenters stated that in the manufactured housing industry, at least three types of entities must employ loan originators: Personal property-only finance lenders, retail sellers of manufactured homes, and owners of manufactured housing communities. These entities typically hold sales finance company licenses, installment loan licenses, or retail seller licenses. The commenters stated that because NMLSR does not include these licenses in its system, these entities are unable to sponsor their employees. Commenters encouraged HUD to address the NMLSR flaw by creating an exempt status to allow these personal property finance lenders, retail sellers, and community owners to sponsor their loan originator employees. The commenters state that this is a fatal flaw in the NMLSR.

Another commenter stated that one of the concerns with the NMLSR is that under this system, only originators involved with real property mortgages are able to register. The commenter states that HUD should expressly confirm that all originators, including chattel-only lenders, will be able to register within the NMLSR.

Other commenters expressed concern with the privacy offered by the NMLSR. The commenters stated that HUD's final rule should clarify that the SAFE Act does not require the release of home address, Social Security Number, or other private information on originators. Commenters stated that the requirement for this information could lead to identity theft and harassment of loan originators. HUD should make it clear that those who misuse or fail to safeguard this data will be subject to severe penalties.

These commenters also supported HUD's proposed rule requiring financial oversight of the NMLSR and HUD's collection, and making public audited financial statements concerning the NMLSR's operations. Another commenter encouraged HUD to consider establishing a mortgage origination standards board, comprised of members from the various segments of the industry that are engaged in loan origination, to establish standards for the NMLSR's approval of education courses and other licensing requirements. The commenter also suggested that HUD require an independent review of the design and effectiveness of the NMLSR Web site and its user interface to ensure that the system is intuitive and easily navigable by all users.

HUD Response: HUD believes it is too early in the implementation of the SAFE Act to consider an alternative system to the NMLSR. States and CSBS and AARMR are all at a point or near the point of commencing full implementation of the requirements of the SAFE Act. More time is needed to evaluate how the NMLSR works before consideration should be given to alternative systems.

With respect to the types of licenses that the NMLSR includes, the SAFE Act charges that NMLSR track ''loan originators.'' If an individual is licensed by the state in which he or she engages in the business of a loan originator, then the individual will be entered in the NMLSR. With respect to the concern that the NMLSR only accepts loan originators working for certain categories of companies, HUD notes that some states have created designations in the NMLSR for ''exempt company'' registrations, so that companies that are not required to be licensed under state law may nonetheless sponsor its loan originators in the system.

On the issue of confidentiality, the SAFE Act establishes a high bar to maintain the confidentiality of information that is in the NMLSR. The SAFE Act provides that except as otherwise provided in the SAFE Act, any requirement under Federal or state law regarding the privacy or confidentiality of any information or material provided to NMLSR, and any privilege arising under Federal or state law (including the rules of any Federal or state court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. The SAFE Act further provides that such information that is subject to privilege or confidentiality shall not be subject to disclosure under any Federal or state law governing the disclosure to the public of information held by an officer or agency of the Federal Government or the respective state agency, nor shall the information be subject to subpoena or discovery or admission into evidence, except where such information is subject only to privilege held by NMLSR or HUD. Finally the SAFE Act provides that any state law, including any state open record law, relating to disclosure of confidential supervisory information or any information that is of the type entered in NMLSR, shall be superseded by section 1512 of the SAFE Act to the extent that the SAFE Act provides less confidentiality or a weaker privilege.

Rule change. However, with respect to confidentiality, and specifically data security, which is addressed in § 3400.305, HUD revises the regulatory language that states that if there is a reasonable belief that a security breach of the NMLSR has occurred, notification of such breach must be provided as soon as practicable, rather than in a reasonable amount of time as the proposed rule stated.

Additionally, the proposed rule, in the regulatory text, inadvertently omitted reference to AARMR in § 3400.305 and § 3400.307, and the final rule inserts such reference.

With respect to the issue of establishing an NMLSR oversight board, HUD believes there is value in establishing such a board but defers to the Bureau on this matter.

M. Loan Processors and Underwriters

Comment: More specificity is needed regarding supervision of loan processors and underwriters. Commenters asked HUD to clarify the SAFE Act's requirement that loan processors or underwriters be supervised by a state-licensed loan originator or a registered loan originator. Commenters stated that the SAFE Act is ambiguous with respect to individuals who do not act as originators as defined in the statute, but who supervise loan processors and underwriters. Commenters stated that the rule should clarify that the statutory requirement is met if company procedures provide that licensed or registered loan originators supervise and instruct loan processors on the individual loans the loan originator is involved with, even though the loan processors and underwriters may report to their own administrative supervisors, who do not engage in loan origination activities and are not licensed or registered loan originators.

Other commenters stated that the rule should clarify that, under § 3400.23 of the proposed rule, as long as the state-licensed loan originator directs, supervises, and instructs the loan processor, he or she is not required to be the loan processor's immediate or direct supervisor. Another commenter questioned how this provision, if not clarified, would affect contractors, because contractors would be employees as to the loan originator but under contract to the broker or lender. The commenter stated that requiring ''direct supervision'' in the case of a contract processor would be detrimental to the processor's ability to provide an arms' length transaction. The loan originator could direct the processor to do things that the SAFE Act would prevent the loan originator from doing.

Another commenter states that the direct supervision requirement could conflict with some state laws.

Commenters stated that, as a result of this requirement, jurisdictions are requiring processing companies, underwriting companies, and staffing companies that provide these services to become licensed brokers. The commenters expressed concern that contract processors may close down because of the expense of becoming licensed in multiple jurisdictions; furthermore, if an individual obtains a loan originator license under a sponsoring broker, the individual is limited to working only with that broker, which defeats the purpose of working as a contract processor. A similar concern was expressed by a commenter about small processing companies that may be forced out of the business because of the cost of meeting licensing requirements.

Other commenters concurred with HUD's proposal that loan processors or underwriters who perform only clerical or support duties and do so at the direction of and subject to the supervision and instruction of a licensed or registered loan originator do not need to be licensed. The commenters stated that the rule should also make clear that processors and underwriters who are not directly supervised by individual loan originators but provide clerical or support duties do not need to be licensed and registered. They stated that this exclusion should be extended to processors or underwriters who do not work under the direct supervision of a loan originator, *i.e.,* contractors, because the Home Valuation Code of Conduct (HVCC) and business practices require that firewalls should be established with these processors to prohibit undue influence on processors. They stated that, for clarity purposes, the rule should provide that the language means that ''loan processors and underwriters must support the origination function. Specific direction and supervision may be subject to appropriate company protocols to protect the integrity of the loan process and consumers.''

A commenter stated that it is unclear from the statute and regulation whether an individual salesperson who gathers information from a potential customer (thereby meeting the definition of ''loan processor or underwriter'') would be required to be licensed or have his or her supervisor become licensed. Another commenter asked that HUD clarify how the direct supervision requirement would apply to contract companies or lenders that use overseas labor to process and underwrite loans. Another commenter suggested that HUD expand the definition of ''clerical and support duties to include submitting to automated electronic loan origination programs information common for the processing of underwriting or a residential mortgage loan and communicating to potential borrowers the results of the automated electronic loan origination programs.'' The commenter also recommended that HUD clarify in the definition of independent contractor, that an individual performs his or her duties ''at the direction of and subject to the instruction of an individual who is * * * exempt under § 3400.103(e)(7)'' when such individual is required to and does hold himself or herself out as a representative of a Federal agency-regulated lender that must follow the loan origination guidelines of such institution.

One commenter supported the requirement for contract processors and underwriters to be licensed because the requirement that such third parties be supervised by loan originators, rather than licensed themselves, can ''create a potentially treacherous environment for consumers and subjects the institution itself to questionable practices.'' The commenter stated that all mortgage-related activities should be under the supervision of the regulator. The commenter also asked that HUD clarify that the phrase ''the origination of a residential mortgage loan'' in the definition of ''loan processor or underwriter'' means ''all residential mortgage loan related activities from the taking of a residential mortgage loan application through the completion of all requires loan closing documents and funding of the loan.''

HUD Response: HUD does not have authority to subject to licensing those activities not subject to licensing under the SAFE Act nor to exempt from licensing those activities clearly subject to licensing under the SAFE Act. Loan processors and underwriters are clearly not covered by licensing under the SAFE Act when such individuals perform clerical or support duties at the direction of and subject to the supervision and instruction of either a state-licensed loan originator or a registered loan originator. The SAFE Act defines what constitutes clerical or support duties and makes clear that the principal factor that distinguishes them from ''administrative or clerical tasks'' (the performance of which, alone, does not subject an individual to licensing requirements) is whether the individual performs any analysis at all of the information for the purpose of either processing or underwriting the loan. HUD believes that the definition of clerical or support duties is thorough and sufficient and does not require elaboration. Nothing in the definition of ''clerical or support'' duties excludes the performance of these duties electronically.

The major issue raised by the commenters pertains to the issue of supervision. Nothing in the SAFE Act or this final rule requires that the requisite licensed or registered loan originator be the loan processor or underwriter's direct or immediate supervisor. At the same time, the SAFE Act's usage of functional terms (*i.e.,* ''at the direction of and subject to the supervision and instruction of [a loan originator]'') make clear that there must be an actual nexus between the licensed or registered loan originator's direction, supervision, and instruction and the loan processor or underwriter's performance, as opposed to a mere nominal relationship on an organizational chart.

Under the SAFE Act, a loan processor or underwriter is not subject to licensing requirements if he or she performs his or her duties at the direction of and subject to the supervision and instruction of ''a'' state-licensed loan originator or registered loan originator. Even with respect to states that require processing or underwriting companies to be licensed or independent contractor licensees to be associated with a single company, the SAFE Act deals only with licensing of individuals. In the case of loan processors or underwriters, the SAFE Act requires supervision by an individual who holds a SAFE Act-compliant loan originator license or who is a registered loan originator. An individual who performs only clerical or support duties and is an employee of a company that provides processing or underwriting services is not required to be licensed so long as he or she is supervised by a licensed or registered loan originator from that company. Any state requirement for such a company to hold a license, or for a loan processor or underwriter to have a relationship with only one company licensee, is beyond the scope of the SAFE Act and this final rule. A single licensed or registered loan originator may be able to effectively direct, supervise, and instruct multiple loan processors or underwriters, possibly even those in overseas locations, depending upon all of the facts and circumstances. HUD believes state supervisory authorities are well suited to evaluate operations and organizational structures to determine whether the SAFE Act's functional requirement for a licensed or registered loan originator's direction, supervision,

and instruction of a loan processor or underwriter is met.

HUD finds the statutory and regulatory language with respect to loan processors and underwriters is clear. Although HUD believes it should be clear that ''origination of a residential mortgage loan'' in the final rule's definition of ''loan processor or underwriter'' includes all phases in a loan origination, through the closing and funding of the loan, HUD has added a definition of ''origination of a residential mortgage loan'' to ensure there is no confusion. In addition, HUD has included a discussion in Appendix C of when loan processors or underwriters may be required to be licensed under the SAFE Act.

Rule change: In § 3400.23 (Definitions), HUD adds the following definition: ''*Origination of a residential mortgage loan,* for purposes of the definition of *loan processor or underwriter,* means all residential mortgage loan-related activities from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan.''

Rule change: In addition, consistent with HUD's determination that individuals providing origination services in certain charitable or government transactions do not engage in the ''business'' of a loan originator, HUD is clarifying that individuals who act only as loan processors or underwriters and only with respect to these same transactions are not subject to the SAFE Act's licensing requirements. The clarification is provided in § 3400.103(e)(3)(ii).

N. Other Definitions and Issues

1. Comment: Establish Web site for housing counselors. A commenter suggested that there should be one national certification and a Web site for counselors to reference various state regulations.

HUD Response: HUD is charged with implementing the SAFE Act with respect to individual loan originators. In that respect, a national certification or Web site for housing counselors is outside HUD's authority under the SAFE Act and beyond the scope of this rule.

2. Comment: Preempt duplicative state laws. Because of the SAFE Act, many states have amended their definition of ''mortgage loan'' in state mortgage lending laws to include personal property finance transactions. As a result, individuals and entities that provide such financing are now subject to dual regulation, both under laws that target sales finance and installment loans (*e.g.,* where, for example, a state views manufactured housing as personal property and a state requires licensing for personal property transactions in addition to licensing as a mortgage loan originator under the SAFE Act). Commenters asserted that dual regulation is unfair and leads to duplication and inconsistency between charges and disclosures required under the two regimes. In addition, commenters stated that HUD should guide states to reconsider the application of their amended laws to focus on individuals, not entities, in accordance with the intent of the SAFE Act.

HUD Response: Under the SAFE Act, individuals acting as loan originators must meet its licensing and registration requirements, even if they are also subject to other laws, such as state or local laws regulating personal property finance transactions. The SAFE Act establishes only the minimum standards for licensing individuals engaged in the business of a loan originator. It does not address licensing of individuals or entities under other laws. The licensing or dual regulation of the individual or entity is an issue of state law and not subject to HUD's rules under the SAFE Act.

3. Comment: HUD's rule does not address federalism implications. A commenter stated that under the section on Executive Order 13132, ''Federalism,'' HUD did not sufficiently address the federalism issues raised by the proposed rule. The commenter stated that specifically, the proposed rule, without justification or explanation, restricts states' ability to legislate and enact laws that are not inconsistent with the U.S. Constitution or existing Federal law. The commenter stated that it is the responsibility of each individual state to implement a system of licensing and registering loan originators that complies with the letter and spirit of the SAFE Act without directly conflicting with or impeding the achievement of congressional objectives or intent in enacting the legislation. The commenter stated that because HUD failed to comply with Executive Order 13132 in issuing the proposed rule, HUD should withdraw this rule.

HUD Response: HUD disagrees with the commenter's characterization of the rule. The licensing requirements in HUD's rule are those established by the SAFE Act. As required by the SAFE Act, the regulation simply sets minimum standards for the licensing and registration of loan originators, and has no additional federalism implications.

4. Comment: HUD's rule triggers an unfunded mandate. A commenter stated that HUD's proposed rule, under the section discussing the Unfunded Mandates Reform Act (UMRA), states that Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. In issuing the proposed rule, the commenter stated that HUD failed to comply with the requirements of Title II of the Unfunded Mandates Reform Act. The commenter stated that no mention was made of the significant impact that will be felt by state agencies that are forced to re-process and re-license current loan originator licensees in order to be in compliance with the proposed rule. Additionally, the commenter stated that the proposed rule failed to account for the impact that will be felt within the competitive market for mortgage loans and among small businesses when states are unable to process applications for new loan originator licenses quickly enough, and when long-time originators are forced to suspend their business activities.

HUD Response: The Unfunded Mandates Reform Act (UMRA) of 1995 requires agencies to ''assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (*other than to the extent that such regulations incorporate requirements specifically set forth in law*).'' (Emphasis added.) Since HUD's SAFE Act regulation simply implement requirements ''specifically set forth in law,'' the assessment of effects by the agency is not required. Although this rule does not have the effects on State, local, and tribal governments within the meaning of UMRA, the SAFE Act statutory provisions do have such effects. HUD addresses the impacts of the statutory provisions of the SAFE Act in its statement on Executive Order 12866 that appears later in this preamble, and in addressing the designation of the rule as being economically significant. As HUD notes in its Executive Order 12866 statement, notwithstanding a determination by HUD and OMB that it is the statute, not HUD's rule, which has a significant economic impact, the rule is designated economically significant because the rule, in codifying the provisions of the SAFE Act in regulation, reflects the economic significance of the statute and should have a designation reflective of the impact of the statute on the economy.

5. Comment: Additional time for public comment should have been

provided. A commenter stated that additional time for public comments should be allowed.

HUD Response: HUD's regulations on rulemaking at 24 CFR 10.1 specify that it is the policy of HUD to allow not less than 60 days for public comment. In the case of this rulemaking, the proposed rule was published on December 15, 2009 (74 FR 66548), and the original 60-day deadline ended on February 16, 2010. On February 17, 2010, at 75 FR 7149, HUD published a notice extending the public comment until March 5, 2010. During the public comment period, more than 5,000 comments were received. HUD believes that the public has had adequate opportunity to comment on the rule and has done so.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, ''Regulatory Planning and Review''). OMB determined this rule to be an ''economically significant regulatory action'' under section 3(f)(1) of the Order, based on the costs of compliance with requirements imposed directly by the SAFE Act, and based on costs that have already been incurred and would be incurred notwithstanding issuance of any rule by HUD. Neither HUD nor OMB determined that this rule adds to these statutory requirements, to the cost of compliance with these statutory requirements, or to any costs to or effects on the economy (including costs to consumers, industries, government agencies, or regions, or effects on competition, employment, investment, productivity, innovation, or competitiveness) of the statutory requirements. Notwithstanding a determination by HUD and OMB that it is the statute, not this rule, which has a significant economic impact, OMB designates the rule economically significant because the rule, in codifying the provisions of the SAFE Act in regulation, reflects the economic significance of the statute, and should bear a designation reflective of the impact that the SAFE Act has on the economy.

Executive Order 12866 provides for agencies to assess the potential costs and benefits of regulatory actions reviewed by OMB under the executive order. However, as just noted, this rule does not add to the effects of the SAFE Act on any person or entity, and in itself therefore imposes no costs, nor creates any benefits, nor causes any transfers. As HUD has previously stated, this rulemaking was not required to implement the licensing requirements of the SAFE Act. The SAFE Act contained no mandate for HUD to issue regulations, or any indication that states must wait for HUD regulations before commencing compliance with the statutory licensing requirements of the SAFE Act.[12] The SAFE Act licensing requirements imposed on states were self-executing requirements.

Section 1508 of the SAFE Act directs states to comply with its licensing requirements no later than one year after the date of enactment of the SAFE Act, or 2 years in the case of a state whose legislature meets only biennially. The SAFE Act allowed HUD to extend the deadline for states making good-faith efforts to achieve compliance with the SAFE Act. In addition, the SAFE Act imposed on HUD certain duties, including to oversee and enforce states' compliance with the SAFE Act, and to assure that the NMLSR continues to meet its purposes of the SAFE Act. Additionally, section 1508 of the SAFE Act provides for HUD to establish a SAFE Act licensing and registration system (a backup system) in any state that fails to establish and maintain a SAFE Act licensing and registration system. Accordingly, HUD initiated rulemaking to clarify certain statutory terms and provisions to assist states in complying with the SAFE Act, and to establish the minimum licensing standards that HUD would apply if HUD had to establish a backup system in any state. HUD did not propose, through this rulemaking, to implement a backup system that would exceed the minimum standards of the SAFE Act.

All 50 states, the District of Columbia, the Virgin Islands, Puerto Rico, and Guam have now enacted SAFE Act licensing laws.[13] At this time, HUD does not expect to have to enforce the SAFE Act by establishing a backup licensing system in any state. Nor does this regulation impose any requirements on covered individuals beyond those requirements imposed by the statute. This regulation is thus not expected to alter the affects of the SAFE Act on any person or entity, so HUD is not imposing any costs or creating any benefits or transfers through this regulation. In the unlikely event that a state fails to enforce its SAFE Act licensing system, HUD (or the successor agency) will have to assume that state's responsibilities, in which case costs, benefits, and transfers will result from this rule, because a state's failure to enforce a SAFE Act licensing system will have caused HUD to undertake enforcement responsibilities.

The principal benefits of the SAFE Act include the enhanced protection of consumers and of the housing finance system as a whole by ensuring that covered loan originators meet minimum standards for integrity and competence nationwide. Standards for integrity include the requirement that individuals not have committed certain crimes and that they must be found to have demonstrated financial responsibility, character, and fitness. Standards for competence include the requirement that individuals must complete educational requirements and pass a test on mortgage origination and consumer protection laws, as well as other topics. One benefit of these standards is expected to be a reduction in the incidence of loan originators misrepresenting or mischaracterizing the features and obligations of residential mortgage loans that they offer to prospective borrowers. Such a reduction is one measure that is important in reducing the likelihood of borrowers accepting loans with predatory features or with obligations that they do not understand or cannot afford, which, in turn, can be expected to reduce the likelihood of future loan defaults and foreclosures. The SAFE Act requires accountability at the level of the individual loan originator, to ensure that problematic loan originators cannot escape all consequences for their actions simply by moving on to another brokerage or lending entity, whether in the same state or in another state. For example, loan originators whose actions result in revocation of their licenses in a given state become ineligible for licensure in all states.

Another benefit of the SAFE Act is that its minimum standards increase uniformity among states (compared with the range of state regulatory frameworks prior to the enactment of the SAFE Act) and establishes a nationwide registry with standardized unique identifiers and procedures, while at the same time maintaining regulation of loan

[12] In contrast, see section 1507 of the SAFE Act, which required the Federal banking agencies to jointly, through the Federal Financial Institutions Examination Council, and together with the Farm Credit Administration, develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the FCA as registered loan originators with the NMLSR. These Federal agencies were mandated to develop and implement such a system one year from the date of enactment of the SAFE Act.

[13] See the Web site of the Conference of State Bank Supervisors, reporting on the status of compliance by states with the SAFE Act at *http://www.csbs.org/news/press-releases/pr2010/Documents/pr-060110.pdf.* In addition, HUD is continuing to work with the remaining jurisdictions to achieve full compliance with the SAFE Act.

originators at the state level and permitting states to exceed the minimum requirements as they deem appropriate. This rule enhances the benefits of the SAFE Act by providing increased clarity to statutory terms that many states and public commenters have found to be ambiguous, and that largely determine which individuals are required to be subject to state licensing. This increased clarity is expected to reduce the likelihood that individuals who are not in fact required by the SAFE Act to be licensed will unnecessarily undergo the process and expense of seeking licensure, and that states will unnecessarily take enforcement actions against individuals who are not required by the SAFE Act to be licensed.

Although this rule has no economic impact on regulated parties, in accordance with OMB's direction and the provisions of OMB Circular A–4 on Regulatory Analysis, HUD is providing an analysis of the estimated costs of the SAFE Act against a ''pre-statutory baseline'' in an effort to bring transparency and more fully inform the public about the costs of the requirements imposed by the statute. As discussed above, this rule does not add any requirements or increase costs of compliance beyond those imposed by the statute. While the SAFE Act sets minimum licensing standards for loan originators, states may establish standards that are higher than the statutory minimum. Additionally, states establish their own fees to cover the costs of maintaining the licensing and registration system. HUD does not set, guide, or regulate the fees imposed by states in connection with a SAFE Act licensing and registration system. Therefore, given the variation in state standards, the variation in fees that states may set for licensing, and the number of loan originators that may be doing business in each state, it is not possible for HUD to currently estimate what the costs of the SAFE Act, as actually implemented by the several states, would be. Therefore, to comply with OMB's direction and OMB Circular A–4, HUD provides below an analysis of the counterfactual situation where ''no'' state or territory implemented SAFE Act-compliant licensing requirements for loan originators (and/or repealed pre-existing statutes that met the SAFE Act requirements), and HUD (or its successor agency, the Consumer Financial Protection Bureau) was responsible for enforcing the minimum requirements in the SAFE Act, as codified by this rule, for the entire country.

Estimate of Costs if HUD Were Required To Establish a Backup SAFE Act Licensing System. The Congressional Budget Office (CBO) provided an estimate of the costs of implementation and compliance with the SAFE Act, prior to its passage, on both the individual residential mortgage loan originators and on the states that were required to establish SAFE Act-compliant laws. CBO's analysis assumes a uniform application of the minimum requirements of the SAFE Act as would be the case if HUD's rule were found necessary to implement because states did not establish SAFE Act-compliant registration systems. In its June 8, 2008, cost estimate report on the SAFE Act, under the heading of ''Changes in Revenues and Direct Spending,'' CBO stated in relevant part as follows with respect to the SAFE Act.

Nationwide Registry for Licensing Fees and Spending. Since 2004, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) have developed a nationwide licensing system for the residential mortgage industry. The system began operations in January 2008 and currently includes participation by agencies in eight states; the registry is expected to be available to the public sometime during 2009. As of May 2008, agencies in 40 states and in Puerto Rico and the District of Columbia have signed statements of intent to participate in the nationwide system. Both the CSBS and AARMR anticipate that agencies in the remaining 10 states will eventually commit to participating in the system.

Assuming that all the states participate and meet the minimum standards that would be established by this legislation, CBO does not expect HUD to develop its own national registry, though HUD would conduct some monitoring and oversight of the emerging voluntary system.

Enacting this legislation would impose a new requirement on loan originators to register with a nationwide registry and would authorize the assessment of fees for the cost of that registration. Although private entities are currently developing and maintaining a registry, participation in that system is voluntary. Under this legislation, participation by loan originators would become mandatory (that is, a loan originator would have to register to be state-licensed), and HUD would have the authority to enforce that requirement. Thus, CBO expects that the NMLSR would be acting as an agent of the Federal government; consequently, the cash flows associated with the NMLSR's regulatory and assessment authorities should be recorded in the Federal budget. Because the fees paid to NMLSR by loan originators would be approximately equal to the amounts some loan originators are currently paying or would pay the registry overseen by CSBS and AARMR under current law, taxable incomes of the loan originators and other entities in the economy would not change significantly under the bill.

The legislation would increase Federal revenues by authorizing the NMLSR to collect assessments from loan originators (that is, individual loan officers, branches of lending institutions, and lending companies). Based on information from the CSBS, CBO estimates that those individuals and entities would likely be charged an initial fee and an annual fee. Moreover, fees could be reduced over time as expenses decrease and more loan originators register with the system.

Based on fee schedules for similar activities and assuming that more than *300,000 entities and individuals would register with the NMLSR over the next five years,* CBO estimates that $137 million in fees would be collected by the NMLSR over the 2009–2018 period. (Emphasis added.)

Funds collected through such assessments would be spent without further appropriation to develop and maintain the registry system, and thus, the expenditures would be classified as direct spending. CBO estimates that the NMLSR would spend about $120 million over the 2009–2018 period. (See *http://www.cbo.gov/ftpdocs/93xx/doc9366/Senate_Housing.pdf* at pages 13–14.)

With respect to cost to the private sector, in CBO's report, under the heading of ''Estimated Intergovernmental and Private-Sector Impact,'' CBO stated in relevant part as follows:

Registry of Originators of Mortgage Loans. The bill also would impose a mandate on the mortgage finance industry by requiring originators of mortgage loans to register with a national registration system and authorizing the assessment of fees for the cost of that registration. Private entities are currently developing and maintaining a voluntary registration system. CBO estimates that about $70 million in fees would be collected over the 2009–2013 period under the bill. However, the direct cost to register with a nationwide registry for some loan originators would be approximately equal to the amounts they are currently paying under the voluntary registration system. Therefore, CBO expects that the incremental cost of complying with the mandate would be small. (See *http://www.cbo.gov/ftpdocs/93xx/doc9366/Senate_Housing.pdf* at page 17.)

Finally, CBO's report refers to a previous CBO cost estimate report, issued November 9, 2007, on H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, which was the legislation on which the SAFE Act was based. In its June 2008 report, CBO states that ''Both H.R. 3915 and the Senate legislation [that corresponded to H.R. 3915] include nearly identical provisions that would establish a nationwide licensing system for the residential mortgage industry. As a result, the cost estimates associated with the proposed system are identical.'' (See *http://www.cbo.gov/ftpdocs/93xx/doc9366/Senate_Housing.pdf* at page 18.) CBO's November 9, 2007, report can

be found at *http://www.cbo.gov/ftpdocs/88xx/doc8804/hr3915.pdf.*

HUD uses the 5-year cost estimate of the national registration system directly above, and one-half of the 10-year estimates cited previously to produce a range of estimates for the economic cost of producing and maintaining the national registration system for 5 years (although the lack of detail prevents HUD from applying separate discount rates to these estimates): $60 million to $70 million.

As noted above, the CBO report estimated that 300,000 entities and individuals would register with the NMLSR over the next 5 years, meaning that such entities and individuals would be licensed or registered under the SAFE Act licensing law in the state or states in which such individuals or entities engage in the residential mortgage loan business. CSBS and AARMR, which submit an annual report to Congress, stated in their June 10, 2010, report to Congress, which described SAFE Act licensing activities and results as of the end of Calendar Year 2009, stated that NMLS reported 134,731 state licenses from 33 participating states. Since all states have now enacted SAFE Act licensing laws, that number is expected to be higher when CSBS and AARMR issue their report on 2010 activities and results to Congress in the summer of 2011. (See ''States Report to Congress'' at *http://www.aarmr.org/.*) The number of 134,731 individual licenses as of the end of Calendar Year 2009 reflects only a partial total of all potential SAFE Act registrants, but also may reflect reductions in total employment of loan originators associated with the recent economic crisis and changes in the loan origination industry. For the remainder of this analysis, HUD will assume a range of theoretically affected loan originators eventually registered under the SAFE Act of 150,000 to 300,000 nationwide.

Integrity Mortgage Licensing, a mortgage licensing service that assist mortgage companies with meeting national and state licensing requirements, provides, on its Web site, [14] an overview of the requirements of the SAFE Act, as implemented by the states and, with respect to fees and costs that an individual residential mortgage loan originator may be required to pay, provides in relevant part as follows:

Twenty (20) hours of education is one of the major requirements [of the SAFE Act]. In order to get a license, a mortgage loan originator must complete 20 hours of pre-licensing education that is offered by an approved education provider. * * * *The course will usually cost around $299 to $399.* (Emphasis added.) * * *

Also, eight (8) hours of continuing education is required each year to renew your license. * * *

The SAFE Act also requires that MLOs complete a test to obtain a mortgage loan originator license. To comply with this requirement, the states have worked together to make a National Test component that covers Federal laws and regulations for mortgage origination. This test is only required to be passed once for all states. However, each state has also developed its own state-specific test component. So the National Test component and the State Test component must be completed to obtain a license. Any states where you have done previous testing to obtain a loan originator license prior to these new requirements may allow you to certify those past tests to meet this new requirement. The National Test component would still be required, but you could be exempt from having to take the state test. *The National Test component costs $92 and the State Test components cost $69 each.* The components only need to be passed once to obtain the license and never need to be taken again. And make sure to study for the tests. Only Sixty-Seven Percent (67%) of applicants are passing the National test component. (Emphasis added.)

Each state is required under the SAFE Act to complete a criminal background check on MLO License applicants. To implement this there is a Federal fingerprinting that can be paid for when you submit an MLO License application. When fingerprints are taken, they are sent to the FBI and the FBI reviews them and puts together a report of any criminal convictions that match your record. These criminal background check reports are then sent to the state to review. Because the Federal fingerprinting only checks the FBI database, some states have decided to also require their own fingerprinting that would check their state criminal database. So you will definitely have to complete the Federal Fingerprinting once, but you also may have to complete a state fingerprinting requirement in some states. *The Federal fingerprinting costs $39* and the state fingerprinting ranges from $25 to $60. (Emphasis added.)

While the SAFE Act clearly establishes a minimum training and licensing requirement for mortgage loan originators, what is less clear is the extent to which this minimum requirement goes beyond what may have been required by states prior to the SAFE Act, or to the extent it comes in addition to education requirements the industry imposes on itself to ensure that employees are competent to originate mortgage loans. The training required by the SAFE Act is to ensure that mortgage loan originators operate ethically, competently, and in compliance with other Federal (and state) regulations. Such training would be needed with or without enactment of the SAFE Act, so the question is whether the minimum SAFE Act training requirements exceed those the market finds necessary to produce ethical and competent loan originators knowledgeable of the regulatory environment in which they operate. CBO's report, in fact, stated that many loan originators were already subject to licensing and training fees by their states, and therefore the transition to the requirements imposed by the SAFE Act, and the costs associated with complying with its requirements would not be significantly different from licensing fees and training costs already in place in the states. For purposes of this analysis, HUD assumes that the incremental training requirements that would be imposed if HUD's rule imposing minimum SAFE Act requirements was binding in all states range from 0 to 20 hours for initial licensing, and from 0 to 8 hours for annual continuing education requirements. Since no estimates are available for the cost of the 8-hour annual refresher course, HUD estimates that they will cost about half the price of the 20-hour initial registration course as cited by Integrity Mortgage Licensing ($150 to $200).

If HUD were required to establish a licensing system, in accordance with this rule, because no state implemented a SAFE Act–compliant licensing statute, the educational course that Integrity Mortgage Licensing estimates at $299 to $399 would apply, as would the national test fees reported estimated at $92. According to the NMLS Activity Report, the average number of state registrations per mortgage loan originator is 1.8.[15] If HUD were required to establish a licensing system, it would need to account for variations among state laws, and for certifying loan originators' knowledge of state mortgage lending laws. To the extent that states could be grouped according to common legal structures and a single test would qualify a mortgage loan originator in all of the states in the group, a HUD-run national registration system would have a lower average number of separate state registrations per mortgage loan originator. HUD therefore demonstrates the costs of and average of: One state test for the low estimate (state test cost of $69, total national and state test costs of $161); 1.8 state tests for the high estimate ($124, total $216); and 1.4 state tests for the primary estimate ($97, total $189).

HUD assumes that the national fingerprinting and background check

[14] See *http://www.integritymortgagelicensing.com/mortgage-licensing-news/the-safe-mortgage-licensing-act/.*

[15] NMLS Activity Report, March 26, 2011: 99,787 unique individuals hold 181,157 state licenses.

cost estimated by Integrity Mortgage Licensing would apply ($39), but that separate state fingerprinting and background check costs would not be present if HUD were the sole SAFE Act registrar.

HUD has no basis for estimate of the total time spent by loan originators to prepare for and take the national and state tests, and submit fingerprints. For purposes of this analysis, HUD demonstrates the costs for a loan originator candidate taking only one state exam at 12 hours, that these time costs rise with the number of state tests required proportionally to the total fees for testing and fingerprinting, and that time in such activities is valued at $75 per hour.[16] HUD assumes the failure rate on the national test found by Integrity Mortgage Licensing of 33 percent applies and that anyone who fails their tests does not retake the training or the tests.

HUD has no basis for estimating the rate of turnover among mortgage loan originators. For purposes of this analysis, HUD demonstrates the costs for annual new licensing rates of 5, 10, and 15 percent at a constant steady state number of mortgage loan originators. Turnover has an impact on continuing education estimates because new entrants will not require refresher training during the year that they enter the profession.

The table below presents low, primary, and high estimates of the cost of complying with the minimum SAFE Act statutory requirements in the counterfactual case of no state implementing any SAFE Act-compliant licensing requirements for mortgage loan originators, and HUD being charged with enforcing the minimum SAFE Act requirements as codified by this rule.

COSTS OF MINIMUM SAFE ACT REQUIREMENTS

Cost item	Low estimate	Primary estimate	High estimate
A. Registration System: Set-up and 5-year Maintenance	$60,000,000	$68,200,000	$70,000,000
B. Mortgage Loan Originators Licensed	150,000	225,000	300,000
C. Mortgage Loan Originator License Applicants (= B/0.67)	223,881	335,821	447,761
D. SAFE-Certified 20-hour Training Course	$299	$349	$399
E. Incremental Licensing Training Time Requirement Relative to Market (hours)	0	10	20
F. Opportunity Cost of Incremental Training (E hours @ $75 per hour)	$0	$750	$1,500
G. National and State Licensing Test	$161	$189	$216
H. National Fingerprinting and Background Check	$39	$39	$39
I. Opportunity Cost of Time for Test Preparation, Test Taking, and Fingerprinting (increasing with state test requirements @ $75 per hour)	$900	$1,026	$1,148
J. Total Cost to Loan Originators of Initial Registration = C*(D+F+G+H+I)	$313,209,519	$790,186,813	$1,478,282,942
K. SAFE Certified 8-hour Refresher Training	$150	$175	$200
L. Incremental Refresher Training Time Requirement Relative to Market (hours)	0	4	8
M. Opportunity Cost of Incremental Training (L hours @ $75 per hour)	$0	$300	$600
N. Total Annual Cost to Loan Originators of Refresher Training = B*(1 − Q)*(K+M)	$21,375,000	$96,187,500	$204,000,000
O. 5 Years Refresher Training Discounted at 7%	$87,641,720	$394,387,741	$836,440,277
P. 5 Years Refresher Training Discounted at 3%	$97,891,241	$440,510,585	$934,260,266
Q. Annual Replacement Rate of Loan Originators	5%	10%	15%
R. Annual New Licensing Attempts = B*Q/0.67	11,194	33,582	67,164
S. Annual Cost of New Licensing Attempts = R*(D+F+G+H+I)	$15,660,406	$79,018,446	$221,741,946
T. 5 Years Annual New Licensing Attempts Discounted at 7%	$64,210,757	$323,991,230	$909,185,758
U. 5 Years Annual New Licensing Attempts Discounted at 3%	$71,720,074	$361,881,345	$1,015,513,184
V. Total 5-Year Cost of SAFE Act Discounted at 7% = A+J+O+T	$525,061,996	$1,576,765,784	$3,293,908,977
W. Total 5-Year Cost of SAFE Act Discounted at 3% = A+J+P+U	$542,820,834	$1,660,778,743	$3,498,056,392
X. Annualized Cost over 5 Years at 7%	$128,057,735	$384,558,502	$803,353,748
Y. Annualized Cost over 5 Years at 3%	$118,527,411	$362,638,631	$763,816,604

It is reiterated here that the above table is not an estimate of the costs of this rule, and should in no way be construed as such. Rather, the above estimates are for the costs that would be imposed by HUD to fulfill the statutory requirements of the SAFE Act if no state implemented any SAFE Act-compliant statute (or repealed pre-existing statutes that met the SAFE Act's requirements). As stated previously all 50 states, the District of Columbia, the Virgin Islands, Puerto Rico, and Guam have enacted SAFE Act licensing laws. Individual state requirements may exceed those that would be in place under HUD's rule if states had not implemented SAFE Act-compliant mortgage loan originator registration systems, but an estimate of the actual cost of the SAFE Act as implemented by the several states is beyond the scope of this analysis.

However, section 1516 of the SAFE Act requires an annual report to Congress on the effectiveness of the SAFE Act's provisions, including legislative recommendations, if any, for strengthening consumer protections, enhancing examination standards, streamlining communication among all stakeholders involved in residential mortgage loan origination and processing, and establishing performance-based bonding requirements for mortgage originators or institutions that employ such brokers. The annual reports to be submitted to Congress this year, and more importantly, in the succeeding years, after the SAFE Act licensing system is in full implementation across the country, will yield better information about the costs, as well as benefits of this nationwide statutory licensing system.

The docket file for this rule is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at

[16] Harold Bunce, Alastair McFarlane, William J. Reid, and Kurt Usowski, ''The Impact of Mortgage Disclosure Reform under RESPA,'' *Cityscape,* 11 (2): 117–136. The figure used in the analysis for 2008 was $72 per hour, which has the same purchasing power as $74.73 in 2011.

202–708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Congressional Review of Final Rules

As provided in HUD's statement under Executive Order 12866 (Regulatory Planning and Review), OMB determined that this rule is an economically significant rule and therefore also a ''major rule'' as defined in Chapter 8 of 5 U.S.C., based on the cost of compliance with requirements that were already imposed by Congress in the SAFE Act statute prior to the issuance of this rule. This rule therefore provides for a 60-day delayed effective date and will be submitted for congressional review in accordance with this chapter.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) 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. The SAFE Act, which establishes minimum licensing requirements for loan originators, is largely directed to individuals who are loan originators as defined by the SAFE Act. The SAFE Act requires each individual to be licensed and registered under its requirements. With respect to the SAFE Act licensing standards, HUD is not, through this rule, establishing or implementing these licensing requirements, because the SAFE Act made these requirements self-implementing. Rather, through this rule, HUD codifies, in regulation, the SAFE Act minimum licensing standards, and to codify those clarifications and interpretations that HUD already has issued through Web site postings. HUD is, however, establishing regulations reflecting its oversight responsibilities under the SAFE Act. The codification of the licensing standards, together with HUD's oversight regulations, will provide a convenient location for regulated parties and interested individuals to reference SAFE Act requirements. Because the SAFE Act is not directed to entities, large or small, but to individuals, and because this rule is directed to HUD's oversight responsibilities, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of Section 6 of the Executive Order are met. This rule merely implements the statutory requirements of the SAFE Act and does not have federalism implications beyond those in the Act. This rule does not itself impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Section 201 of Title II limits the assessment to enforceable duties imposed by the regulation and excludes duties that ''incorporate requirements specifically set forth in law.'' This rule does not add to the duties of states or individuals set forth in the SAFE Act statute, but instead clarifies classes of activities and individuals that are subject to the SAFE Act's statutory requirements. Accordingly, the costs identified by HUD above under the section ''Executive Order 12866, Regulatory Planning and Review'' are the costs of HUD's and individuals' compliance with the SAFE Act's statutory requirements in the counterfactual situation in which HUD were to implement licensing systems in all 50 states. Because this final rule does not add to the incorporated requirements specifically set forth in law, it is not subject to the requirements of UMRA.

List of Subjects

24 CFR Part 30

Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Mortgages, and Penalties.

24 CFR Part 3400

Licensing, Mortgages, Registration, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD amends 24 CFR part 30 and adds a new 24 CFR part 3400, as follows:

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, and 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

■ 2. Add § 30.69 to subpart B to read as follows:

§ 30.69 SAFE Mortgage Licensing violations.

(a) *General.* HUD may impose a civil penalty on a loan originator operating in any state that is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of 24 CFR part 3400, if HUD finds that such loan originator has violated or failed to comply with any requirement of the SAFE Act, the provisions of 24 CFR part 3400, or an order issued under the authority of 12 U.S.C. 5113(c).

(b) *Maximum amount of penalty.* The maximum amount of penalty for each act or omission described in paragraph (a) of this section shall be $25,000.

■ 3. Add part 3400, to read as follows:

PART 3400—SAFE MORTGAGE LICENSING ACT

Sec.
3400.1 Purpose.
3400.3 Confidentiality of information.

Subpart A—General

3400.20 Scope of this subpart.
3400.23 Definitions.

Subpart B—Determination of State Compliance With the SAFE Act

3400.101 Scope of this subpart.
3400.103 Individuals required to be licensed by states.
3400.105 Minimum loan originator license requirements.

3400.107 Minimum annual license renewal requirements.
3400.109 Effective date of state requirements imposed on individuals.
3400.111 Other minimum requirements for state licensing systems.
3400.113 Performance standards.
3400.115 Determination of noncompliance.

Subpart C—HUD's Loan Originator Licensing System and HUD's Nationwide Mortgage Licensing and Registry System

3400.201 Scope of this subpart.
3400.203 HUD's establishment of loan originator licensing system.
3400.205 HUD's establishment of nationwide mortgage licensing system and registry.

Subpart D—Minimum Requirements for Administration of the NMLSR

3400.301 Scope of this subpart.
3400.303 Financial reporting.
3400.305 Data security.
3400.307 Fees.
3400.309 Absence of liability for good-faith administration.

Subpart E—Enforcement of HUD Licensing System

3400.401 HUD's authority to examine loan originator records.
3400.403 Enforcement proceedings.
3400.405 Civil money penalties.
Appendix A to Part 3400—Examples of Mortgage Loan Originator Activities
Appendix B to Part 3400—Engaging in the Business of a Loan Originator: Commercial Context and Habitualness
Appendix C to Part 3400—Independent Contractors and Loan Processor and Underwriter Activities That Require a State Mortgage Loan Originator License
Appendix D to Part 3400—Attorneys: Circumstances That Require a State Mortgage Loan Originator License

Authority: 12 U.S.C. 5101–5116; 42 U.S.C. 3535(d).

§ 3400.1 Purpose.

(a) This part implements HUD's responsibilities under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) (12 U.S.C. 5101–5116). The SAFE Act strives to enhance consumer protection and reduce fraud by directing states to adopt minimum uniform standards for the licensing and registration of residential mortgage loan originators and to participate in a nationwide mortgage licensing system and registry database of residential mortgage loan originators. Under the SAFE Act, if HUD determines that a state's loan origination licensing system does not meet the minimum requirements of the SAFE Act, HUD is charged with establishing and implementing a system for all loan originators in that state. Additionally, if at any time HUD determines that the nationwide mortgage licensing system and registry is failing to meet the SAFE Act's requirements, HUD is charged with establishing and maintaining a licensing and registry database for loan originators.

(b) Subpart A establishes the definitions applicable to this part. Subpart B provides the minimum standards that a state must meet in licensing loan originators, including standards for whom a state must require to be licensed, and sets forth HUD's procedure for determining a state's compliance with the minimum standards. Subpart C provides the requirements that HUD will apply in any state that HUD determines has not established a licensing and registration system in compliance with the minimum standards of the SAFE Act. Subpart D provides minimum requirements for the administration of the Nationwide Mortgage Licensing System and Registry. Subpart E clarifies HUD's enforcement authority in states in which it operates a state licensing system.

§ 3400.3 Confidentiality of information.

(a) Except as otherwise provided in this part, any requirement under Federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under this part, and any privilege arising under Federal or state law (including the rules of any Federal or state court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all state and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and state laws.

(b) Information or material that is subject to a privilege or confidentiality under paragraph (a) of this section shall not be subject to:

(1) Disclosure under any Federal or state law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective state; or

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or by the Secretary with respect to such information or material, the person to whom such information or material pertains, waives, in whole or in part, in the discretion of such person, that privilege.

(c) Any state law, including any state open record law, relating to the disclosure of confidential supervisory information or any information or material described in paragraph (a) of this section that is inconsistent with paragraph (a), shall be superseded by the requirements of such provision to the extent that state law provides less confidentiality or a weaker privilege.

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Subpart A—General

§ 3400.20 Scope of this subpart.

This subpart provides the definitions applicable to this part, and other general requirements applicable to this part.

§ 3400.23 Definitions.

Terms that are defined in the SAFE Act and used in this part have the same meaning as in the SAFE Act, unless otherwise provided in this section.

Administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

American Association of Residential Mortgage Regulators is the national association of executives and employees of the various states who are charged with the responsibility for administration and regulation of residential mortgage lending, servicing, and brokering, and dedicated to the goals described at *http://www.aarmr.org.*

Application means a request, in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer.

Clerical or support duties:

(1) Include:

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication

does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; and

(2) Does not include:

(i) Taking a residential mortgage loan application; or

(ii) Offering or negotiating terms of a residential mortgage loan.

Conference of State Bank Supervisors (CSBS) is the national organization composed of state bank supervisors dedicated to maintaining the state banking system and state regulation of financial services in accordance with the CSBS statement of principles described at *http://www.csbs.org.*

Employee:

(1) Subject to paragraph (2) of this definition, means:

(i) An individual:

(A) Whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and

(B) Whose compensation for Federal income tax purposes is reported, or required to be reported, on a W–2 form issued by the controlling person.

(2) Has such binding definition as may be issued by the Federal banking agencies in connection with their implementation of their responsibilities under the SAFE Act.

Farm Credit Administration means the independent Federal agency, authorized by the Farm Credit Act of 1971, to examine and regulate the Farm Credit System.

Federal banking agencies means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

For compensation or gain. See § 3400.103(c)(2)(ii).

Independent contractor means an individual who performs his or her duties other than at the direction of and subject to the supervision and instruction of an individual who is licensed and registered in accordance with § 3400.103(a), or is not required to be licensed, in accordance with § 3400.103(e)(5), (e)(6), or (e)(7).

Loan originator. See § 3400.103.

Loan processor or underwriter, for purposes of this part, means an individual who, with respect to the origination of a residential mortgage loan, performs clerical or support duties at the direction of and subject to the supervision and instruction of:

(1) A state-licensed loan originator; or

(2) A registered loan originator.

Nationwide Mortgage Licensing System and Registry or NMLSR means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of loan originators and the registration of registered loan originators or any system established by the Secretary of HUD, as provided in subpart D of this part.

Nontraditional mortgage product means any mortgage product other than a 30-year fixed-rate mortgage.

Origination of a residential mortgage loan, for purposes of the definition of *loan processor or underwriter,* means all residential mortgage loan-related activities from the taking of a residential mortgage loan application through the completion of all required loan closing documents and funding of the residential mortgage loan.

Real estate brokerage activities mean any activity that involves offering or providing real estate brokerage services to the public including—

(1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(4) Engaging in any activity for which a person engaged in the activity is required to be registered as a real estate agent or real estate broker under any applicable law; and

(5) Offering to engage in any activity, or act in any capacity, described in paragraphs (1), (2), (3), or (4) of this definition.

Residential mortgage loan means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

Secretary means the Secretary of Housing and Urban Development.

State means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Unique identifier means a number or other identifier that:

(1) Permanently identifies a loan originator;

(2) Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and

(3) Shall not be used for purposes other than those set forth under the SAFE Act.

Subpart B—Determination of State Compliance with the SAFE Act

§ 3400.101 Scope of this subpart.

This subpart describes the minimum standards of the SAFE Act that apply to a state's licensing and registering of loan originators. This subpart also provides the procedures that HUD follows to determine that a state does not have in place a system for licensing and registering mortgage loan originators that complies with the minimum standards. Upon making such a determination, HUD will impose the requirements and exercise the enforcement authorities described in subparts C and E of this part.

§ 3400.103 Individuals required to be licensed by states.

(a) Except as provided in paragraph (e) of this section, in order to operate a SAFE-compliant program, a state must prohibit an individual from engaging in the business of a loan originator with respect to any dwelling or residential real estate in the state, unless the individual first:

(1) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and

(2) Obtains and maintains a valid loan originator license from the state.

(b) An individual engages in the business of a loan originator if the individual, in a commercial context and habitually or repeatedly:

(1)(i) Takes a residential mortgage loan application; and

(ii) Offers or negotiates terms of a residential mortgage loan for compensation or gain; or

(2) Represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform the activities described in paragraph (b)(1) of this section.

(c)(1) An individual ''takes a residential mortgage loan application'' if the individual receives a residential

mortgage loan application for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower (or to accept the terms offered by a borrower or prospective borrower in response to a solicitation), whether the application is received directly or indirectly from the borrower or prospective borrower.

(2) An individual ''offers or negotiates terms of a residential mortgage loan for compensation or gain'' if the individual:

(i)(A) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;

(B) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or

(C) Recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower; and

(ii) Receives or expects to receive payment of money or anything of value in connection with the activities described in paragraph (c)(2)(i) of this section or as a result of any residential mortgage loan terms entered into as a result of such activities.

(d)(1) Except as provided in paragraph (e) of this section, a state must prohibit an individual who is an independent contractor from engaging in residential mortgage loan origination activities as a loan processor or underwriter with respect to any dwelling or residential real estate in the state, unless the individual first:

(i) Registers as a loan originator through and obtains a unique identifier from the NMLSR, and

(ii) Obtains and maintains a valid loan originator license from the state.

(2) An individual ''engages in residential mortgage loan origination activities as a loan processor or underwriter'' if, with respect to a residential mortgage loan application, the individual performs clerical or support duties.

(e) A state is not required to impose the prohibitions required under paragraphs (a) and (d) of this section on the following individuals:

(1) An individual who performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the individual is compensated directly or indirectly by a lender, mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator;

(2) An individual who is involved only in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D);

(3) An individual who performs only clerical or support duties and:

(i) Who does so at the direction of and subject to the supervision and instruction of an individual who:

(A) Is licensed and registered in accordance with paragraph (a) of this section, or

(B) Is not required to be licensed in accordance with paragraph (e)(5); or

(ii) Who performs such duties solely with respect to transactions for which the individual who acts as a loan originator is not required to be licensed, in accordance with paragraph (e)(2), (e)(6), or (e)(7) of this section;

(4) An individual who performs only purely administrative or clerical tasks on behalf of a loan originator;

(5) An individual who is lawfully registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry, and who is an employee of

(i) A depository institution;

(ii) A subsidiary that is:

(A) Owned and controlled by a depository institution; and

(B) Regulated by a Federal banking agency; or

(iii) An institution regulated by the Farm Credit Administration;

(6)(i) An individual who is an employee of a Federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the Federal, state, or local government agency or housing finance agency.

(ii) For purposes of this paragraph (e)(6), the term ''employee'' has the meaning provided in paragraph (1) of the definition of employee in § 3400.23 and excludes the meaning provided in paragraph (2) of the definition.

(iii) For purposes of this paragraph (e)(6), the term ''housing finance agency'' means any authority:

(A) That is chartered by a state to help meet the affordable housing needs of the residents of the state;

(B) That is supervised directly or indirectly by the state government;

(C) That is subject to audit and review by the state in which it operates; and

(D) Whose activities make it eligible to be a member of the National Council of State Housing Agencies.

(7)(i) An employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

(ii) For an organization to be considered a bona fide nonprofit organization under this paragraph, a state supervisory authority that opts not to require licensing of the employee must determine, under criteria and pursuant to processes established by the state, that the organization:

(A) Has the status of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) Promotes affordable housing or provides homeownership education, or similar services;

(C) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(D) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(E) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(F) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and

(G) Meets other standards that the state determines are appropriate.

(iii) A state must periodically examine the books and activities of an organization it determines is a bona fide nonprofit organization and revoke its status as a bona fide nonprofit organization if it does not continue to meet the criteria under paragraph (e)(ii) of this section;

(iv) For residential mortgage loans to have terms that are favorable to the borrower, a state must determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.

(f) A state must require an individual licensed in accordance with paragraphs (a) or (d) of this section to renew the loan originator license no less often than annually.

§ 3400.105 Minimum loan originator license requirements.

For an individual to be eligible for a loan originator license required under § 3400.103(a) and (d), a state must require and find, at a minimum, that an individual:

(a) Has never had a loan originator license revoked in any governmental

jurisdiction, except that a formally vacated revocation shall not be deemed a revocation;

(b)(1) Has never been convicted of, or pled guilty or *nolo contendere* to, a felony in a domestic, foreign, or military court:

(i) During the 7-year period preceding the date of the application for licensing; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

(2) For purposes of this paragraph (b):

(i) Expunged convictions and pardoned convictions do not, in themselves affect the eligibility of the individual; and

(ii) Whether a particular crime is classified as a felony is determined by the law of the jurisdiction in which an individual is convicted.

(c) Has demonstrated financial responsibility, character, and general fitness, such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently, under reasonable standards established by the individual state.

(d) Completed at least 20 hours of pre-licensing education that has been reviewed and approved by the Nationwide Mortgage Licensing System and Registry. The pre-licensing education completed by the individual must include at least:

(1) 3 hours of Federal law and regulations;

(2) 3 hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and

(3) 2 hours of training on lending standards for the nontraditional mortgage product marketplace.

(e)(1) Achieved a test score of not less than 75 percent correct answers on a written test developed by the NMLSR in accordance with 12 U.S.C. 5105(d).

(2) To satisfy the requirement under paragraph (e)(1) of this section, an individual may take a test three consecutive times, with each retest occurring at least 30 days after the preceding test. If an individual fails three consecutive tests, the individual must wait at least 6 months before taking the test again.

(3) If a formerly state-licensed loan originator fails to maintain a valid license for 5 years or longer, not taking into account any time during which such individual is a registered loan originator, the individual must retake the test and achieve a test score of not less than 75 percent correct answers.

(f) Be covered by either a net worth or surety bond requirement, or pays into a state fund, as required by the state loan originator supervisory authority.

(g) Has submitted to the NMLSR fingerprints for submission to the Federal Bureau of Investigation and to any government agency for a state and national criminal history background check; and

(h) Has submitted to the NMLSR personal history and experience, which must include authorization for the NMLSR to obtain:

(1) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction; and

(2) An independent credit report.

§ 3400.107 Minimum annual license renewal requirements.

For an individual to be eligible to renew a loan originator license as required under § 3400.103(f), a state must require the individual:

(a)(1) To continue to meet the minimum standards for license issuance provided in § 3400.105; and

(2) To satisfy annual continuing education requirements, which must include at least 8 hours of education approved by the NMLSR. The 8 hours of annual continuing education must include at least:

(i) 3 hours of Federal law and regulations;

(ii) 2 hours of ethics (including instruction on fraud, consumer protection, and fair lending issues); and

(iii) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) A state must provide that a state-licensed loan originator may only receive credit for a continuing education course in the year in which the course is taken, and that a state-licensed loan originator may not apply credits for education courses taken in one year to meet the continuing education requirements of subsequent years. A state must provide that an individual may not meet the annual requirements for continuing education by taking an approved course more than one time in the same year or in successive years.

(c) An individual who is an instructor of an approved continuing education course may receive credit for the individual's own annual continuing education requirement at the rate of 2 hours credit for every one hour taught.

§ 3400.109 Effective date of state requirements imposed on individuals.

(a) Except as provided in paragraphs (b) and (c) of this section, a state must provide that the effective date for requirements it imposes in accordance with §§ 3400.103, 3400.105, and 3400.107 is no later than August 29, 2011.

(b) For an individual who was permitted to perform residential mortgage loan originations under state legislation or regulations enacted or promulgated prior to the state's enactment or promulgation of a licensing system that complies with this subpart, a state may delay the effective date for requirements it imposes in accordance with §§ 3400.103, 3400.105, and 3400.107 to no later than August 29, 2011. For purposes of this paragraph (b), an individual was permitted to perform residential mortgage loan originations only if prior state law required the individual to be licensed, authorized, registered, or otherwise granted a form of affirmative and revocable government permission for individuals as a condition of performing residential mortgage loan originations.

(c) HUD may approve a later effective date only upon a state's demonstration that substantial numbers of loan originators (or of a class of loan originators) who require a state license face unusual hardship, through no fault of their own or of the state government, in complying with the standards required by the SAFE Act and in obtaining state licenses within one year.

§ 3400.111 Other minimum requirements for state licensing systems.

(a) *General.* A state must maintain a loan originator licensing, supervisory, and oversight authority (supervisory authority) that provides effective supervision and enforcement, in accordance with the minimum standards provided in this section and in § 3400.113.

(b) *Authorities.* A supervisory authority must have the legal authority and mechanisms:

(1) To examine any books, papers, records, or other data of any loan originator operating in the state;

(2) To summon any loan originator operating in the state, or any person having possession, custody, or care of the reports and records relating to such a loan originator, to appear before the supervisory authority at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of the SAFE Act;

(3) To administer oaths and affirmations and examine and take and preserve testimony under oath as to any

matter in respect to the affairs of any such loan originator;

(4) To enter an order requiring any individual or person that is, was, or would be a cause of a violation of the SAFE Act as implemented by the state, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same requirement;

(5) To suspend, terminate, and refuse renewal of a loan originator license for violation of state or Federal law; and

(6) To impose civil money penalties for individuals acting as loan originators, or representing themselves to the public as loan originators, in the state without a valid license or registration.

(c) A supervisory authority must have established processes in place to verify that individuals subject to the requirement described in § 3400.103(a)(1) and (d)(1) are registered with the NMLSR.

(d) The supervisory authority must be required under state law to regularly report violations of such law, as well as enforcement actions and other relevant information, to the NMLSR.

(e) The supervisory authority must have a process in place for challenging information contained in the NMLSR.

(f) The supervisory authority must require a loan originator to ensure that all residential mortgage loans that close as a result of the loan originator engaging in activities described in § 3400.103(b)(1) are included in reports of condition submitted to the NMLSR. Such reports of condition shall be in such form, shall contain such information, and shall be submitted with such frequency and by such dates as the NMLSR may reasonably require.

§ 3400.113 Performance standards.

(a) For HUD to determine that a state is providing effective supervision and enforcement, a supervisory authority must meet the following performance standards:

(1) The supervisory authority must participate in the NMLSR;

(2) The supervisory authority must approve or deny loan originator license applications and must renew or refuse to renew existing loan originator licenses for violations of state or Federal law;

(3) The supervisory authority must discipline loan originator licensees with appropriate enforcement actions, such as license suspensions or revocations, cease-and-desist orders, civil money penalties, and consumer refunds for violations of state or Federal law;

(4) The supervisory authority must examine or investigate loan originator licensees in a systematic manner based on identified risk factors or on a periodic schedule.

(b) A supervisory authority that is accredited under the Conference of State Bank Supervisors-American Association of Residential Mortgage Regulators Mortgage Accreditation Program will be presumed by HUD to be compliant with the requirements of this section.

§ 3400.115 Determination of noncompliance.

(a) *Evidence of compliance.* Any time a state enacts legislation that affects its compliance with the SAFE Act, it must notify HUD. Upon request from HUD, a state must provide evidence that it is in compliance with the requirements of the SAFE Act and this part, including citations to applicable state law, and regulations; descriptions of processes followed by the state's supervisory authority; and data concerning examination, investigation, and enforcement actions.

(b) *Initial determination of noncompliance.* If HUD makes an initial determination that a state is not in compliance with the SAFE Act, HUD will notify the state and will publish, in the *Federal Register,* a notice providing HUD's initial determination and presenting the opportunity for public comment for a period of no less than 30 days. This public comment period will allow the residents of the state and other interested members of the public to comment on HUD's initial determination.

(c) *Final determination of noncompliance.* In making a final determination of noncompliance, HUD will review additional information that may be offered by a state and the comments submitted during the public comment period described in paragraph (b) of this section. If HUD makes a final determination that a state does not have in place by law or regulation a system that complies with the minimum requirements of the SAFE Act, as described in this part, HUD will publish that final determination in the **Federal Register**.

(d) *Good-faith effort to comply.* If HUD makes the final determination described in paragraph (c) of this section, but HUD finds that the state is making a good-faith effort to meet the requirements of 12 U.S.C. 5104, 5105, 5107(d), and this subpart, HUD may grant the state a period of not more than 24 months to comply with these requirements. If an extension is granted to the state in accordance with this paragraph (d), then HUD will provide an additional initial and final determination process before it determines that the state is not in compliance and is subject to subparts C and E of this part.

(e) *Effective date of subparts C and E.* The provisions of subparts C and E of this part will become effective with respect to a state for which a final determination of noncompliance has been made upon:

(1) The effective date of HUD's final determination with respect to the state, pursuant to paragraph (c) of this section, unless an extension had been granted to the state in accordance with paragraph (d) of this section; or

(2) If an extension had been granted to the state in accordance with paragraph (d) of this section, the effective date of HUD's subsequent final determination with respect to the state following the expiration of the period of time granted pursuant to paragraph (d) of this section.

Subpart C—HUD's Loan Originator Licensing System and Nationwide Mortgage Licensing and Registry System

§ 3400.201 Scope of this subpart.

The SAFE Act provides HUD with ''backup authority'' to establish a loan originator licensing system for any state that is determined by HUD not to be in compliance with the minimum standards of the SAFE Act. The provisions of this subpart become applicable to individuals in a state as provided in § 3400.115(e). The SAFE Act also authorizes HUD to establish and maintain a nationwide mortgage licensing system and registry if HUD determines that the NMLSR is failing to meet the purposes and requirements of the SAFE Act for a comprehensive licensing, supervisory, and tracking system for loan originators.

§ 3400.203 HUD's establishment of loan originator licensing system.

If HUD determines, in accordance with § 3400.115(e), that a state has not established a licensing and registration system in compliance with the minimum standards of the SAFE Act, HUD shall apply to individuals in that state the minimum standards of the SAFE Act, as specified in subpart B, which provides the minimum requirements that a state must meet to be in compliance with the SAFE Act, and as may be further specified in this part.

§ 3400.205 HUD's establishment of nationwide mortgage licensing system and registry.

If HUD determines that the NMLSR established by CSBS and AARMR does not meet the minimum requirements of subpart D of this part, HUD will establish and maintain a nationwide mortgage licensing system and registry.

Subpart D—Minimum Requirements for Administration of the NMLSR

§ 3400.301 Scope of this subpart.

This subpart establishes minimum requirements that apply to administration of the NMLSR by the Conference of State Bank Supervisors or by HUD. The NMLSR must accomplish the following objectives:

(a) Provides uniform license applications and reporting requirements for state-licensed loan originators.

(b) Provides a comprehensive licensing and supervisory database.

(c) Aggregates and improves the flow of information to and between regulators.

(d) Provides increased accountability and tracking of loan originators.

(e) Streamlines the licensing process and reduces the regulatory burden.

(f) Enhances consumer protections and supports anti-fraud measures.

(g) Provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.

(h) Establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.

(i) Facilitates responsible behavior in the mortgage marketplace and provides comprehensive training and examination requirements related to mortgage lending.

(j) Facilitates the collection and disbursement of consumer complaints on behalf of state and Federal mortgage regulators.

§ 3400.303 Financial reporting.

To the extent that CSBS maintains the NMLSR, CSBS must annually provide to HUD, and HUD will annually collect and make available to the public, NMLSR financial statements, audited in accordance with Generally Accepted Accounting Principles (GAAP) promulgated by the Federal Accounting Standards Advisory Board, and other data. These financial statements and other data shall include, but not be limited to, the level and categories of funds received in relation to the NMLSR and how such funds are spent, including the aggregate total of funds paid for system development and improvements, the aggregate total of salaries and bonuses paid, the aggregate total of other administrative costs, and detail on other money spent, including money and interest paid to reimburse system investors or lenders, and a report of each state's activity with respect to the NMLSR, including the number of licensees, the state's financial commitment to the system, and the fees collected by the state through the NMLSR.

§ 3400.305 Data security.

(a) To the extent that CSBS, AARMR, or their successors, maintain the NMLSR, CSBS, AARMR, and their successors, as applicable, must complete a background check on their employees, contractors, or other persons who have access to loan originators' Social Security Numbers, fingerprints, or any credit reports collected by the system.

(b) To the extent that CSBS, AARMR, or theirs successors, maintains the NMLSR, CSBS, AARMR, and their successors as applicable, must keep and adhere to an appropriate information security and privacy policy. If the NMLSR forms a reasonable belief that a security breach has occurred, it shall notify affected parties, as soon as practicable, including HUD, any loan originators or registrants whose data may have been compromised, and the employer of the loan originator or registrant, if such employer is also licensed through the system.

§ 3400.307 Fees.

CSBS, AARMR, or HUD, as applicable, may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry. Fees shall not be charged to consumers for access to such system and registry. If HUD determines to charge fees, the fees to be charged shall be issued by notice with the opportunity for comment prior to any fees being charged.

§ 3400.309 Absence of liability for good-faith administration.

HUD or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by HUD under 12 U.S.C. 5108 and in accordance with subpart C, or any officer or employee of HUD or HUD's designee, shall not be subject to any civil action or proceeding for monetary damages by reason of the good-faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

Subpart E—Enforcement of HUD Licensing System

§ 3400.401 HUD's authority to examine loan originator records.

(a) *Summons authority.* HUD may:

(1) Examine any books, papers, records, or other data of any loan originator operating in any state which is subject to a licensing system established by HUD under subpart C of this part; and

(2) Summon any loan originator referred to in paragraph (a)(1) of this section or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before a HUD representative at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of the SAFE Act.

(b) *Examination authority*—(1) *In general.* If HUD establishes a licensing system under 12 U.S.C. 5107 and in accordance with subpart C of this part for any state, HUD shall appoint examiners for the purposes of ensuring the appropriate administration of the HUD licensing system.

(2) *Power to examine.* Any examiner appointed under paragraph (b)(1) of this section shall have power, on behalf of HUD, to make any examination of any loan originator operating in any state which is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of this part, whenever HUD determines that an examination of any loan originator is necessary to determine the compliance by the originator with minimum requirements of the SAFE Act.

(3) *Report of examination.* Each HUD examiner appointed under paragraph (b)(1) of this section shall make a full and detailed report to HUD of examination of any loan originator examined under this section.

(4) *Administration of oaths and affirmations; evidence.* In connection with examinations of loan originators operating in any state which is subject

to a licensing system established by HUD under 12 U.S.C. 5107, and in accordance with subpart C of this part, or with other types of investigations to determine compliance with applicable law and regulations, HUD and the examiners appointed by HUD may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) *Assessments.* The cost of conducting any examination of any loan originator operating in any state which is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of this part shall be assessed by HUD against the loan originator to meet the Secretary's expenses in carrying out such examination.

§ 3400.403 Enforcement proceedings.

(a) *Cease and desist proceeding.* (1) If HUD finds, after notice and opportunity for hearing in accordance with subpart A of part 26, that any person is violating, has violated, or is about to violate any provision of the SAFE Act, the provisions of this part, or a provision of state law enacted or promulgated under the SAFE Act, to which the person is subject and with respect to a state that is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of this part, HUD may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation.

(2) The order authorized by paragraph (a)(1) of this section may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as HUD may specify in such order.

(3) Any order issued under paragraph (a)(1) of this section may, as HUD determines appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as HUD may specify, with such provision or regulation with respect to any loan originator.

(b) *Hearing.* The notice instituting proceedings in accordance with paragraph (a) of this section shall establish a hearing date not earlier than 30 days nor later than 60 days after the date of service of the notice unless an earlier or a later date is set by HUD with the consent of any respondent so served.

(c) *Temporary order*—(1) *Issuance of a temporary order.* Whenever HUD determines that the alleged violation or threatened violation specified in the notice instituting proceedings in accordance with paragraph (a) of this section, or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest prior to the completion of the proceedings, HUD may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as HUD determines appropriate pending completion of such proceedings.

(i) The order authorized by paragraph (c)(1) of this section shall be entered only after notice and opportunity for a hearing, unless HUD determines that notice and hearing prior to entry would be impracticable or contrary to the public interest.

(ii) The temporary order authorized by paragraph (c)(1) of this section shall become effective upon the date of service upon the respondent and, unless set aside, limited, or suspended by HUD or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(2) *Review of temporary orders*—(i) *Review by HUD.* At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (c)(1) of this section, the respondent may apply to HUD to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior hearing before HUD, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application, and HUD shall hold a hearing and render a decision on such application at the earliest possible time.

(ii) *Judicial review.* (A) Within 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior hearing before HUD or within 10 days after HUD renders a decision on an application and hearing under paragraph (b) of this section, with respect to any temporary cease-and-desist order entered without a prior hearing before HUD, the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order.

(B) A respondent served with a temporary cease-and-desist order entered without a prior hearing before the Secretary may not apply to the court, except after a hearing and decision by HUD on the respondent's application under paragraph (c)(2)(i) of this section.

(C) The commencement of proceedings under paragraph (b) of this section shall not, unless specifically ordered by the court, operate as a stay of HUD's order.

(d) *Authority of the secretary to prohibit persons from serving as loan originators.* In any cease-and-desist proceeding under this section, HUD may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as HUD shall determine, any person who has violated this title or regulations thereunder, from acting as a loan originator if the conduct of that person demonstrates unfitness to serve as a loan originator.

§ 3400.405 Civil money penalties.

HUD may impose civil money penalties on a loan originator operating in any state which is subject to a licensing system established by HUD under 12 U.S.C. 5107 and in accordance with subpart C of this part, as provided in 24 CFR 30.69.

Appendix A to 24 CFR Part 3400

Examples of Mortgage Loan Originator Activities

This Appendix provides examples to aid in the understanding of activities that would cause an individual to fall within or outside the definition of a mortgage loan originator under this part 3400. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise. For purposes of the examples below, the term ''loan'' refers to a residential mortgage loan as defined in § 3400.23 of this part.

Taking a Loan Application. Taking a residential mortgage loan application within the meaning of § 3400.103(c)(1) means receipt by an individual, for the purpose of facilitating a decision whether to extend an offer of loan terms to a borrower or prospective borrower, of an application as defined in § 3400.23 (a request in any form for an offer, or a response to a solicitation of an offer, of residential mortgage loan terms, and the information about the borrower or

prospective borrower that is customary or necessary in a decision whether to make such an offer).

(a) The following are examples to illustrate when an individual takes, or does not take, a loan application:

(1) An individual ''takes a residential mortgage loan application'' even if the individual:

(i) Has received the borrower or prospective borrower's request or information indirectly. Section 3400.103(c)(1) provides that an individual takes an application, whether he or she receives it ''directly or indirectly'' from the borrower or prospective borrower. This means that an individual who offers or negotiates residential mortgage loan terms for compensation or gain cannot avoid licensing requirements simply by having another person physically receive the application from the prospective borrower and then pass the application to the individual;

(ii) Is not responsible for verifying information. The fact that an individual who takes application information from a borrower or prospective borrower is not responsible for verifying that information—for example, the individual is a mortgage broker who collects and sends that information to a lender—does not mean that the individual is not taking an application;

(iii) Only inputs the information into an online application or other automated system; or

(iv) Is not involved in approval of the loan, including determining whether the consumer qualifies for the loan. Similar to an individual who is not responsible for verification, an individual can still ''take a residential mortgage loan application'' even if he or she is not ultimately responsible for approving the loan. A mortgage broker, for example, can take a residential mortgage loan application even though it is passed on to a lender for a decision on whether the borrower qualifies for the loan and for the ultimate loan approval.

(2) An individual does not take a loan application merely because the individual performs any of the following actions:

(i) Receives a loan application through the mail and forwards it, without review, to loan approval personnel. HUD interprets the term ''takes a residential mortgage loan application'' to exclude an individual whose only role with respect to the application is physically handling a completed application form or transmitting a completed form to a lender on behalf of a borrower or prospective borrower. This interpretation is consistent with the definition of ''loan originator'' in section 1503(3) of the SAFE Act.

(ii) Assists a borrower or prospective borrower who is filling out an application by explaining the contents of the application and where particular borrower information is to be provided on the application;

(iii) Generally describes for a borrower or prospective borrower the loan application process without a discussion of particular loan products; or

(iv) In response to an inquiry regarding a prequalified offer that a borrower or prospective borrower has received from a lender, collects only basic identifying information about the borrower or prospective borrower on behalf of that lender.

Offering or Negotiating Terms of a Loan. The following examples are designed to illustrate when an individual offers or negotiates terms of a loan within the meaning of § 3400.103(c)(2) and, conversely, what does not constitute offering or negotiating terms of a loan:

(a) Offering or negotiating the terms of a loan includes:

(1) Presenting for consideration by a borrower or prospective borrower particular loan terms, whether verbally, in writing, or otherwise, even if:

(i) Further verification of information is necessary;

(ii) The offer is conditional;

(iii) Other individuals must complete the loan process;

(iv) The individual lacks authority to negotiate the interest rate or other loan terms; or

(v) The individual lacks authority to bind the person that is the source of the prospective financing.

(2) Communicating directly or indirectly with a borrower or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms, including responding to a borrower or prospective borrower's request for a different rate or different fees on a pending loan application by presenting to the borrower or prospective borrower a revised loan offer, even if a mutual understanding is not subsequently achieved.

(b) Offering or negotiating terms of a loan does not include any of the following activities:

(1) Providing general explanations or descriptions in response to consumer queries, such as explaining loan terminology (*e.g.,* debt-to-income ratio) or lending policies (*e.g.,* the loan-to-value ratio policy of the lender), or describing product-related services;

(2) Arranging the loan closing or other aspects of the loan process, including by communicating with a borrower or prospective borrower about those arrangements, provided that any communication that includes a discussion about loan terms only verifies terms already agreed to by the borrower or prospective borrower;

(3) Providing a borrower or prospective borrower with information unrelated to loan terms, such as the best days of the month for scheduling loan closings at the bank;

(4) Making an underwriting decision about whether the borrower or prospective borrower qualifies for a loan;

(5) Explaining or describing the steps that a borrower or prospective borrower would need to take in order to obtain a loan offer, including providing general guidance about qualifications or criteria that would need to be met that is not specific to that borrower or prospective borrower's circumstances;

(6) Communicating on behalf of a mortgage loan originator that a written offer has been sent to a borrower or prospective borrower without providing any details of that offer; or

(7) Offering or negotiating loan terms solely through a third-party licensed loan originator, so long as the nonlicensed individual does not represent to the public that he or she can or will perform covered activities and does not communicate with the borrower or potential borrower. For example:

(i) A seller who provides financing to a purchaser of a dwelling owned by that seller in which the offer and negotiation of loan terms with the borrower or prospective borrower is conducted exclusively by a third-party licensed loan originator;

(ii) An individual who works solely for a lender, when the individual offers loan terms exclusively to third-party licensed loan originators and not to borrowers or potential borrowers.

For Compensation or Gain.

(a) An individual acts ''for compensation or gain'' within the meaning of § 3400.103(c)(2)(ii) if the individual receives or expects to receive in connection with the individual's activities anything of value, including, but not limited to, payment of a salary, bonus, or commission. The concept ''anything of value'' is interpreted broadly and is not limited only to payments that are contingent upon the closing of a loan.

(b) An individual does not act ''for compensation or gain'' if the individual acts as a volunteer without receiving or expecting to receive anything of value in connection with the individual's activities.

Appendix B to 24 CFR Part 3400

Engaging in the Business of a Loan Originator: Commercial Context and Habitualness

An individual who acts (or holds himself or herself out as acting) as a loan originator in a commercial context and with some degree of habitualness or repetition is considered to be ''engaged in the business of a loan originator.'' An individual who acts as a loan originator does so in a commercial context if the individual acts for the purpose of obtaining anything of value for himself or herself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes. The habitualness or repetition of the origination activities that is needed to ''engage[e] in the business of a loan originator'' may be met either if the individual who acts as a loan originator does so with a degree of habitualness or repetition, or if the source of the prospective financing provides mortgage financing or performs other origination activities with a degree of habitualness or repetition. This Appendix provides examples to aid in the understanding of activities that would not constitute engaging in the business of a loan originator, such that an individual is not required to obtain and maintain a state mortgage loan originator license. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under part 3400. For purposes of the examples below, the term ''loan'' refers to a ''residential mortgage loan'' as defined in § 3400.23 of this part.

Not Engaged in the Business of a Mortgage Loan Originator. The following examples illustrate when an individual generally does

not ''engage in the business of a loan originator'':

(a) An individual who acts as a loan originator in providing financing for the sale of that individual's own residence, provided that the individual does not act as a loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual and commercial activity.

(b) An individual who acts as a loan originator in providing financing for the sale of a property owned by that individual, provided that such individual does not engage in such activity with habitualness.

(c) A parent who acts as a loan originator in providing loan financing to his or her child.

(d) An employee of a government entity who acts as a loan originator only pursuant to his or her official duties as an employee of that government entity, if all applicable conditions in § 3400.103(e)(6) of this part are met.

(e) If all applicable conditions in § 3400.103(e)(7) of this part are met, an employee of a nonprofit organization that has been determined to be a bona fide nonprofit organization by the state supervisory authority, when the employee acts as a loan originator pursuant to his or her duties as an employee of that organization.

(f) An individual who does not act as a loan originator habitually or repeatedly, provided that the source of prospective financing does not provide mortgage financing or perform other loan origination activities habitually or repeatedly.

Appendix C to 24 CFR Part 3400

Independent Contractors and Loan Processor and Underwriter Activities That Require a State Mortgage Loan Originator License

The examples below are designed to aid in the understanding of loan processing or underwriting activities for which an individual is required to obtain a SAFE Act-compliant mortgage loan originator license. The examples in this Appendix are not all inclusive. They illustrate only the issue described and do not illustrate any other issues that may arise under this part 3400. For purposes of the examples below, the term ''loan'' refers to a residential mortgage loan as defined in § 3400.23 of this part.

(a) An individual who is a loan processor or underwriter who must obtain and maintain a state loan originator license includes:

(1) Any individual who engages in the business of a loan originator, as defined in § 3400.103 of this part;

(2) Any individual who performs clerical or support duties and who is an independent contractor, as those terms are defined in § 3400.23;

(3) Any individual who collects, receives, distributes, or analyzes information in connection with the making of a credit decision and who is an independent contractor, as that term is defined in § 3400.23; and

(4) Any individual who communicates with a consumer to obtain information necessary for making a credit decision and who is an independent contractor, as that term is defined in § 3400.23.

(b) A state is not required to impose SAFE Act licensing requirements on any individual loan processor or underwriter who, for example:

(1) Performs only clerical or support duties (*i.e.,* the loan processor's or underwriter's activities do not include, *e.g.,* offering or negotiating loan rates or terms, or counseling borrowers or prospective borrowers about loan rates or terms), and who performs those clerical or support duties at the direction of and subject to the supervision and instruction of an individual who either: Is licensed and registered in accordance with § 3400.103(a) (State licensing of loan originators); or is not required to be licensed because he or she is excluded from the licensing requirement pursuant to §§ 3400.103(e)(2) (time-share exclusion), (e)(5) (federally registered loan originator), (e)(6) (government employees exclusion), or (e)(7) (nonprofit exclusion).

(2) Performs only clerical or support duties as an employee of a mortgage lender or mortgage brokerage firm, and who performs those duties at the direction of and subject to the supervision and instruction of an individual who is employed by the same employer and who is licensed in accordance with § 3400.103(a) (State licensing of loan originators).

(3) Is an employee of a loan processing or underwriting company that provides loan processing or underwriting services to one or more mortgage lenders or mortgage brokerage firms under a contract between the loan processing or underwriting company and the mortgage lenders or mortgage brokerage firms, provided the employee performs only clerical or support duties and performs those duties only at the direction of and subject to the supervision and instruction of a licensed loan originator employee of the same loan processing and underwriting company.

(4) Is an individual who does not otherwise perform the activities of a loan originator and is not involved in the receipt, collection, distribution, or analysis of information common for the processing or underwriting of a residential mortgage loan, nor is in communication with the consumer to obtain such information.

(c) In order to conclude that an individual who performs clerical or support duties is doing so at the direction of and subject to the supervision and instruction of a loan originator who is licensed or registered in accordance with § 3400.103 (or, as applicable, an individual who is excluded from the licensing and registration requirements under § 3400.103(e)(2), (e)(6), or (e)(7)), there must be an actual nexus between the licensed or registered loan originator's (or excluded individual's) direction, supervision, and instruction and the loan processor or underwriter's activities. This actual nexus must be more than a nominal relationship on an organizational chart. For example, there is an actual nexus when:

(1) The supervisory licensed or registered loan originator assigns, authorizes, and monitors the loan processor or underwriter employee's performance of clerical and support duties.

(2) The supervisory licensed or registered loan originator exercises traditional supervisory responsibilities, including, but not limited to, the training, mentoring, and evaluation of the loan processor or underwriter employee.

Appendix D to 24 CFR Part 3400

Attorneys: Circumstances that Require a State Mortgage Loan Originator License

This Appendix D clarifies the circumstances in which the SAFE Act requires a licensed attorney who engages in loan origination activities to obtain a state loan originator license and registration. This special category recognizes limited, heavily regulated activities that meet strict criteria that are different from the criteria for specific exemptions from the SAFE Act requirements and the exclusions set forth in the regulations and illustrated in other appendices of part 3400.

SAFE Act-Compliant Licensing Required: An individual who is engaged in the business of a loan originator as defined in § 3400.103 of this part and who happens to be a licensed attorney, but whose loan origination activities are not all of the following: (1) Considered by the state's court of last resort (or other state governing body responsible for regulating the practice of law) to be part of the authorized practice of law within the state; (2) carried out within an attorney-client relationship; and (3) accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards.

SAFE Act-Compliant Licensing Not Required: A licensed attorney performing activities that come within the definition of a loan originator, provided that such activities are: (1) Considered by the state's court of last resort (or other state governing body responsible for regulating the practice of law) to be part of the authorized practice of law within the state; (2) carried out within an attorney-client relationship; and (3) accomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards

Dated: June 17, 2011.

Robert C. Ryan,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–15672 Filed 6–29–11; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened With Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2010–0017; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list a distinct population segment (DPS) of the fisher (*Martes pennanti*) in its U.S. Northern Rocky Mountain range, including portions of Montana, Idaho, and Wyoming, as endangered or threatened and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the fisher in the U.S. Northern Rocky Mountains as threatened or endangered is not warranted at this time.

DATES: The finding announced in this document was made on June 30, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R6–ES–2010–0017. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Montana Field Office, 585 Shepard Way, Helena, MT 59601; telephone (406) 449–5225. We ask the public to submit any new information that becomes available concerning the status of, or threats to, the fisher, in addition to new information, materials, comments, or questions concerning this finding, to the above address. No information will be accepted by facsimile. The petition finding, related **Federal Register** notices, and other pertinent information, may be obtained online at *http://www.fws.gov/mountain-prairie/species/mammals/fisher/*.

FOR FURTHER INFORMATION CONTACT: Mark Wilson, Field Supervisor, Montana Ecological Services Field Office (see **ADDRESSES**); or by telephone at (406) 449–5225. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition. In this finding, we will determine that the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, requiring a subsequent finding be made within 12 months. We must publish these 12-month findings in the **Federal Register.**

Previous Federal Actions

U.S. Northern Rocky Mountains

On March 6, 2009, we received a petition dated February 24, 2009, from the Defenders of Wildlife, Center for Biological Diversity, Friends of the Bitterroot, and Friends of the Clearwater (petitioners) requesting that the fisher in the Northern Rocky Mountains of the United States (USNRMs) be considered a DPS and listed as endangered or threatened, and critical habitat be designated under the Act (Defenders of Wildlife *et al.* 2009, entire). In an April 9, 2009, letter to the petitioners, we responded that we had reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted (Guertin 2009, entire). We informed the petitioners that due to staffing and funding constraints in Fiscal Year 2009, we would not be able to further address the petition at that time, but would complete the action when resources allowed. We published a 90-day finding on April 16, 2010, stating that the petition presented substantial information that listing a DPS of fisher in the USNRMs may be warranted, and initiated a status review of the species (75 FR 19925). The notice of a 90-day finding and commencement of a 12-month status review for the USNRMs DPS was published in the annual Candidate Notice of Review on November 10, 2010 (75 FR 69222).

Fishers in the USNRMs were previously petitioned for listing with a U.S. Pacific States' population in 1994 (see below).

U.S. Pacific States

On June 5, 1990, we received a petition dated May 29, 1990, from Mr. Eric Beckwitt, Forest Issues Task Force, Sierra Biodiversity Project, and others requesting that the Pacific fisher (*Martes pennanti pacifica*) be listed as an endangered species in California, Oregon, and Washington under the Act. On January 11, 1991, we published a 90-day finding (56 FR 1159) indicating that the fisher in the Pacific States is a distinct population that is geographically isolated from populations in the Rocky Mountains and British Columbia and represents a listable entity under the Act. The finding also indicated that the petition had not presented substantial information indicating that a listing may be warranted because of a lack of information on fisher habitat needs, population size and trends, and demographic parameters (56 FR 1159).

On December 29, 1994, we received a petition dated December 22, 1994, from the Biodiversity Legal Foundation requesting that two fisher populations in the western United States, including the States of Washington, Oregon, California, Idaho, Montana, and Wyoming, be listed as threatened under the Act. Based on our review, we found that the petition did not present substantial information indicating that listing the two western United States fisher populations as a DPS was warranted (61 FR 8016, March 1, 1996). The best available scientific evidence at that time indicated that the range of the fisher was contiguous across Canada with some areas having abundant populations, and through southward peninsular extensions, was contiguous with the U.S. Rocky Mountain and Pacific populations (61 FR 8016). No evidence was presented in the petition to support physical, physiological, ecological, or behavioral separations (61 FR 8016).

On December 5, 2000, we received a petition dated November 28, 2000, from 12 organizations, with the lead organizations identified as the Center for Biological Diversity and the Sierra Nevada Forest Protection Campaign, requesting that the West Coast DPS of

the fisher, including portions of California, Oregon, and Washington, be listed as endangered and critical habitat be designated under the Act. A court order was issued on April 4, 2003, by the U.S. District Court, Northern District of California, that required the Service to submit for publication in the **Federal Register** a 90-day finding on the 2000 petition (*Center for Biological Diversity, et al.* v. *Norton et al., No. C 01—2950 SC*). On July 10, 2003, we published a 90-day petition finding that the petition provided substantial information that listing may be warranted and initiated a 12-month status review (68 FR 41169).

On April 8, 2004, we published a warranted 12-month finding for listing of the fisher's West Coast DPS (69 FR 18770). A listing action was precluded by higher priorities and the West Coast DPS was added to our candidate species list. On April 8, 2010, the Center for Biological Diversity, Sierra Forest Legacy, Environmental Protection Information Center, and Klamath-Siskiyou Wildlands Center filed a complaint in the United States District Court for the Northern District of California seeking an order for the Service to withdraw the 2004 warranted-but-precluded finding and proceed with a proposed rule to list the species under the Act (*Center for Biological Diversity, et al.* v. *Salazar, et al., No. CV 10—1501*). A resolution of the complaint is pending.

The West Coast fisher was included in the Service's candidate notices of review in 2005, 2006, 2007, 2008, 2009, and 2010 (70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010).

Species Information

This ''Species Information'' section concentrates on general biology and fisher studies conducted in the USNRMs area. Additional information regarding fisher biology in the western portion of its range can be found in the Service's 12-month finding on a petition to list the West Coast DPS of the fisher (69 FR 18770).

Description

The fisher is a forest-dwelling, medium-sized mammal, light brown to dark blackish-brown in color, with the face, neck, and shoulders sometimes being slightly gray (Powell 1981, p. 1). The chest and underside often have irregular white patches. The fisher has a long body with short legs and a long bushy tail. Males range in length from 90 to 120 centimeters (cm) (35 to 47 inches (in.)), and females range from 75 to 95 cm (29 to 37 in.) in length. At 3.5 to 5.5 kilograms (kg) (7.7 to 12.1 pounds (lbs)), male fishers weigh about twice as much as females (2.0 to 2.5 kg (4.4 to 5.5 lbs)) (Powell *et al.* 2003, p. 638). Heavier males have been reported across the range, including individuals within the USNRMs (Sauder 2010 unpublished data; Schwartz 2010 unpublished data); an exceptional specimen from Maine weighed 9 kg (20.1 lbs) (Blanchard 1964, pp. 487–488). Fishers may show variation in typical body weight regionally, corresponding with latitudinal gradients. For example, fishers in the more southern latitudes of the U.S. Pacific States may weigh less than fishers in the eastern United States and Canada (Seglund 1995, p. 21; Dark 1997, p. 61; Aubry and Lewis 2003, p. 87; Lofroth *et al.* 2010, p. 10).

Taxonomy

The ''Fisher of Pennant,'' or *Mustela pennantii,* was formally described by Erxleben in 1777, based on accounts of the same specimen from either the eastern United States or eastern Canada, by Buffon in 1765 and the naturalist Thomas Pennant in 1771 (Rhoads 1898 as cited in Goldman 1935, p. 177; Powell 1981, p. 1). Taxonomic stability was not attained until 80 years after Buffon's original description, when taxonomists transferred the fisher to the genus *Martes* and changed the spelling of the species to *pennanti* (Hagmeier 1959, p. 185; Powell 1981, p. 1; Powell 1993, pp. 11–12).

The fisher is classified in the order Carnivora, family Mustelidae, a family that also includes weasels, mink, martens, and otters (Anderson 1994, p. 14). It is the largest member of the genus *Martes,* classified as subgenus *Pekania,* and occurs only in North America (Anderson 1994, pp. 22–23). Its geographic range overlaps extensively with that of the American marten (*Martes americana*—subgenus *Martes*), the only other *Martes* species in North America (Gibilisco 1994, p. 59). Characteristic of the subgenus *Pekania* is large body size compared with other *Martes* and the presence of an external median rootlet on the upper carnassial (fourth) premolar (Anderson 1994, p. 21).

Goldman (1935, p. 177) recognized three subspecies of fisher based on differences in skull dimensions, although he stated they were difficult to distinguish: (1) *Martes pennanti pennanti* in the east and central regions; (2) *M. p. columbiana* in the central and northwestern regions that include the USNRMs; and (3) *M. p. pacifica* in the western coast States of the United States. A subsequent analysis questioned whether there is a sufficient basis to support recognition of different subspecies based on numerous factors, including the small number of samples available for examination (Hagmeier 1959, p. 193). Regional variation in characteristics used by Goldman to discriminate subspecies appears to be clinal (varying along a geographic gradient), and the use of clinal variations is ''exceedingly difficult to categorize subspecies'' (Hagmeier 1959, pp. 192–193). Although subspecies taxonomy as described by Goldman (1935, p. 177) is often used in literature to describe or reference fisher populations in different regions of its range, and recent consideration of genetic variation indicates patterns of population subdivision similar to the earlier described subspecies (Kyle *et al.* 2001, p. 2345; Drew *et al.* 2003, p. 59), it is not clear whether Goldman's designations of subspecies are taxonomically valid. Therefore, for the purposes of this finding, we are evaluating the fisher in the USNRMs as a DPS of a full species (*i.e., M. pennanti*).

Biology

Fishers are opportunistic predators, primarily of snowshoe hares (*Lepus americanus*), squirrels (*Tamiasciurus, Sciurus, Glaucomys,* and *Tamias* spp.), mice (*Microtus, Clethrionomys,* and *Peromyscus* spp.), and birds (numerous spp.) (reviewed in Powell 1993, pp. 18, 102). Carrion and plant material (*e.g.,* berries) also are consumed (Powell 1993, p. 18). The fisher is one of the few predators that successfully kills porcupines (*Erethizon dorsatum*), and porcupine remains have been found more often in the gastrointestinal tract and scat of fisher than in any other predator (Powell 1993, p. 135). There is only one study reporting the food habits of an established fisher population in the USNRMs, and that study confirms that snowshoe hares, voles (*Microtus* and *Clethrionomys* spp.), and red squirrels (*Tamiasciurus hudsonicus*) are similarly important prey in north-central Idaho as they are in other parts of the range (Jones 1991, p. 87). Fishers from Minnesota relocated to the Cabinet Mountains of Montana subsisted primarily on snowshoe hare and deer (*Odocoileus* spp.) carrion (Roy 1991, p. 29). As dietary generalists, fishers across their range tend to forage in areas where prey is both abundant and vulnerable to capture (Powell 1993, p. 100). Fishers in north-central Idaho exhibit seasonal shifts in habitat use to forests with younger successional structure plausibly linked to a concurrent

seasonal shift in habitat use by their prey species (Jones and Garton 1994, p. 383).

Fishers are estimated to live up to 10 years (Arthur *et al.* 1992, p. 404; Powell *et al.* 2003, p. 644). Both sexes reach maturity their first year but may not be effective breeders until 2 years of age (Powell *et al.* 2003, p. 638). Fishers are solitary except during the breeding season, which is generally from late February to the middle of May (Wright and Coulter 1967, p. 77; Frost *et al.* 1997, p. 607). The breeding period in north-western Montana and north-central Idaho is approximately late February through April based on observations of significant changes of fisher movement patterns and examination of the reproductive tracts of harvested specimens (Weckwerth and Wright 1968, p. 980; Jones 1991, pp. 78–79; Roy 1991, pp. 38–39). Uterine implantation of embryos occurs 10 months after copulation; active gestation is estimated to be between 30 and 60 days; and birth occurs nearly 1 year after copulation (Wright and Coulter 1967, pp. 74, 76; Frost *et al.* 1997, p. 609; Powell *et al.* 2003, p. 639).

Litter sizes for fishers range from one to six, with a mean of two to three kits (Powell *et al.* 2003, pp. 639–640). Potential litter sizes in the USNRMs are between two to three per female, based on the frequency of embryos recovered from harvested females (Weckwerth and Wright 1968, p. 980; Jones 1991, p. 84). Newborn kits are entirely dependent and may nurse for 10 weeks or more after birth (Powell 1993, p. 67). Kits develop their own home ranges by 1 year of age (Powell *et al.* 2003, p. 640). Populations of fisher fluctuate in size, and reproductive rates may vary widely from year to year in response to the availability of prey (Powell and Zielinski 1994, p. 43).

An animal's home range is the area traversed by the individual in its normal activities of food gathering, mating, and caring for young (Burt 1943, p. 351). Only general comparisons of fishers' home range sizes can be made, because studies across the range have been conducted by different methods. Generally, fishers have large home ranges, male home ranges are larger than females, and fisher home ranges in British Columbia and the USNRMs are larger than those in other areas in the range of the taxon (reviewed in Powell and Zielinski 1994, p. 58; reviewed in Lofroth *et al.* 2010, pp. 67–70). Fisher home ranges vary in size across North America and range from 16 to 122 square kilometers (km^2) (4.7 to 36 square miles (mi^2)) for males, and from 4 to 53 km^2 (1.2 to 15.5 mi^2) for females (reviewed by Powell and Zielinski 1994, p. 58; Lewis and Stinson 1998, pp. 7–8; Zielinski *et al.* 2004, p. 652). In north-central Idaho, the movements of a small number of radio-collared fishers indicated that males range from approximately 30 to 120 km^2 (8.7 to 35 mi^2) year round, and females range from 6 to 75 km^2 (1.7 to 22 mi^2), with a slight reduction in summer (Jones 1991, pp. 82–83). Fishers in Idaho have home ranges larger than any other home ranges reported within the range of the taxon (Idaho Office of Species Conservation (IOSC) 2010, p. 4).

The abundance or availability of vulnerable prey may play a role in home range selection (Powell 1993, p. 173; Powell and Zielinski 1994, p. 57). Fishers exhibit territoriality, with little overlap between members of the same sex; in contrast, overlap between opposite sexes is extensive, and size and overlap are possibly related to the density of prey (Powell and Zielinski 1994, p. 59). Male fishers may extend or temporarily abandon their territories to take long excursions during the breeding season from the end of February to April presumably to increase their opportunities to mate (Arthur 1989a, p. 677; Jones 1991, pp. 77–78). However, males who maintained their home ranges during the breeding season were more likely to successfully mate than were nonresident males encroaching on an established range (Aubry *et al.* 2004, p. 215).

It is not known how fishers maintain territories; it is possible that scent marking plays an important role (Leonard 1986, p. 36; Powell 1993, p. 170). Direct aggression between individuals in the wild has not been observed, although signs of fishers fighting and the capture of male fishers with scarred pelts have been reported (Douglas and Strickland 1987, p. 516). Combative behavior has been observed between older littermates and between adult females in captivity (Powell and Zielinski 1994, p. 59).

There is little information available regarding the long-distance movements of fishers, although long-distance movements have been documented for dispersing juveniles and recently relocated individuals before they establish a home range. Fishers relocated to novel areas in Montana's Cabinet Mountains and British Columbia moved up to 163 km (100 mi) from release sites, crossing large rivers and making 700-m (2,296-ft) elevation changes (Roy 1991, p. 42; Weir and Harestad 1997, pp. 257, 259).

Juveniles dispersing from natal areas are capable of moving long distances and navigating various landscape features such as highways, rivers, and rural communities to establish their own home range (York 1996, p. 47; Weir and Corbould 2008, p. 44). In Maine and British Columbia, juveniles dispersed from 0.7 km (0.4 mi) to 107 km (66.4 mi) from natal areas (York 1996, p. 55; Weir and Corbould 2008, p. 44). Dispersal characteristics may be influenced by factors such as sex, availability of unoccupied areas, turnover rates of adults, and habitat suitability (Arthur *et al.* 1993, p. 872; York 1996, pp. 48–49; Aubry *et al.* 2004, pp. 205–207; Weir and Corbould 2008, pp. 47–48). Long-distance dispersal by vulnerable, less experienced individuals is made at a high cost and is not always successful. Fifty-five percent of transient fishers in a British Columbia study died before establishing home ranges, and only one in six juveniles successfully established a home range (Weir and Corbould 2008, p. 44). One dispersing juvenile female traveled an unusually long distance of 135 km (84 mi) over rivers and through suboptimal habitats before succumbing to starvation (Weir and Corbould 2008, p. 44). Individuals traveling longer distances are subject to greater mortality risk (Weir and Corbould 2008, p. 44), and very few establish the stability of a home range, which improves the chance of successful recruitment (Aubry *et al.* 2004, p. 215).

Habitat

The occurrence of fishers at regional scales is consistently associated with low- to mid-elevation environments of mesic (moderately moist), coniferous and mixed conifer and hardwood forests with abundant physical structure near the ground (reviewed by Hagmeier 1956, entire; Arthur *et al.* 1989a, pp. 683–684; Banci 1989, p. v; Aubry and Houston 1992 p. 75; Jones and Garton 1994, pp. 377–378; Powell 1994, p. 354; Powell *et al.* 2003, p. 641; Weir and Harestad 2003, p. 74). Fishers avoid areas with little or no cover (Powell and Zielinski 1994, p. 39; Buskirk and Powell 1994, p. 286); an abundance of coarse woody debris, boulders, shrub cover, or subterranean lava tubes sometimes provide suitable overhead cover in non-forested or otherwise open areas (Buskirk and Powell, 1994, p. 293; Powell *et al.* 2003, p. 641). In the understory, the physical complexity of coarse woody debris such as downed trees and branches provides a diversity of foraging and resting locations (Buskirk and Powell 1994, p. 295).

Forest succession is a dynamic continuum that begins with an event such as wildfire, windthrow (areas of downed trees due to high winds) or

timber harvest that removes or alters major components of an environment. Over time the affected environment experiences a series of changes or seral stages in vegetation species and structure. In the absence of disturbance and over many decades to hundreds of years depending on the forest type, mature or late-seral structure and species composition may result. Late-seral forests (also known as old-growth) are generally characterized by more diversity of structure and function than younger developmental stages. Specific characteristics of late-seral forests vary by region, forest type, and local conditions. Fishers are associated more commonly with mature forest cover and late-seral forests with greater physical complexity than other habitats (reviewed by Powell and Zielinski 1994, p. 52). Other forest successional stages may suffice if adequate cover and structure is provided. For example, extensive, mid-mature, second growth forests are used by fishers in the Northeast and Midwest United States (Coulter 1966, pp. 59–60; Arthur *et al.* 1989b, pp. 680–683; Powell 1993, p. 92).

To what extent late successional forests are required to support fisher may be dependent on scale (Powell *et al.* 2003, p. 641). Home ranges may be established based on attributes at a landscape scale, foraging at a site scale, and resting and denning use based on the element or structural scale (Powell 1993, p. 89; Buskirk and Powell 1994, p. 284; Weir and Corbould 2008, p. 103). Within areas of low and mid-elevation forests, the most consistent predictor of fisher occurrence at larger spatial scales is moderate to high levels of contiguous canopy cover rather than any particular forest plant community (Buck 1982, p. 30; Arthur *et al.* 1989b, pp. 681–682; Powell 1993, p. 88; Jones and Garton 1994, p. 41; Weir and Corbould 2010, p. 408). In north-central Idaho, mature to old-growth mesic forests of grand and subalpine fir in close proximity to riparian areas are used extensively (Jones 1991, pp. 90, 113; Jones and Garton 1994, p. 381); fishers in this study avoided forests with less than 40 percent crown cover and drier upland sites composed of *Abies grandis* (grand fir), *Abies lasiocarpa* (subalpine fir), *Pseudotsuga menziesii* (Douglas fir), and *Pinus ponderosa* (ponderosa pine) (Jones 1991, p. 90). A preliminary analysis of habitat associations in the USNRMs indicates that in summer, fishers select areas with larger diameter trees and landscapes with a higher proportion of large trees, and avoid dry areas typically populated by ponderosa pine (Schwartz 2010, unpublished data). Winter detections of fisher are more likely in drainages with a high amount of canopy cover, and winter avoidance of dry areas is similar to summer (Schwartz 2010, unpublished data). Fishers in Idaho include forested environments of differing configurations in their home range including roadless areas, industrial forest, and national forests managed for multiple uses (Albrecht and Heusser 2009, p. 19; IOSC 2010, p. 4).

The physical structure of the forest and prey associated with forest structures are thought to be critical features that explain fisher habitat use, rather than specific forest types (Buskirk and Powell 1994, p. 286), and the composition of individual fisher home ranges is usually a mosaic of different forested environments and successional stages (reviewed by Lofroth *et al.* 2010, p. 94). Further, fishers are opportunistic predators with a relatively general diet, and the vulnerability of prey may be more important to the use of an area for foraging than the abundance of a particular prey species (Powell and Zielinski 1994, p. 54). In north-central Idaho, fishers expand their use of young forest stages in winter, likely in response to a seasonal shift in habitat use by their prey or an increase in prey vulnerability in these areas (Jones and Garton 1994, p. 383). Individuals translocated to the Cabinet Mountains of Montana from Minnesota and Wisconsin exhibit winter habitat use similar to that reported for fishers in north-central Idaho (Roy 1991, p. 60). Fishers in north-central Idaho and Montana also select forest riparian areas and draws or valley bottoms that have a strong association with spruce, which tend to have dense cover, high densities of snowshoe hare, and a diversity of other prey types (Powell 1994, p. 354; Jones 1991, pp. 90–93; Heinemeyer 1993, p. 90).

Fishers are more selective of habitat for resting than they are about foraging or traveling habitat (Arthur *et al.* 1989b, p. 686; Powell and Zielinski 1994, p. 54; Powell 1994, p. 353). Across the range, fishers select resting sites with characteristics of late successional forests—higher canopy closure, large-diameter trees, coarse downed wood, and singular features of large snags, tree cavities, or deformed trees (Powell and Zielinski 1994, p. 54; Lofroth *et al.* 2010, pp. 101–103). Rest sites may be selected for their insulating or thermoregulatory qualities and their effectiveness at providing protection from predators (Weir *et al.* 2004, pp. 193–194). Resting locations for fishers in north-central Idaho are predominately in mature forest types (Jones and Garton 1994, p. 383). When fishers use younger forest types, they will select large-diameter trees or snags, if present, that are remnants of a previously existing older forest stage (Jones 1991, p. 92). Because of this selectivity for mature forest type or structure, resting and denning sites may be more limiting to fisher distribution than foraging habitats, and should receive particular consideration in managing habitat for fishers (Powell and Zielinski 1994, pp. 56–57).

Cavities and branches in trees, snags, stumps, rock piles, and downed timber are used as resting sites, and cavities in large-diameter live or dead trees are selected more often for natal and maternal dens (Powell and Zielinski 1994, pp. 47, 56). Fishers do not appear to excavate their own natal or maternal dens; therefore, other factors (*i.e.,* heartwood decay of trees, excavation by woodpeckers, broken branches, frost or fire scars) are important in creating cavities and narrow entrance holes (Lofroth *et al.* 2010, p. 112). The tree species may vary from region to region based on local influences. In regions where both hardwood and conifers occur, hardwoods are selected more often, although they may be a minor component of the area (Lofroth *et al.* 2010, p. 115). Den trees tend to be older and larger in diameter than other available trees in the vicinity (reviewed by Lofroth *et al.* 2010, pp. 115, 117). Little is known of natal or maternal den use or selection in the USNRMs. A habitat study conducted in north-central Idaho found no kits or evidence of denning (Jones 1991, p. 83). A female introduced into Montana's Cabinet Mountains used a downed hollow log for a natal den only months after release, and it is likely that this suboptimal site was selected only because of the female's unfamiliarity with the area (Roy 1991, p. 56).

Snow conditions and ambient temperatures may affect fisher activity and habitat use. Fishers in eastern parts of the taxon's range may be less active during winter and avoid areas where deep, soft snow inhibits movement (Leonard 1980, pp. 108–109; Raine 1981, p. 74). Historical and current fisher distributions in California and Washington are consistent with forested areas that receive low or lower relative snowfall (Krohn *et al.* 1997, p. 226; Aubry and Houston 1992, p. 75). Fishers in Ontario, Canada, moved from low-snow areas to high-snow areas during population increases, indicating a possible density-dependent migration to less suitable habitats factored by snow conditions (Carr *et al.* 2007, p. 633). These distribution and activity patterns

suggest that the presence of fisher and their populations may be limited by deep snowfall. However, the reaction to snow conditions appears to be variable across the range, with fishers in some locations not affected by snow conditions or increasing their activity with fresh snowfall (Jones 1991, p. 94; Roy 1991, p. 53; Weir and Corbould 2007, p. 1512). Thus, fishers' reaction to snow may be dependent on a myriad of factors, including, but not limited to, local freeze-thaw cycles, the rapidity of crust formation, snow interception by the forest canopy, and prey availability (Krohn *et al.* 1997, p. 226; Mote *et al.* 2005, p. 44; Weir and Corbould 2007, p. 1512).

Historical Distribution Across the Range of the Species

Fishers occur only in North America, appearing in the fossil record approximately 30,000 years ago in the eastern United States throughout the Appalachian Mountains, south to Georgia, Alabama, and Arkansas, and west to Ohio and Missouri (Anderson 1994, p. 18). No fossil evidence of a fisher range expansion to the north or west exists until the middle Holocene (4,000 to 8,000 years ago) in southern Wisconsin, and only within the past 4,000 years is there evidence that fishers inhabited northwestern North America (Graham and Graham 1994, pp. 46, 58). Although there is limited fossil evidence available from central Canada, fishers' expansion westward and northward likely coincided with glacier retreat and the subsequent development of the boreal spruce forests (Graham and Graham 1994, p. 58). Fossil remains of early fisher in the northwest have been found in British Columbia, Washington, and Oregon, and no fossil remains have been discovered in the USNRMs region (Graham and Graham 1994, pp. 50–55).

Our present understanding of the historical (before European settlement) distribution of fishers is based on the accounts of natural historians of the early 20th century and general assumptions of what constitutes fisher habitat. The presumed fisher range prior to European settlement of North America (c. 1600) was throughout the boreal forests across North America in Canada from approximately 60° north latitude, extending south into the United States in the Great Lakes area and along the Appalachian, Rocky, and Pacific Coast Mountains (Figure 1) (Hagmeier 1956, entire; Hall 1981, pp. 985–987; Powell 1981, pp. 1–2; Douglas and Strickland 1987, p. 513; Gibilisco 1994, p. 60).

The distribution of fishers has been described by numerous authors, and the distribution boundaries vary depending on the evidence used for occurrences. The presumed presence of fishers has been drawn along the lines of forest distribution, and the species has been consistently described as an associate of boreal forest in Canada, mixed deciduous-evergreen forests in eastern North America, and coniferous forest ecosystems in the west (Lofroth *et al.* 2010, p. 39). Subsequently, range maps of historical distribution typically portray large areas of continuous occurrence, although it is likely that the suitability of habitat to support fishers within the portrayed range varied over time and spatial scales, subject to climatic variation, large-scale disturbances, and other ecological factors (Giblisco 1994, p. 70; Graham and Graham 1994, pp. 57–58). Fishers do not occur in all forested habitats today, and evidence would indicate they did not occupy all forest types in the past (Graham and Graham 1994, p. 58). Based on the contemporaneous assemblages of fossilized remains, it is likely that habitat selection by fishers has historically been influenced by the availability of specific types of prey (Graham and Graham 1994, p. 58).

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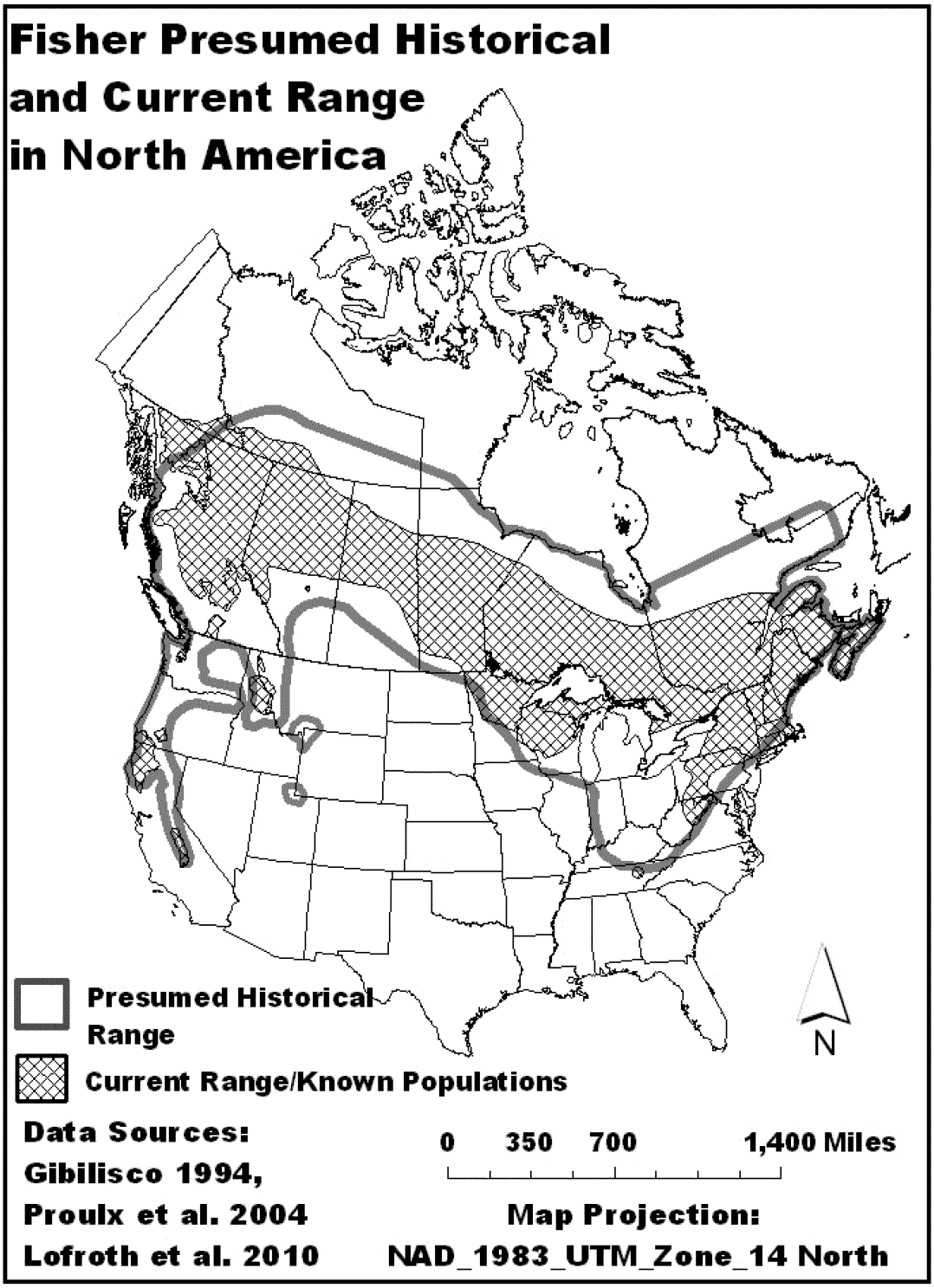

Figure 1. Presumed Historical Distribution (circa 1600) and Current Distribution and Known Populations of the Fisher (*Martes pennanti*) (data compiled from Gibilisco 1994; Proulx *et al.* 2004; and Lofroth *et al.* 2010).

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Post-European Settlement Distribution Across the Range of the Species

In the late 1800s and early 1900s, fishers experienced reductions in range, decreases in population numbers, and local extirpations attributed to overtrapping, predator control, or habitat destruction in the United States, including the USNRMs, and to a lesser extent in Canada (Weckwerth and Wright 1968, p. 977; Brander and Books 1973, p. 53; Douglas and Strickland 1987, p. 512; Powell and Zielinski 1994, p. 39). Since the 1950s, fishers have

recovered in some of the central (Minnesota, Wisconsin, Michigan) and eastern (Northeastern States and West Virginia) portions of their historical range in the United States as a result of trapping closures and regulations, habitat regrowth, and reintroductions (Brander and Books 1973, pp. 53–54; Powell 1993, p. 80; Gibilisco 1994, p. 61; Lewis and Stinson 1998, p. 3; Proulx *et al.* 2004, pp. 55–57; Kontos and Bologna 2008, entire). Fishers have not returned to the areas south of the Great Lakes to the southern Appalachian States (Proulx *et al.* 2004, p. 57). The historical, early European settlement, and contemporary distribution of fishers in the USNRMs is discussed in detail in the following sections.

Current Distribution Outside of the U.S. Northern Rocky Mountains

Presently, fishers are found in all Canadian provinces and territories except Newfoundland and Prince Edward Island (Proulx *et al.* 2004, p. 55) (Figure 1). The fisher range in Quebec, Ontario, and eastern Manitoba is contiguous with currently occupied areas in New England, northern Atlantic States, Minnesota, Wisconsin, and the Upper Peninsula of Michigan in the United States (Proulx *et al.* 2004, pp. 55–57). In Saskatchewan and Alberta, fishers are found primarily north of 52 degrees and 54 degrees north latitude, respectively, and form no known breeding population with the United States (Proulx *et al.* 2004, p. 58). In Alberta, trapping data indicate that a rare fisher may occur to the south of high-density population areas to approximately 32 km (20 mi) north of the United States border along the Continental Divide near Waterton Lakes National Park, (Corrigan 2010, pers. comm.; Hale 2010, pers. comm.)—an area contiguous with the USNRMs. However, there is no indication that there is a population of fisher in southern Alberta or whether the source of the occasional rare fisher detected there is the distant fisher population of central Alberta, central British Columbia, or the USNRMs. Fishers occupy low- to mid-elevation forested areas throughout British Columbia, but are rare or absent from the coast and from the southern region for at least 200 km (125 mi) to the border with the United States (Weir *et al.* 2003, p. 25; Weir and Lara Almuedo 2010, p. 36).

After reviewing known distribution records for fishers in 1956, Hagmeier (p. 156) noted that there were no known records from southeastern British Columbia, which includes the Rocky Mountains in the eastern Kootenay Region contiguous with northern Idaho and northwest Montana. A reintroduction of fishers to the Kootenay Region of southeast British Columbia, an area just north of the USNRMs, was attempted in the 1990s (Fontana *et al.* 1999, entire), but ''the observed survival rate of translocated adults and the few cases of confirmed reproduction in the area were not likely sufficient for the population to expand and become self-sustaining'' (Weir *et al.* 2003, p. 25). The South Thompson Similkameen area of south-central British Columbia, bordering north-central Washington, produced 88 legally harvested fishers between 1928 and 2007, and 13 since 1985 (Lofroth *et al.* 2010, p. 48). Because the northern boundary of the South Thompson Similkameen is considered the southern extent of the fisher population distribution in the province (Weir and Lara Almuedo 2010, p. 36), the significance of the trapping data to fisher distribution is not clear without more specific location information. Harvest data could indicate that individuals were captured at the periphery of larger, established populations, that there is a low-density population in south-central British Columbia, or that individuals represent transient or extralimital (outside an established population area) records.

In the western United States outside of the USNRMs, fishers occur in a few disjunct and relatively small areas of their former range in the Cascade Mountains of southwest Oregon, the Klamath and Coastal Ranges of southwest Oregon and northwest California, and the Southern Sierra Nevada Mountains in east-central California (Proulx *et al.* 2004; Lofroth *et al.* 2010, pp. 47–49). A reintroduction program is underway on the Olympic Peninsula of Washington State, and the program's objective of establishing a self-sustainable population of fisher has yet to be achieved (Lewis *et al.* 2009, p. 3).

Historical Distribution and Early European Settlement Distribution in the U.S. Northern Rocky Mountains

Presumed historical distribution of fishers in the USNRMs is depicted as continuous with eastern British Columbia and southwestern Alberta in Canada, bounded on the east by the forested areas of the front range of the Rocky Mountains at approximately 113 degrees west longitude in Montana, the south at approximately 44 degrees north latitude, and the west in Idaho at approximately 116.5 degrees west longitude, extending to the northwest, north of the Palouse Prairie in Idaho to include the forested Pend Oreille River area of northeastern Washington (Hagmeier 1956, entire; Hall 1981, pp. 985–987; Gibilisco 1994, p. 64) (Figure 1). The described historical distribution also includes individually isolated areas in the present-day Greater Yellowstone Ecosystem (northwest Wyoming, southern Montana and east-central Idaho), and north-central Utah (Gibilisco 1994, p. 64). The representation of historical fisher distribution in the USNRMs by the sources above should be viewed cautiously, because it is based on limited information and records collected in the late 1800s to mid-1900s (Hagmeier 1956, pp. 154, 156, 161, 163; Hall 1981, p. 985) after European settlement had influence in the area. In addition, as stated previously, fishers have been consistently described as associates of coniferous forest ecosystems in the west, and the presumed historical presence of fishers was drawn along the lines of forest distribution, with little physical evidence of whether fishers occupied those habitats.

Montana

No reliable records are available for Montana, and historical and early settlement distribution in the western forested areas of the State was assumed based on the reports of the presence of fishers in northwest Wyoming and central Idaho (Hagmeier 1956, p. 156). Vinkey (2003, pp. 44–69) investigated fisher records in the Rocky Mountains, concentrating on Montana, to determine the fisher distribution post-settlement and prior to their apparent disappearance in the 1920s (Newby and McDougal 1964, p. 487; Weckworth and Wright 1968, p. 977). The first reference to fisher in Montana was a shipping record of pelts from Fort Benton in 1875 (Vinkey 2003, p. 49). Although shipping records are not definitive of the product origin, it is likely some of the fisher pelts were of Montana origin because of Montana's prominence in the fur trade and Fort Benton's location at the upper reaches of the Missouri River (Vinkey 2003, p. 49).

Reports of fishers in Montana's Glacier National Park in the early 1900s were dismissed as ''unreliable'' and ''unauthentic'' by Newby (cited in Hagmeier 1956, p. 156); nevertheless, these records have been cited by other authors, in addition to reports from early trappers, to support a distribution of fishers in Montana as far south as Wyoming (Hoffman *et al.* 1969, p. 596; Vinkey 2003, p. 50). Hoffman *et al.* (1969, p. 596) interpreted the lack of reliable records as an indication of the fisher's extirpation in Montana and adjacent areas before any specimens

could be preserved. Thus, in Montana, the presumed occurrence of fishers before translocations occurred in 1959 is based on trapper accounts alone (Weckworth and Wright 1968, p. 977; Hoffman *et al.* 1969, p. 596).

Idaho

The historical presence of fisher in Idaho was based on an 1890 specimen from Alturas Lake (originally Sawtooth Lake) in the Sawtooth Mountains of Blaine County in central Idaho (Goldman 1935, p. 177; Hagmeier 1956, p. 154; Drew *et al.* 2003, p. 62; Schwartz 2007, p. 922), and other 20th century reports of fishers in the ''mountainous parts of the state,'' including the Selkirk (north), Bitterroot (northeast), and Salmon River (central) ranges (Hagmeier 1956, p. 154). Only two fisher specimens document the presence of fishers in the USNRMs prior to their presumed extirpation in the 1920s (Williams 1963, p. 9). Both specimens originated in Idaho. The above-mentioned 1890 specimen from Alturas Lake, Blaine County, in central Idaho is housed in the collection of the National Museum of Natural History in Washington, DC, and this specimen has been pivotal for supporting historical distribution and post-settlement representation, and for suggesting that an indigenous population has survived since the 1920s in the USNRMs (Hagmeier 1956, p. 154; Hall 1981, p. 985; Drew *et al.* 2003, pp. 59, 62; Vinkey *et al.* 2006, p. 269). An 1896 Harvard Museum specimen collected in Idaho County in north-central Idaho west of the Bitterroot Divide, which separates Idaho and Montana, further supports the extent of fisher distribution in the late 1800s, and supports a close ecological connection between north-central Idaho and west-central Montana (Vinkey *et al.* 2006, p. 269; Schwartz 2007, pp. 923–924).

Wyoming and Utah

The first reported fisher capture in Wyoming is often cited as occurring in the 1920s from the Beartooth Plateau east of Yellowstone National Park near the Montana State line (Thomas 1954, p. 28; Hagmeier 1956, p. 163). The pelt of a poached fisher was confiscated in Yellowstone National Park in the 1890s, but it is not clear where the animal was captured originally (Skinner 1927, p. 194; Buskirk 1999, p. 169). Fishers have been seldom described in Wyoming (Buskirk 1999, p. 169), and by the 1950s fishers were considered ''extinct or nearly so'' in the Yellowstone area (Thomas 1954, p. 3; Hagmeier 1956, p. 163). As early as the 1920s the fisher was considered rare or absent from Yellowstone National Park (Skinner 1927, p. 180). The inclusion of Utah in the historical range of the fisher was based solely on photographs of tracks taken in 1938 (Hagmeier 1956, p. 161).

Location of Restocking Efforts in the U.S. Northern Rocky Mountains

By 1930, fishers were thought to be extirpated from the USNRMs in Montana and Idaho as they were in other parts of the United States (Williams 1963, p. 9; Newby and McDougal 1964, p. 487; Weckworth and Wright 1968, p. 977). Montana Department of Fish and Game (now Montana Fish, Wildlife and Parks (MTFWP)) initiated a restocking program for fisher in 1959 with 36 individuals from central British Columbia transplanted to the Purcell, Swan, and Pintler Ranges in northwestern and west-central Montana (Weckworth and Wright 1968, p. 979). Idaho Fish and Game (IDFG) followed with a reintroduction program for fishers in 1962. Forty-two fishers from central British Columbia were transplanted to areas considered to have been formerly occupied before presumed extirpation in north-central Idaho, including the Bitterroot divide area (Williams 1963, p. 9; reviewed by Vinkey 2003, p. 55). Minnesota and Wisconsin were the sources for 110 fishers transplanted to the Cabinet Mountains of northwest Montana between 1989 and 1991 (Roy 1991, p. 18; Heinemeyer 1993, p. ii). After an absence of authenticated records for over 20 years in the USNRMs, areas near release sites yielded fisher captures in Montana in the years following the first reintroduction efforts in 1959 (Newby and McDougal 1964, p. 487; Weckworth and Wright 1968, p. 979). No post-release studies were conducted in Idaho until the mid-1980s, but marten trappers in the State reported inadvertent captures of fishers by the late 1970s (Jones 1991, p. 1).

Contemporary Distribution in the U.S. Northern Rocky Mountains

The use of unreliable records to support distribution and population extent has led to overestimation of other species' ranges (Aubry and Lewis 2003, p. 86; McKelvey *et al.* 2008, p. 550). Mindful of that, we have used the most reliable and verified data in this analysis of the fisher in the USNRMs. We base the contemporary (1960 to present) record of fisher distribution in the USNRMs on verifiable or documented records of physical evidence such as legal harvest or incidentally captured specimens, animals captured for scientific study, genetic analysis of biological samples, and photographs identified by a knowledgeable expert. Eyewitness accounts of a fisher itself, or its sign, by the general public or untrained observer also may be found in agency databases (IOSC 2010, p. 5–6); however, a correct identification of fisher or its sign can be difficult by an untrained observer and these unverified records or anecdotal reports should be viewed cautiously (Aubry and Lewis 2003, p. 81; Vinkey 2003, p. 59; McKelvey *et al.* 2008, p. 551). Other animals that are similar in appearance and share similar habitats, such as the American marten, mink (*Mustela vison*), or domestic cat (*Felis catus*), may be mistaken for fishers (Aubry and Lewis 2003, p. 82; Lofroth *et al.* 2010, p.11; Kays 2011, p. 1). Animal signs, such as tracks, can be significantly altered by environmental conditions, and fisher tracks can be confused with those of the more common American marten (Vinkey 2003, p. 59; Giddings 2010, pers. comm.).

Montana and Idaho

A legal trapping season for fisher was reopened in Montana in 1983 after a series of fisher transplantations and evidence that fishers were reproducing in the State (Weckwerth and Wright 1968, entire; MTFWP 2010, p. 3). The majority of verified fisher records in the State through 2009 result from the harvest program (Vinkey 2003, p. 51; MTFWP 2010, p. 2, Attachment 3). In addition, Montana agency files include 48 incidental harvest records between 1968 and 1979 (Vinkey 2003, p. 51). Prior to 2002, Idaho records included verified fisher presence by targeted live-trapped and incidental captures, or otherwise-obtained physical specimens, photographs, and individuals observed directly by qualified experts (IOSC 2010, p. 7). From 2004 to the present, multiple State and Federal agencies in Montana and Idaho have partnered to collect biological data and samples by live-trapping and hair-snares for genetic testing (Albrecht and Heusser 2010, p. 23; Albrecht 2010, unpublished data; IOSC 2010, pp. 4–6; MTFWP 2010, p. 2); many surveys are conducted using a standardized protocol specific to fisher (Schwartz *et al.* 2007, entire). Fisher detections (species identification) and genetic analyses to identify individual fishers have been provided to us as they become available (Albrecht 2010, unpublished data); the results of some targeted fisher surveys are pending (IOSC 2010, p. 10). Harvest specimens and targeted studies provide confident identification of fishers, but may not represent the full extent of fisher

distribution due to biases of trapper effort, site accessibility, nonrandom site selection to increase the efficacy of detection, or a lack of either survey or trapping exposure (Vinkey 2003, p. 59; Schwartz *et al.* 2007, p. 6; Albrecht and Heusser 2009, p. 19).

In western Montana from 1968 to the late 1980s, fishers were known to occur in the Bitterroot Mountains bordering north-central Idaho, and west of the Continental Divide in the Whitefish Range, Flathead, and Swan Mountain Ranges (Vinkey 2003, p. 53). Trapping or targeted sampling has not been robust in these areas west of the Continental Divide since the early 1990s, but there are verified fisher detections over the past two decades (Vinkey 2003, p. 53; MTFWP 2010, Attachment 2) (Figure 2). Fisher presence has been consistent in the Bitterroot Mountains to the present, and in the Cabinet Mountains in northwest Montana since the late 1980s introduction (Vinkey 2003, p. 53; MTFWP 2010, Attachment 2).

Fishers in Idaho are found in the Selkirk Mountains in the north, the Clearwater and Salmon River Mountains in central Idaho, and the Bitterroot Range, including the Selway-Bitterroot Wilderness, in the north-central portion of the State.

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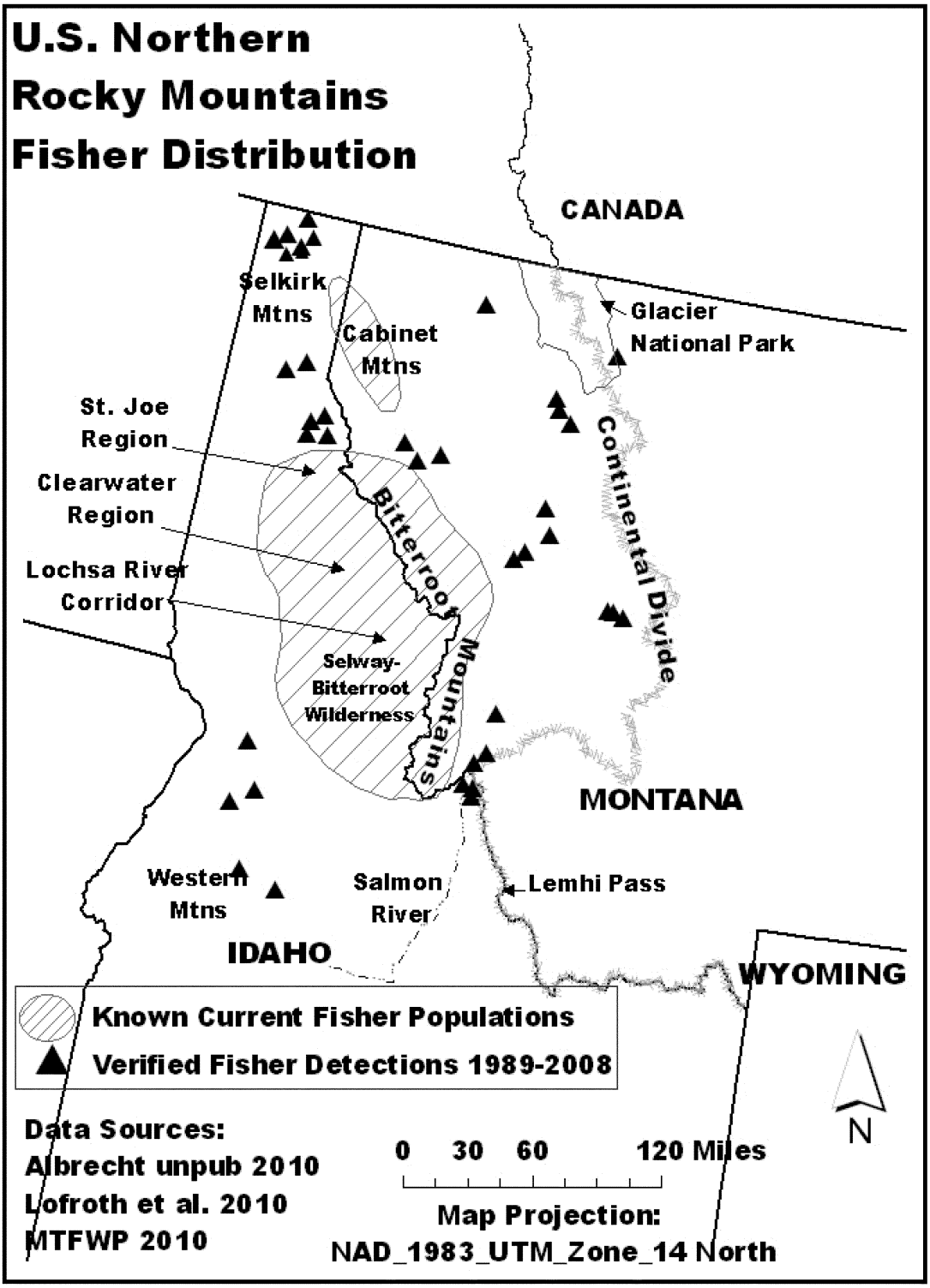

Figure 2. Current Distribution and Known Populations of the Fisher (*Martes pennanti*) (data compiled from Albrecht 2010, unpublished data; Lofroth *et al.* 2010; MTFWP 2010).

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Wyoming and Utah

The contemporary distribution of fisher in Wyoming is unknown. Rare reports of fisher tracks and harvested specimens are available up until the 1950s (Thomas 1954, p. 31; Hagemeier 1956, p. 163; Buskirk 1999, p. 169). A photograph of an animal near Yellowstone National Park described as a fisher was featured in a popular publication in 1995 (Gehman, p. 2), but to date there has been no professional or expert verification that the photographed animal is indeed a fisher. Carnivore detection surveys were conducted in the Gallatin National Forest in the northern Greater Yellowstone Ecosystem between 1997 and 2000, using camera stations, hair-snares, and snow track transects; the surveyors reported fisher tracks in snow in the Gallatin and Madison Ranges of southern Montana (Gehman and Robinson 2000, p. 7). These records are considered unverified, because the use of sighting and track measurements alone are dependent on the observer's level of skill, snow and weather conditions, and ''notoriously unreliable'' (Vinkey 2003, p. 59).

The Wyoming Fish and Game Department (2010, p. IV–2–26) and Gibilisco (1994, pp. 63–64) report only two verified records, both prior to 1970, in or near Yellowstone National Park. One specimen was described from Ucross, Wyoming, in 1965 (Hall 1981, p. 985) over 217 km (135 mi) east of the Beartooth Plateau and Yellowstone National Park, but most of that distance is open grassland or sagebrush, which is unsuitable for fisher. Proulx *et al.* (2004, p. 59) could not confirm the presence of fisher in Wyoming in their status review of *Martes* distribution. Schwartz *et al.* (2007, p. 1) acknowledge that Wyoming may contain fisher, but there is no evidence to confirm that presence. Recently, fishers are described as ''accidental'' or ''rare'' in Wyoming with assumed breeding or records of breeding in the northwest part of the State (Orabona *et al.* 2009, p. 152; Wyoming Fish and Game Department 2010, p. IV–2–26). However, the statement of fisher breeding in Wyoming is unsubstantiated and apparently made in error, (Oakleaf 2010, pers. comm.). The fisher is considered extirpated in Utah (Biotics Database 2005, pp. 1–2).

Summary of Contemporary Distribution of Fisher in the U.S. Northern Rocky Mountains

Based on the available verified specimen data, contemporary fisher distribution in western Montana and Idaho (Figure 2) covers an area similar to that depicted in the historical distribution synthesized by Gibilisco in 1994 (p. 64) (Figure 1). The contemporary distribution of fishers includes forested areas of western Montana and north-central to northern Idaho, and the boundary is further described in the ''Distinct Vertebrate Population Segment'' section of the finding. Based on a lack of verified records or documentation, we cannot conclude that the fisher is present, or if a breeding population was ever present, in Wyoming, including the Greater Yellowstone Ecosystem, which includes parts of south-central Montana, northwest Wyoming, and south-east Idaho.

Distribution Based on Genetic Characteristics

Recent genetic analyses revealed the presence of a remnant native population of fishers in the USNRMs that escaped the extirpation presumed to have occurred early in the 20th century (Vinkey *et al.* 2006 p. 269; Schwartz 2007, p. 924). Fishers in the USNRMs today reflect a genetic legacy of this remnant native population, with unique genetic identity found nowhere else in the range of the fisher and genetic contributions from fishers introduced from British Columbia and the Midwest United States. We discuss the genetic differences due to this the native legacy and its significance to the fisher taxon in the ''Significance'' section of the DPS analysis later in this document.

Individuals with native genes are concentrated in the Bitterroot Mountains of west-central Montana and north-central Idaho, the St. Joe and Clearwater Regions, and the Lochsa River corridor in Idaho (Vinkey 2003, p. 76; Vinkey *et al.* 2006, p. 267; Albrecht 2010, unpublished data). Individuals in these areas appear to form one population based on the frequency of gene types (Schwartz 2007, p. 924). The unique genetic type also has been identified in the only two existing USNRMs fisher specimens from the 1890s (Schwartz 2007, p. 922). The presence of this unique variation would indicate that fishers in the USNRMs were isolated from populations outside the region by distance, small population number, or both, for some time before the influences that led to the presumed extirpation in the early 20th century (Vinkey 2003, p. 82). Today, a genetic identity more commonly found in British Columbia populations also is present in the Bitterroot Divide area, and fishers in this region are likely a mix of native and individuals translocated from British Columbia (Vinkey 2003, p. 76; Vinkey *et al.* 2006, p. 268; Schwartz 2007, p. 924).

Fishers in northwestern Montana and extreme northern Idaho represent the geographically distant source populations from Minnesota and Wisconsin that were introduced into the Cabinet Mountains of Montana in the late 1980s (Drew *et al.* 2003, p. 59; Vinkey *et al.* 2006, pp. 268–269; Albrecht 2010, unpublished data). British Columbia types also are found in this region, reflecting offspring of a 1959 introduction from Canada, a remnant native population, or possibly natural immigration from Canada (Vinkey *et al.* 2006, p. 270; Schwartz 2007, p. 924).

An assessment of the degree of hybridization between native and introduced individuals is difficult based on the assessment techniques. Analysis of genetic identity is conducted on mitochondrial DNA, which only reflects the genetic contribution of the mother (Forbes and Alledorf 1991, p. 1346; Vinkey 2003, p. 82). Males could make a greater contribution to distant populations based on their larger home range sizes and expanded wanderings during the breeding period (Arthur 1989a, p. 677; Jones 1991, pp. 7–78), but based on mitochondrial DNA analysis alone, this contribution would not be detected.

Population Status

Estimates of fisher abundance and vital rates are difficult to obtain and often based on harvest records, trapper questionnaires, and tracking information (Douglas and Strickland 1987, p. 522), and recent information is limited. Habitat modeling and behavioral or other natural history characteristics (*e.g.,* home range sizes) also are used to estimate population sizes over a geographic area (Lofroth 2004, pp. 19–20; Lofroth *et al.* 2010, p. 50). Fisher densities over areas of suitable habitat have been reported, but there are no total or comprehensive population sizes for the fisher in the eastern United States or Canada. In the western range, fisher populations have been estimated using habitat models and home range sizes. Late winter populations in British Columbia range from 1,403 to 3,715 individuals (Lofroth 2004, p. 20). In the Southern Sierra Nevada Mountains, the fisher population is estimated between 160 to 598 individuals depending on the methods used, and an estimated 4,616 fishers inhabit the Southwest Oregon/Northern California area (reviewed by Lofroth *et al.* 2010, p. 50).

As previously noted, fishers in the USNRMs have increased in number and distribution since their perceived

extirpation in the 1920s. However, little is known of the population numbers, trends, or vital rates of fishers in the USNRMs today. Preliminary work is ongoing to determine the geographic range of the species, identify populations with native and introduced genes, and determine the abundance of individuals in populations using DNA analyses (Schwartz *et al.* 2007, pp. 1–2). An evaluation of the translocation effort in the Cabinet Mountains of northwest Montana between 2001 and 2003 yielded only 4 live-trapped individuals and 28 track detections over 25 survey weeks, indicating that the population there is likely small and limited in distribution (Vinkey 2003, p. 33) (Figure 2). Based on genetic similarities, fishers in the Selkirk Mountains of northern Idaho, just south of the Canadian border, are likely associated with the fishers from Minnesota and Wisconsin introduced to Montana's Cabinet Mountains to the east (Cushman *et al.* 2008, p. 180). Efforts to detect fisher in the Selkirk Mountains between 2003 and 2005 using hair-snares for genetic analysis produced 26 samples identified as fisher, although the number of unique individuals is likely much smaller than the number of samples (Cushman *et al.* 2008, p. 180).

A review of historical records and carnivore research in Montana indicates that the fisher is one of the lowest-density carnivores in the State (Vinkey 2003, p. 61). What is known of fisher populations today in Montana is primarily derived from harvest data and winter furbearer track surveys (MTFWP 2010, p. 2, Attachment 8, pp. 2–3). A Montana habitat model based on 30 years of fisher presence data (the majority being harvest data) conservatively estimates that there is high habitat suitability capable of supporting 216 individuals concentrated in the Bitterroot Mountains along the Idaho border, the Swan and Flathead River drainages, and the Whitefish and Cabinet Mountains just south of the Canada border (MTFWP 2010, Attachment 8, pp. 2–3; Montana Natural Heritage Program (MTNHP) 2010a, entire; 2010b, entire).

Most of the recent USNRMs fisher survey effort has targeted the Coeur d'Alene, St. Joe, Clearwater, and Lochsa areas of northern and north-central Idaho. In 2006 and 2007, 10 individual fishers were identified in an area of approximately 8,951 km^2 (3,456 mi^2) of potentially suitable habitat in the St. Joe and Coeur d'Alene areas, north and south of Interstate 90 in northern Idaho (Albrecht and Heusser 2009, pp. 6, 8, 15). The St. Joe and Coeur d'Alene projects were not intended to elucidate fisher presence in the entire area of potentially suitable habitat, but simply to detect the presence of fisher; therefore, traps were placed in areas highly likely to support fisher (Albrecht and Heusser 2009, p. 19). Thirty-four fisher were identified in a 1,295-km^2 (500-mi^2) (one fisher per 38 km^2 (14.7 mi^2)) area of the Lochsa River corridor of north-central Idaho during a targeted live-trap study between 2002 and 2004 (Schwartz 2010, unpublished data). Thirty individual fishers were captured in the Clearwater area north of the Lochsa River in north-central Idaho between 2007 and 2010 (Sauder 2010, unpublished data). Based on genetic data, it appears that individuals in these areas of north-central Idaho and fishers in west-central Montana represent a single population (Schwartz 2007, p. 924) (Figure 2). We have no additional information on the Lochsa River or Clearwater surveys to determine if these reports are indicative of comprehensive population numbers. No habitat suitability or capacity model is available for Idaho.

Evaluation of Listable Entities

Under section 3(16) of the Act, we may consider for listing any species, including subspecies, of fish, wildlife, or plants, or any DPS of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Such entities are considered eligible for listing under the Act (and, therefore, are referred to as listable entities), should we determine that they meet the definition of an endangered or threatened species. In this case, the petitioners have requested that the fisher in the USNRMs be considered as a DPS of a full species for listing as endangered or threatened under the Act. We concluded in our 90-day finding on the petition that there is support for a DPS of fisher in the USNRMs (75 FR 19925), and we analyze this possibility further in the following section after reviewing the best available information.

Distinct Vertebrate Population Segment

Under the Service's DPS policy (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to, or removal from, the Federal List of Endangered and Threatened Wildlife. These elements include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (*i.e.,* is the population segment endangered or threatened).

In evaluating the distribution of fisher and the geographic extent of a possible DPS in the USNRMs, we examined information cited in the petition (Defenders *et al.* 2009, pp. 11–24), published range maps, published works that included historical occurrences, unpublished studies related to fisher distribution, and other data submitted to us subsequent to the request for information published in the 90-day finding for fisher (75 FR 19925). Fisher distribution in the USNRMs and extended area was discussed in detail in the preceding ''Distribution'' section.

Discreteness

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Western Montana and north-central to northern Idaho broadly encompass the area under consideration for a fisher DPS in the USNRMs. The population area includes the contemporary (1960s reintroductions to present) distribution of fisher in the USNRMs and is best circumscribed by geological features and the distribution of habitat known to support fisher. The distribution of fishers in the USNRMs is bounded by the southern Bitterroot Range north of Lemhi Pass in Montana, east and then north along the Continental Divide including forested areas east of the Divide to the Rocky Mountain Front, north along the eastern boundary of Glacier National Park, west along the Boundary Mountains and northern Whitefish Range in northern Montana, west to the southern Selkirk and southern Purcell Mountains to the Idaho boundary with Washington, south along the forested areas of northern Idaho bounded on the west by the Palouse and Camas Prairie regions, south along the Western Mountains and North Payette River to the Boise Mountains, northeast along the Salmon River to the southern

Bitterroot Range north of Lemhi Pass in Idaho (Figure 2). The northern geographic extent of the fisher distribution roughly coincides with the border of the United States and Canada at 49 degrees north latitude. The fisher distribution in the USNRMs is the southern extent of the taxon's known range in the Rocky Mountains.

Fishers in the USNRMs are physically or geographically separate from other fisher populations. The range of the fisher in the West Coast Range of Washington, Oregon, and California is separated from the USNRMs by distance, natural physical barriers, including the nonforested high desert areas of the Great Basin in Nevada and eastern Oregon and the Okanogan Valley in eastern Washington, major highways, urban and rural open-canopied areas, and agricultural development (69 FR 18770; Lofroth *et al.* 2010, p. 47). Occupied areas in the USNRMs are 150 to 200 km (93 to 124 mi) from the closest edge of the West Coast fisher DPS abutting the unoccupied Okanogan Valley of Washington (69 FR 18770, Lofroth *et al.* 2010, p. 33). Occupied areas in the USNRMs are approximately 418 km (300 mi) from the closest occupied area of the West Coast DPS in the southern Cascade Mountains of southwest Oregon or the Olympic Peninsula in Washington (National Park Service (NPS) 2009, entire; Lofroth *et al.* 2010, p. 47). There is no evidence to indicate that fisher in the USNRMs were recently, or historically, connected to other fisher population centers in the United States (Gibilisco 1994, p. 64; Proulx *et al.* 2004, p. 57). Maps of historical and recent fisher distributions show no connection in the contiguous United States between occurrences in the USNRMs and the fisher populations in the Midwest and Great Lakes area, which occur approximately 1,126 km (700 mi) away, across mostly nonforested areas of unsuitable habitat (Hagmeier 1956, p. 151; Douglas and Strickland 1987, p. 313; Gibilisco 1994, p. 64; Proulx *et al.* 2004, p. 57).

There is no indication that a population of fisher exists in a large geographic area of southern Alberta or southern British Columbia in Canada to the north of the USNRMs (see ''Distribution'' section). Individual fishers have been identified near the international boundary and observed using areas in both Canada and the USNRMs (Fontana *et al.* 1999, p. 19; Albrecht 2010, unpublished data; Giddings, 2010 pers. comm.). We believe that the detections in extreme southern Canada represent wandering individuals, or individuals in the USNRMs whose home ranges include suitable habitat patches coincidental to the border, because the closest concentration of fishers in Canada is over 200 km (125 mi) north of the USNRMs through patchy habitat of low suitability (Weir 2003, p. 14; Weir and Lara Almuedo 2010, p. 36). The lack of suitable habitat in southeastern British Columbia likely contributed to the failure to reestablish a fisher population there in the early 1990s (Fontana *et al.* 1999, p. 1; Weir *et al.* 2003, pp. 24–25).

We have no direct confirmation that fishers are moving between the USNRMs and larger population centers in Canada; however, it is likely there is some interaction between transient individuals from the larger population areas. Reports of transient or juvenile fishers moving linear distances up to 135 km (84 mi) are known from other parts of the fisher's range (Weir and Corbould 2008, p. 48), although shorter distances of up to 107 km (66 mi) are more common (York 1996, p. 55). It is unlikely that transient individuals provide a functional connection between Canada population centers and the USNRMs. Individuals traveling longer distances are subject to a greater risk of mortality, and very few establish the stability of a home range (Weir and Corbould 2008, p. 44) required for successful long-term recruitment. Because the intervening areas appear unable to support resident fishers, and we believe that the only fishers using these areas are transient individuals attempting to move between population centers, we have concluded that the USNRMs fisher population is markedly separate from those to the north.

Summary for Discreteness

We conclude that the fisher in the USNRMs is markedly separated from other populations of the same taxon as a result of physical factors, and thus meets the definition of a discrete population according to the Service's DPS policy. Because the entity meets the first criterion for discreteness (marked physical separation), an evaluation with respect to the second criterion (international boundaries) is not needed.

Significance

If a population segment is considered discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used ''sparingly'' (see Senate Report 151, 96th Congress, 1st Session) while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance. Below we address conditions 1, 2, and 4. Condition 3 does not apply to fishers in the USNRMs because North American fishers are distributed widely within their historical range in Canada and the eastern United States.

Unusual or Unique Ecological Setting

The fisher is a forest-dependent species, and marked separation from fishers in other geographic locations may be indicated by variations in forest types or ecological conditions influencing forest characteristics. Fishers in the western portion of the range (West Coast, western Canada, and the USNRMs) generally inhabit landscapes dominated by conifer forests, whereas fishers live in more dense, lowland forests with higher proportions of deciduous trees in the Northeast and upper Midwest United States and Canada (Allen 1983, pp. 2–3; Arthur *et al.* 1989b, p. 687; Powell 1993, p. 89; Buskirk and Powell 1994, p. 285; Jones and Garton 1994 p. 377;

Ricketts *et al.* 1999, pp. 156, 160, 170). Fishers of the West Coast population (Washington, Oregon, and California) inhabit forest environments unusual in comparison to the rest of the taxon, and are unique from other parts of the range based on the unusual forest environment (69 FR 18777). Not only are the forests of the West Coast fishers lacking the broadleaf forest component common in the eastern range, but the coastal climate of wet winters and cool, dry summers produces distinctive forests of sclerophyllic (leathery-leafed) evergreen trees and shrubs found nowhere else in the range (Smith *et al.* 2001 pp. 17–18; 69 FR 18777).

In addition to differences of forest type between the USNRMs and eastern North America and the U.S. West Coast, fishers in the USNRMs occupy forest areas that differ due to influences of climate and precipitation patterns from fisher population areas in western Canada. Forested areas of western Montana and central-to-northern Idaho are temperate, coniferous forests influenced by dramatic elevation gradients that produce several types of vegetation zones (Ricketts *et al.* 1999, pp. 213–214, 250–251; Bailey 2009, p. 89, plate 1). Topographic relief produces localized climate effects which add to the vegetation variability within this region (Ricketts *et al.* 1999, pp. 213–214). Locally variable in predominant tree species or assemblages of species, this temperate zone encompasses the USNRMs extending north along the Continental Divide into southwestern Alberta and southeast British Columbia (Ricketts *et al.* 1999, pp. 213–214).

The northern areas of the USNRMs are heavily influenced by maritime moisture patterns, and in addition to the predominating *Pseudotsuga monziesii,* Pacific tree species such as *Thuja plicata* (western red cedar), *Tsuga heterophylla* (western hemlock) and *Abies grandis* are present (McGrath *et al.* 2002, entire; U.S. Forest Service (USFS) 2009, p. 1). Severe winters with heavy snowfall are usual and summers are usually dry; precipitation is highly variable within the zone averaging between 510 to 1,020 mm (20 to 40 in.) per year primarily falling as snow in fall, winter, and spring (USFS 2009, p. 1). In the southern part of the USNRMs, maritime conditions decrease along latitudinal and altitudinal clines in the mountains of central Idaho and the Bitterroot Range in west-central and southwest Montana (McGrath *et al.* 2002, entire). *A. grandis, P. monziesii,* and western spruce/fir forests, *Larix* spp. (larch), *Pinus ponderosa* and *Pinus contorta* (lodgepole pine) characterize the mountain forests of the Idaho Batholith (Ricketts *et al.* 1999, p. 250; McGrath *et al.* 2002, entire). Hardwood trees, selected for fisher denning in other parts of the range, are not significant parts of the landscape in the USNRMs (reviewed by Powell 1993, pp. 55–56; Heinemeyer and Jones 1994, p. iii; reviewed by Lofroth *et al.* 2010, pp. 101, 108–109). The absence of hardwoods may be a limiting factor to fishers in the region (Heinemeyer and Jones 1994, p. iii), or an indication of successful adaptation to resources not used elsewhere. Both of these points are speculative as there is little information available describing natal den selection or successful reproduction in the USNRMs.

Fishers in British Columbia and Alberta are associated most commonly with the Sub-boreal Spruce and Boreal White and Black Spruce Biogeoclimatic Zones in the central to northern areas of the provinces (Weir and Lara Almuedo 2010, p. 36; Meidinger *et al.* 1991, p. 211; Delong *et al.* 1991, p. 239). The Sub-boreal Spruce Zone is a heavily forested montane region with uplands dominated by *Picea engelmannii x glauca* (hybrid white spruce) and *Abies lasiocarpa; Pinus contorta* is common on drier sites (Meidinger *et al.* 1991, p. 210). The climate of the Sub-boreal Spruce Zone is continental and characterized by severe, snowy winters and relatively warm, moist, and short summers (Meidinger *et al.* 1991, p. 210). Mean annual precipitation ranges from 415 to 1,650 mm (16 to 65 in.) with less than half of that falling as snow in winter (Meidinger *et al.* 1991, p. 210). The Boreal White (*Picea glauca*) and Black (*Picea mariana*) Spruce Zone is a relatively dry zone with very long, very cold winters with short summer growing seasons, and annual precipitation averages between 330 and 570 mm (13 and 22 in.), with 35 to 55 percent falling as snow (DeLong *et al.* 1991, p. 238). *P. glauca, P. mariana, P. contorta,* and *A. lasiocarpa* are major tree species in these zones (DeLong *et al.* 1991, p. 238). Both the Sub-boreal Spruce and Boreal White and Black Spruce Zones have a representative deciduous tree component of *Populus tremuloides* (trembling aspen), *Betula papyrifera* (paper birch), and *Populus balsamifera* spp. *Trichocarpa* (black cottonwood) (DeLong *et al.* 1991, p. 238; Meidinger *et al.* 1991, p. 212; Weir and Corbould 2008, p. 5), all of which are tree hardwood types selected by fisher for reproductive dens (Weir and Lara Almuedo 2010, p. 37).

Topographic relief in the USNRMs produces localized variations in vegetation and seasonal snowfall not widely seen in the western Canada population. It is hypothesized that fisher distribution on the landscape is limited by deep snow (Krohn *et al.* 1995, p. 103; Krohn *et al.* 1997, p. 226). If this is correct, then the precipitation in the USNRMs, the majority of which falls as snow and is heavily influenced by topography, could lead to geographic partitioning and an overall less optimal habitat within the region. There are observations of fishers using areas with deep, fluffy snow in the USNRMs, which also could indicate an adaptation to local conditions, but the relationship between using or avoiding certain snow conditions has not been evaluated statistically. Fishers in Idaho have some of the largest home ranges recorded for the species (reviewed by Powell and Zielinski 1994, p. 58; IOSC 2010, p. 4; reviewed by Lofroth *et al.* 2010, p. 68), possibly indicating suboptimal forest resources often found in peripheral populations (Wolf *et al.* 1996, p. 1147). The limited availability of hardwood tree types used for denning in other areas of the range also may indicate a local adaptation to different den structures in the USNRMs and the selection of less optimal structures based on necessity.

More information is needed to elucidate important ecological relationships for fishers in the USNRMs. Therefore, we do not conclude that the fisher in the USNRMs is significant to the taxon as a whole based on ecological differences alone, but the observed differences indicate that fishers in the region are subject to suboptimal habitats and pressures typically seen in important peripheral populations. Strong selective pressures in peripheral populations may induce adaptations that may be important to the taxon in the future.

Significant Gap in the Range of the Taxon

The loss of the fisher in the USNRMs would result in a significant gap in the range of the taxon and contribute to the extensive range retraction and fragmentation that has occurred since European settlement of North America (Gibilisico 1994, p. 60). The USNRMs represent one of only three historical peninsular reaches of the range in the United States connecting with Canada and the southernmost extension of the taxon's distribution in the Rocky Mountains (Gibilisco 1994, p. 60; Proulx *et al.* 2004, p. 57). Range retraction in the eastern United States south of the Great Lakes has isolated populations in New England and northern Atlantic States from Minnesota and Wisconsin, although the eastern United States populations retain connectivity to

Canada (Gibilisico 1994, p. 60; Proulx *et al.* 2004, p. 57).

Fisher populations in the western United States are isolated from each other and the closest Eastern population in the Great Lakes area, and have lost a connection or have a severely diminished capacity to connect with larger population areas in Canada (Gibilisco 1994, p. 64; Zielinski *et al.* 1995, p. 107; Aubry and Lewis 2003, pp. 86, 88; Weir 2003, pp. 19, 24, 25; Weir and Lara Almuedo 2010, p. 36). Extirpation of the USNRMs population would significantly impact representation of the species by shifting the southern boundary of the western range of the taxon over 965 km (600 mi) to the north. Only three individually isolated fisher populations in Oregon and California, two being native populations (Aubry and Lewis 2003, p. 88; Lofroth *et al.* 2010, p. 47), would be left in the entire southwest range of the taxon at a distance of over 800 km (500 mi) from populations in Canada (Weir and Almuedo 2010, p. 36). The recent fisher introduction to Washington's Olympic peninsula is not considered here because its establishment as a self-sustaining entity has not been demonstrated.

The retention of a fisher population in the USNRMs is significant to the taxon because of its situation at the periphery of the range. Populations at geographic margins, defined as peripheral populations, may be of high conservation significance and important to long-term survival and evolution of species (Lesica and Allendorf 1995, p. 756; Fraser 2000, p. 49). Populations at the periphery tend not to be given conservation priority because of their existence in lower quality habitats, and these populations are presumed to be least likely to survive a reduction in range (Wolf *et al.* 1996, p. 1147). This presumption is based on an existing theory that the cause of a species' range contraction is erosion that commences at the periphery where population numbers are low and progresses to the center where optimal habitats support higher population numbers (Lomolino and Channell 1995, pp. 336, 338). Upon closer examination, population persistence is not biased toward larger, less isolated or more central regions of a species historical range. Of 245 vertebrate species experiencing geographic range contraction, 98 percent retained some species presence in peripheral populations, 68 percent retained greater periphery than core, and 37 percent of species retained no core but remained in peripheral populations (Channell and Lomolino 2000, p. 85). Peripheral populations are likely to be in suboptimal habitats and subject to severe pressures that result in genetic divergence, as seen in USNRMs fisher populations, either from genetic drift or adaptation to local environments (Fraser 2000, p. 50). Because of their exposure to strong selective pressures, peripheral populations may contain adaptations that may be important to the taxon in the future. Lomolino and Channell (1998, p. 482) hypothesize that because peripheral populations should be adapted to a greater variety of environmental conditions, then they may be better suited to deal with anthropogenic (human-caused) disturbances than populations in the central part of a species' range.

We conclude that the loss of the USNRMs fisher population would result in a significant gap in the range of the taxon by shifting the southern boundary of the western range over 965 km (600 mi) to the north, leaving only three individually isolated populations in the entire southwestern range of the taxon. Thus, the USNRMs population meets the definition of significant in our DPS policy.

Marked Genetic Differences

Fishers in the USNRMs represent a native lineage that escaped extirpation early in the 20th century (Weckwerth and Wright 1968, p. 977; Schwartz 2007, p. 924). Close to half of the USNRMs fishers sampled have a unique mitochondrial haplotype [a group of alleles (DNA sequences) of different genes on a single chromosome that are closely enough linked to be inherited usually as a unit]—Haplotype 12—found nowhere else in the range of the taxon (Drew *et al.* 2003, p. 57; Vinkey 2003, p. 82; Vinkey *et al.* 2006, p. 269). Mitochondrial DNA is associated with the energy-producing structures within cells called mitochondria, and is inherited through the maternal line. Individuals with Haplotype 12 are significantly divergent from all other haplotypes in having an additional variation (Haplotype B) within a genetic structure associated with the mitochondria called Cytochrome b, while all of the other 11 mitochondrial haplotypes have the Haplotype A of the Cytochrome b region (Vinkey 2003, p. 79; Vinkey *et al.* 2006, p. 268; Schwartz 2007, p. 923). Unique genetic haplotypes common to the native lineage are expected, considering the peripheral location of the population and a history of severe population reduction and isolation (Lesica and Allendorf 1995, p. 754, Vinkey 2003, p. 82). Locally adapted populations evolve traits that provide an advantage and higher level of fitness under the local environmental conditions or habitat than genotypes evolved elsewhere (Kawecki and Ebert, 2004, p. 1225), and the unique genetic characteristics may have factored into sustaining a rare population in the USNRMs. The forces that shape adaptation are often strongest in the periphery of the range, and populations situated here may be better suited to deal and adapt to changes in their environments (Lomolino and Channell 1998, p. 482). It is the intent of the DPS policy and the Act to preserve important elements of biological and genetic diversity. The loss of the native fisher lineage in the USNRMs would result in the loss of a unique and irreplaceable genetic identity and the local adaptation and evolutionary potential that goes with it. Thus, we conclude that the USNRMs fisher differs markedly from other members of the taxon in genetic characteristics, and this difference is significant to the conservation of the species.

Summary for Significance

We conclude that the fisher population in the USNRMs is significant because its loss would result in a significant gap in the range of the taxon, and its genetic characteristics differ markedly from those of other fisher populations.

Determination of Distinct Population Segment

Based on the best scientific and commercial information available, we find that the fisher in the USNRMs is both discrete and significant to the taxon to which it belongs. Fishers in the USNRMs are markedly separated from other populations of the same taxon as a result of physical factors, further supported by quantitative differences in genetic identity. The loss of the fisher in the USNRMs would result in a significant gap in the range of the taxon and the loss of markedly different genetic characteristics relative to the rest of the taxon. Because the fisher in the USNRMs is both discrete and significant, it qualifies as a DPS under the Act.

Distinct Population Segment Five-Factor Analysis

Since the fisher in the USNRMs qualifies as a DPS, we will now evaluate its status with regard to its potential for listing as endangered or threatened under the five factors enumerated in section 4(a) of the Act.

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or

reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the USNRMs fisher DPS in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In making our 12-month finding on the petition we considered and evaluated the best available scientific and commercial information.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of the factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

We are required by the Act to assess threats information that may occur within the foreseeable future. We define foreseeable future as a timeframe in which impacts can be reasonably expected to occur. Where future projections are not available, it is assumed that current trends will continue unless information exists to the contrary. Our evaluation of the fisher in the USNRMs follows.

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

Under Factor A, we will discuss a variety of impacts to fisher habitat including: (1) Timber Harvest and Forest Management, (2) Development and Roads, (3) Climate Change, and (4) Fire and Disease. Climate change is discussed under Factor A, because the primary impact of climate change on fishers is expected to be through changes to the availability and distribution of fisher habitat. Many of these impact categories overlap or act together to affect fisher habitat.

Timber Harvest and Forest Management

Industrial timber harvest in the inland Northwest United States (Interior Columbia River Basin), including Idaho and western Montana, did not occur until the early 20th century (Hessburg and Agee 2003, pp. 40–41). Prior to 1900, logging in Idaho and Montana supplied timbers only to local concerns such as mining and railroad development, and did not become important to national markets until after other forested areas (*e.g.,* Great Lakes region) had been depleted (Hessburg and Agee 2003, p. 40). Early industrial logging used selective practices, taking only large, high-grade or salvage logs (Hessburg and Agee 2003, pp. 41–42). By 1940, many inland northwest areas containing dry forest types, typically of ponderosa pine, were intensively logged by this method; moist or mesic forest types favored by fishers in the Flathead Valley and Whitefish Mountains in Montana and the Coeur d'Alene area of northern Idaho were also affected (Lesica 1996, p. 34; Hessburg and Agee 2003, pp. 41–42). The balance of forested areas in Idaho and Montana showed little or no logging activity up to 1940 (Hessburg and Agee 2003, p. 42).

Historical fisher population numbers are not known, but reports of their presence declined in the 1920s to a point that the fisher was presumed extirpated in the USNRMs (Williams 1963, p. 8; Weckwerth and Wright 1968, p. 977; Brander and Books 1973, p. 52). Fishers in the USNRMs avoid dry forest types (Schwartz 2010, unpublished data), and because local subsistence logging and early industrial logging were of limited geographic scale and selected for dry forest types, it is unlikely that this contributed directly to the fishers' apparent demise across the USNRMs area. Other factors or combination of factors, discussed in subsequent sections, may have had more influence on past fisher population reductions.

From the 1930s, timber harvest continued (Hessburg and Agee 2003, p. 41) while native fishers maintained an undetected refugium likely, in the Selway-Bitterroot Mountains straddling the border of Montana and Idaho (Vinkey *et al.* 2006, p. 269). Timber harvest was increasing in the USNRMs as fisher reintroductions (later realized to be population augmentations) were occurring in the late 1950s and early 1960s. Clearcutting practices, which removed all overhead cover in the harvest area, increased on private and public lands, and large areas of private timberland were converted to plantation forestry which emphasized clearcutting and even-aged forest regeneration management practices (Hessburg and Agee 2003, p. 41). With plantation or rotational forestry, the large tree components and coarse woody debris are suppressed or not allowed to accumulate to the point that they supply denning or cold weather resting sites (Weir 2003, p. 16). From 1938 to present day, low-elevation timberlands have been depleted of large, older trees considered late-seral or old-growth type, and the mid-elevation habitats retain only small amounts (DellaSala *et al.* 1996, p. 213; Lesica 1996, p. 37). The majority of presettlement upland old-growth forest was in the drier forest types of ponderosa pine/Douglas fir/western larch, which are subject to frequent low-intensity underburns that reduce ladder fuels (forest fire fuels that provide fire connectivity from understory to midlevel or canopy fuels) and more shade-tolerant vegetation in the understory (Green *et al.* 1992, p. 2). However, fishers are known to avoid these forest types and they represent only minor components of areas used by fishers (Jones and Garton 1994, pp. 377–378; Schwartz 2010, unpublished data).

In general, timber harvest and management over the last century has resulted in the loss of old forest and large- and medium-diameter trees that historically were widely distributed in forest structures other than old growth forest (Hessburg and Agee 2003, p. 45); still, the amount of land covered by forest in the USNRMs is similar to historical times (Hessburg *et al.* 2000, p. 60). Timber harvest, together with fire exclusion, has produced younger, homogenously structured forest patches, especially in dry forest types, with more canopy layers and more understory vegetation than historically due to fire suppression (Hessburg and Agee 2003, pp. 45–46). Fragmentation of managed landscapes has increased due to more numerous and smaller patches of various forest types, while roadless and wilderness areas have retained a simpler less fragmented structure (Hessburg *et al.* 2000, p. 78). From a landscape perspective, the departure from historical old-growth structure is most

pronounced in the northern areas of the USNRMs, with a concurrent shift to increasing old-forest multistory stages in the southern areas (Wisdom *et al.* 2001, p. 184).

As a result of timber harvest and management practices, forest structures and quantities of large trees across the USNRMs have been affected. It is unclear how this has impacted fisher populations. There is no information regarding fisher population numbers within the region before European settlement, and no region-wide population numbers or trends are available today to allow a comparison of the impacts of changes to the landscape over time on fisher populations. Fishers were so rare as to be considered extirpated before large-scale harvesting occurred. Fifty years after the introduction of 78 animals to 9 areas in Idaho and Montana between 1959 and 1962 (reviewed by Vinkey 2003, p. 55), concurrent with decades of post-introduction timber harvest, fishers, half of which are of native lineage, persist on the landscape in a wider distribution than they did before augmentations (Vinkey 2003, p. 82; IOSC 2010, pp. 7, 10; MTFWP 2010, Attachment 4). Although there is little information elucidating the density of fisher populations in the USNRMs, the contemporary distribution of fishers appears to be similar to the historically depicted distribution in Idaho and Montana (Gibilisco 1994, p. 64) (Figure 1).

We are not concluding that a cause and effect relationship exists between increased timber harvest or treatment and increasing fisher distribution. The existing state of the USNRMs landscape is conducive to supporting fisher, but it is unknown if the system has the capacity to support, in the long term, a self-sustaining population or subpopulations in a metapopulation dynamic. Fisher home ranges in Idaho and Montana are larger than most other areas in the taxon's range (reviewed by Powell and Zielinski 1994, p. 58; reviewed by Lofroth *et al.* 2010, p. 68; IOSC 2010, p. 4), and this large size could be the result of fragmentation or low-quality habitat (Powell and Zielinski 1994, p. 60), either naturally occurring or human-produced. Timber harvest and management have significant potential to alter the suitability of a landscape for fishers; conversely, management of forests using mechanical means or fire can assist in creating conditions that foster larger trees, create snags, increase woody debris, or open densely stocked areas to provide habitat for fisher prey species. Fishers in the USNRMs evolved in forest types where fire frequency and intensity was mixed, and windthrow was common, resulting in a complex and intricate landscape mosaic of young, mixed-age, and late-seral components (Jones 1991, p. 111; Arno *et al.* 2000, pp. 225–227). Thus, the result of silviculture treatments or harvest may resemble the natural disturbances and the succession that follows (Powell and Zielinski 1994, p. 64).

Current and Future Timber Harvest and Management

Commercial timber harvest, management for timber production, and the use of forestry techniques to protect, restore, and enhance forest ecosystems are ongoing activities in the USNRMs and are expected to continue. Fourteen national forests comprise approximately 65 percent of the land area and 72 percent of the forest types known to be used by fishers in the USNRMs (U.S. Department of Agriculture (USDA) 2009, entire). Timber harvest or manipulation for either timber production or other resource objectives is stated in each forest's Land and Resource Management Plan, which provide direction for a 10- to 15-year period. National forests are subject to a multi-use mandate and maintenance ''in perpetuity of a high level of annual or regular periodic output of the various renewable resources,'' including timber (PL 104–333), and other legislative mandates for forest health or fuels reduction (*e.g.,* Healthy Forests Restoration Act (Pub. L. 108–148)), which may require manipulation of forested areas. Planning directives specify lands for timber production for long-term sustained yields; however, silviculture (forest removed or treated) acres on all forests in the USNRMs has generally declined over the past 15 years, including a significant reduction in clearcutting (USDA 2010a, entire; USDA 2010b, entire). The USFS actions are regulated and relevant authorities are discussed in the ''Factor D'' section below.

State-owned forestry lands comprise approximately 6 percent of the forest types preferred by fishers in the USNRMs area. Timber harvest is an activity expected to continue on State trust or endowment lands in both States of Idaho and Montana, because of the responsibility to maximize long-term financial returns to public schools and other trust beneficiaries (Idaho Board of Land Commissioners 2007, p. 3; Montana Code Annotated 2009a, entire). Forest resources are evaluated for management of a sustainable harvest on 5- to 10-year review schedules (Idaho Board of Land Commissioners 2007, p. 18; Montana Department of Natural Resources and Conservation (MTDNRC) 2010, p. 3). Private lands, including commercial timber operations with the primary objective of maximizing fiber production, comprise approximately 22 percent of the fisher forest types. The extent of timber harvest operations are driven by market forces and difficult to predict (Morgan *et al.* 2005, p. 2), but it is reasonable to conclude that management to maximize wood production (*e.g.,* pre-thinning of stands), harvest, road construction and maintenance, and other activities will continue into the future.

We expect the current timber management and silviculture activity to continue on national forest lands guided by management plans. The effects of present and future forest management and timber harvest on the capacity of the USNRMs to support fishers may be influenced by many factors, including the location, scale, and juxtaposition of treatments to previous disturbances; the suitability of an area to provide fisher habitat under natural conditions; and the habitat needs of fishers. The habitat ecology of fishers in the USNRMs is not well understood. Forest patches with high densities of large trees, canopy covers exceeding 40 percent, and riparian areas appear to be important; however, information is lacking regarding fishers' requirements for patch size and connectivity (Jones and Garton 1994, pp. 380, 385–386). Although some information is available from other regions, habitat requirements for successful denning and rearing of young in the USNRMs are not known. Fishers have been described as using ''old-growth'' forest types disproportionally to their occurrence (Thomas *et al.* 1988, p. 255); however, there also has been a lack of clarity in the use of the term ''old-growth'' in forest ecology literature, and description of forest characteristics at any particular successional stage vary by geographic region, forest type, and local conditions (Green *et al.* 1992 errata 2008, p. 2). Therefore, without specific parameters, basing a loss of fisher habitat on trends of ''old-growth'' or even ''larger trees'' may be misleading.

Late seral or mature forest elements such as snags and overhead cover are important habitat features for fishers throughout their range. These mature forest conditions may take many decades to hundreds of years to develop, and national forest management direction is revised over short time periods relative to forest succession. National forest lands that support fishers today reflect natural processes and silviculture actions

spanning numerous planning periods as well as actions taken before comprehensive national forest management was mandated in 1976 (16 U.S.C 1601–1614). Given the history of forest management and planning, we do not expect significant changes in the availability of mature forest habitats through future forest planning cycles.

The species continues to occupy its presumed historical range despite habitat alterations that have occurred within that range, although fisher densities may be different. Fishers in the USNRMs have been observed to use roadless areas of forests, national forest lands managed for multiple purposes, and State forests and industrial forests managed primarily for commercial timber production (J. Sauder, IDFG, unpublished data cited in IOSC 2010, p. 4), although it is unclear how fishers are using these environments, or the relative importance of each to supporting individuals or fisher populations. We expect that fishers' use of lands managed for timber production or multiple uses will occur in the future under conditions fostered by the continuance of current management. Therefore, we conclude that the best available scientific and commercial information does not indicate that current or future forest management practices and timber harvest threaten the fisher now, or in the foreseeable future.

Development and Roads

The USNRMs region encompasses large tracts of public lands with little or no development, wilderness areas, and numerous municipalities of varying size, low-density rural development, rail lines, road networks and other human developments. Most of the development and infrastructure, including national forest roads, have been on the landscape for decades (Baker *et al.* 1993, p. 2; Havlick 2002, p. 11). Higher density development and road networks are situated in broad, open, lower-elevation intermountain valleys or lower montane areas, and most human activity and dwellings adjacent to public lands occur in dry woodlands or dry forest (Hessburg and Agee 2003, p. 47). Development in most cases is not far from public lands—primarily national forest. Mesic forest types and riparian corridors preferred by fishers are generally found at low to mid-elevations, and these highly productive habitats often coincide with areas that receive above average levels of human use (Carroll *et al.* 2001, p. 962). Where development and roads coexist with these areas, habitat could be lost directly by replacement with infrastructure or removal of cover, and fishers could be impacted by increased susceptibility to direct mortality from vehicle collisions, and increased exposure to disease from pets and animals such as raccoons associated with human development (Ruediger 1994, p. 3; Carroll *et al.* 2001, p. 969; Brown *et al.* 2008, p. 23). We have no information that disease is a problem for fishers in the USNRMs, and reports of fisher mortality due to vehicle collision are few (Vinkey 2003, p. 32; Giddings 2010, pers. comm.) (see Factor C discussion below).

The secondary effects of human activity and infrastructure, and roads or road use, in causing fisher avoidance or inhibiting movement on the landscape are unclear. It is reported that fishers in California more often used areas with a greater than average density of low-use roads (Dark 1997, p. 50), and, in Maine, fishers seldom traveled in the vicinity of roads or powerline corridors (Coulter 1966, p. 61). Conversely, Arthur *et al.* (1989b, p. 687) found that fishers in Maine were fairly tolerant of human activity, including low-density housing, farms, roads, and gravel pits, if forest canopy cover was maintained in the vicinity. Roads in forested areas of the USNRMs are often constructed along riparian corridors or forested valley bottoms, which are habitats fishers prefer. Targeted surveys for fishers are often conducted near roads because of the ease of access and likelihood of detecting fisher in a preferred habitat. Fishers do not avoid areas adjacent to a minor State highway that traverses National Forest land in Idaho (Schwartz *et al.* 2007, p. 6), and other targeted survey efforts for fishers in northern Idaho have successfully detected fishers in the vicinity of roads (Schwartz *et al.* 2007, p. 6; Albrecht and Heusser 2009, p. 8). This would imply that fishers are not displaced from suitable habitat by the presence of roads or road use. Roads and landscape features such as rivers have been implicated in increasing mortality risk to dispersing fishers, but fishers have dispersed across, and did not appear to be affected by roads, lakes or rivers in other parts of the range (York 1996, p. 46; Fontana *et al.* 1999, pp. 17; Weir and Corbould 2008, p. 44).

Roads constructed on public lands to provide access for resource use and extraction have been implicated in increasing access for trappers that target fishers or that may accidentally trap them (Hodgman *et al.* 1994, p. 598). The closure of roads to provide grizzly bear (*Ursus arctos*) habitat security is a possible reason for the reduction in fishers harvested in Montana's Flathead and Swan Valley (Giddings 2010, pers. comm.). Recent changes in the USFS' travel management direction (70 FR 68264, November 9, 2005), require that national forest roads are managed in a manner compatible with wildlife resources. Accordingly, implementation of seasonal or permanent road closures to benefit the threatened grizzly bear has likely provided benefits to fishers in many parts of the USNRMs.

Rapid housing growth has occurred in close proximity to public lands in the Rocky Mountain region since the 1990s, with much of it situated in areas already considered wildland-urban interface and impacted by development (Alig *et al.* 2010, p. 9). Additional residential development adjacent to public lands is expected to increase by 10 to 42 percent in some areas of the USNRMs by 2030 (Stein *et al.* 2007, p. 8). The sale of private nonindustrial lands (*i.e.,* family-owned forests) currently managed for timber is a likely source for additional residential development (Alig *et al.* 2010, pp. 6–7), although it is uncertain if a significant quantity of these lands is mesic forest or dry forest type less suitable for fishers.

There is a trend of large, industrially managed or corporate forest properties being divested for real estate development across the United States that is expected to continue into the future. Although large areas of industrial forest are predicted to be lost nationwide through 2050, most of this loss is due to urbanization in the southern United States (Alig *et al.* 2010, pp. 14–15). We know that fishers utilize industrial forests in the USNRMs (IOSC 2010, p. 4). The availability of industrial forest lands for other uses will likely improve conditions for fishers in Montana, where over 1,253 km^2 (484 mi^2) of low-elevation commercial forest, originally intended to be sold for development purposes was instead purchased for conservation and sustainable forestry by State, Federal, and conservation organizations (MTFWP 2010, Appendix 13, entire; The Nature Conservancy 2010, entire).

Dwellings, roads, and other infrastructure have been on the landscape for decades, and areas currently developed will see an increase in the density of development over the next 20 years. It is unknown if fisher habitats that are currently or potentially suitable will be affected directly by future development. The proximity and availability of public lands may moderate a loss of habitat if it occurs, but the impact to fishers is uncertain because of a lack of understanding of how fishers use the lands at the interface of public and private ownerships. Increased road traffic and

human presence and recreational demands on public lands may increase the risk to fisher of vehicle collisions and displacement from suitable habitats near areas of high human use. Reports of fishers' responses to human activity and the presence of roads are mixed and, therefore, difficult to conclude with certainty. Habitat loss and increased direct mortality resulting from increasing human development are a concern but, based on the available information, do not rise to a level of threat to the USNRMs fisher now, or in the foreseeable future.

Climate Change

We know of no element of the fisher's ecology or physiology that would be directly affected by changes in climate. Predicted climate changes could impact forested environments upon which fishers depend; therefore, we address climate change under Factor A.

Climate is influenced primarily by long-term patterns in air temperature and precipitation. The Intergovernmental Panel on Climate Change (IPCC) concluded that climate warming is unequivocal, and evident from observed increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global mean sea level (IPCC 2007a, pp. 30–31). Continued greenhouse gas emissions at or above current rates are expected to cause further warming (IPCC 2007a, p. 30). Eleven of the 12 years from 1995 through 2006 rank among the 12 warmest years in the instrumental record of global average near-surface temperature since 1850 (Independent Scientific Advisory Board (ISAB) 2007, p. 7; IPCC 2007a, p. 30). During the last century, mean annual air temperature increased by approximately 0.6 °C (1.1 °F) (IPCC 2007a, p. 30). Warming appears to be accelerating in recent decades, as the linear warming trend over the 50 years from 1956 to 2005 (average 0.13 °C or 0.24 °F per decade) is nearly twice that for the 100 years from 1906 to 2005 (IPCC 2007a, p. 30). Climate change scenarios estimate that the mean air temperature could increase by over 3 °C (5.4 °F) by 2100 (IPCC 2007a, pp. 45–46). The IPCC also projects that there will likely be regional increases in the frequency of hot extremes, heat waves, and heavy precipitation, as well as greater warming in high northern latitudes (IPCC 2007a, p. 46). We recognize that there are scientific differences of opinion on many aspects of climate change, including the role of natural variability in climate. In our analysis, we rely primarily on synthesis documents that present the consensus of a large number of experts on climate change from around the world, as well as the scientific papers used in those reports, to represent the best available scientific information. Where possible, we used empirical data or projections specific to the western United States, which includes the Northern Rocky Mountain region, and have focused on observations or expected effects on forested ecosystems.

Specific regional projections for the Interior Columbia Basin and the USNRMs are warmer temperatures, with more precipitation falling as rain than snow, diminished snowpack and altered stream flow timing, increase in peak flow of rivers, and increasing water temperatures through the 21st century (to 2099) (Hansen *et al.* 2001, p. 769; ISAB 2007, pp. iii, 15–16). The consequences of these projections are unclear and could result in positive, negative, or neutral impacts to fisher habitat and populations. Fisher habitat could expand due to warming temperatures extending the growing season and increased atmospheric carbon dioxide escalating vegetation growth and extending forest area (Millar *et al.* 2006, pp. 48–49). It is hypothesized that climate change will produce greater tree species richness over much of the coterminous United States because of the current relatively greater species richness in warmer climates (Hansen *et al.* 2001, p. 774). The potential habitats of dominant rainforest conifers (*e.g.,* western hemlock and red cedar that fishers use in the USNRMs) are expected to decrease west of the Cascades but expand into mountain ranges of the interior West (ISAB 2007, p. 26). If the hypothesis that fishers are limited by deep winter snow is correct (Raine 1981, p. 74; Krohn *et al.* 1997, p. 226), decreased winter snowfall could increase the habitat available to fishers.

Changes in temperature and rainfall patterns are expected to shift the distribution of ecosystems northward (IPCC 2007b, p. 230) and up mountain slopes (McDonald and Brown 1992, pp. 411–412; IPCC 2007b, p. 232). Predicted climate shifts over the next century could result in the loss of alpine and subalpine spruce-fir forests, for example, forcing competition for prey between fishers and predators that are now occupying higher elevation niches (*e.g.,* lynx) (Koehler 1990, p. 848; Ruediger *et al.* 2000, p. 3), or novel predator-prey interactions could evolve (ISAB 2007, pp. 26, 28). Increasing temperatures without additional moisture could stress vegetation, alter riparian systems, increase fire risk, and increase the susceptibility of forest vegetation to disease (Westerling *et al.* 2006, p. 943; ISAB 2007, pp. 19, 25). Riparian areas are used extensively by fishers in the USNRMs (Jones 1991, pp. 90–93). Changing water regimes or decreased flow could decrease the productivity of riparian species and affect vegetation structure necessary for prey and security cover. The potential effects of climate change on the health of riparian systems could be exacerbated by the demands from increasing human population, development, and land use (Hansen *et al.* 2002, p. 159).

Projected changes of climate could result in a wide range of potential outcomes for fishers and their habitat. The effects to fishers in either the short or long term in a focused geographic area cannot be reasonably discerned without a specific aspect of the species' ecology or physiology linked to a confidently projected climate change variable (*e.g.,* water temperature tolerance of fish, or early snowmelt reducing wolverine denning). Increasing temperatures and drought could affect fire frequency and intensity and the susceptibility of forest vegetation to disease, but climate change itself does not represent a threat to fishers now or in the foreseeable future.

Fire and Disease

Fire disturbance was an integral force in shaping the Northern Rocky Mountains forest ecosystem well before European settlement of the region (Lesica 1996, p. 33). Lower, drier elevations were prone to frequent, low-intensity burns, while cool high-elevation forests were subject to intense stand-replacing events at intervals up to 300 years (reviewed by Hessburg and Agee 2003, p. 27). The grand fir/hemlock/cedar forests known to support fisher today in Idaho have a history of highly variable mixed-intensity fire regimes. Fire severity and return intervals varied widely ranging from low-intensity fires with 16-year return intervals, to high-severity fires with 500-year return intervals (reviewed by Hessburg and Agee 2003, p. 27). Pre-European settlement forests would likely have been in a shifting mosaic of different successional stages, with 4 to 46 percent of the landscape of trees older than 200 years old (reviewed by Lesica 1996, p. 37). A fire history from 1650 to 1900 reveals that local fires or no fires occurred in most years. Occurring less often were extensive regional fire events in warm, dry summers that were preceded by warm springs: Eleven of these events occurred in the 20th century (Morgan *et al.* 2008, p. 723). One of the largest regional fires

of the 20th century occurred in 1910, consuming over 11,675 km² (4507 mi²) in northern Idaho and scattered locations in northwest Montana (Morgan *et al.* 2008, p. 721). Regional fires in the early 1900s consumed more mesic forest than regional fires in later years (Morgan *et al.* 2008, p. 725). It has been suggested that the 1910 and 1934 fire events, in combination with overharvest by the fur industry, contributed to the fisher population decline (Jones 1991, p. 1).

Active fire suppression by humans in the mid-20th century has been implicated in the accumulation of forest vegetation believed to contribute to more fire-prone conditions today (Hessburg and Agee 2003, pp. 44, 46). However, a remarkable period between 1935 and 1987 was the longest period of low fire activity of the previous 250 years, and the lack of large fire activity was more a factor of cooler, wet climate conditions than fire suppression action (Morgan *et al.* 2008, p. 726). An abrupt change occurred in the 1980s from a fire regime of infrequent large fires of short duration, to more frequent longer burning fires (Westerling *et al.* 2006, p. 942). The shift was associated with unusually warm springs, longer summer dry seasons associated with reduced winter precipitation, and early spring snowmelt (Westerling *et al.* 2006, p. 943), a climate pattern seen with historical regional fire regimes.

Since the 1980s, the Northern Rocky Mountains have seen the largest absolute increase in large wildfire activity in the forest types least affected by previous fire exclusion: Mesic mid-elevation and high-elevation forest types (Westerling *et al.* 2006, p. 943). Climate model projections indicate decreased snowpack, earlier snowmelt, and increasing temperatures contributing to longer fire seasons (Westerling *et al.* 2006, p. 943). Moisture patterns are more difficult to predict than temperature (Global Climate Change Impacts 2009, p. 135; Dai 2011, p. 16). Because many climate models predict higher precipitation levels associated with climate warming, the interaction between precipitation and temperature increase can be quite complex. If temperatures increase without compensating moisture patterns or amounts, the predicted warmer springs and summers could produce conditions favorable to the occurrence of large fires in the future, regardless of past trends (Westerling *et al.* 2006, p. 943). If this occurs, increased fire frequency and intensity in forests could increase the likelihood of direct fisher mortality, diminish the capacity of the landscape to support fisher, and increase isolation of small fisher populations on the landscape.

Diseases that affect forest structure and composition could impact fisher habitats by reducing cover or altering prey availability. Bark beetle (Dendroctonus spp.) eruptions have been affecting forest structure for millennia, but recent drought and increased winter temperatures have contributed to unprecedented rates of beetle infestations in lodgepole and ponderosa pine in the western United States (Brunelle *et al.* 2008, pp. 836–837). Lodgepole forests in British Columbia are a significant habitat type for fishers in British Columbia, and these forests have experienced widespread mortality from beetle infestation (Weir and Corbould 2010, p. 409). Infestations are widespread in forested areas of Idaho and western Montana (MTDNRC 2009, entire; Idaho Department of Lands 2010, entire), but the affected forest types are a small component of fisher habitat in the USNRMs (Jones and Garton 1994, pp. 377–378). Mortality of the overstory occurs in affected stands, but fisher use may not be affected if sufficient secondary structure remains (Weir and Corbould 2010, p. 409). Over time, affected trees or stands could provide standing (vertical) rest and den sites as well as contributing to downed woody debris in the understory (Simard *et al.* in press, p. 2). Standing beetle-killed trees have been considered a significant fire hazard which could fuel larger, landscape fires (Bentz *et al.* 2010, p. 611). Recent studies indicate that this concern could be overstated as neither torching nor crowning would be expected to increase with dead standing trees with retained needles, and the likelihood of sustaining an active crown fire in dead stands significantly decreases with tree collapse (Simard *et al.* in press, pp. 2, 28).

Disease processes are natural forces in shaping forest environments and may be important in providing denning or resting structures for fishers. We have no information that the current bark beetle epidemic is negatively impacting fisher habitat or fishers in the USNRMs. An increase in incidence of forest diseases or novel diseases also could accompany a changing climate, but as with fire, the threat to fisher habitats is difficult to predict. Based on the available information, climate driven events such as regional fires or disease and insect infestations do not rise to the level of threat to the fisher now or in the foreseeable future.

Summary of Factor A

The fisher is a forest-dependent species that evolved in the USNRMs in a complex landscape mosaic shaped by fire, tree disease, and windthrow. In the USNRMs, younger forests provide foraging habitat, but abundant mature and old trees that provide extensive canopy cover for resting and possibly denning are also considered important elements to support fishers on the landscape. Fisher populations were greatly reduced to the point they were believed extirpated in the USNRMs in the early 20th century. Human occupation and commercial timber harvest occurred at low levels early in the century, and anthropogenic alteration of fisher habitat is an unlikely cause of the species' population collapse in this region. Over decades, fisher populations resurged, with the help of augmentations, concurrently with natural climate events such as drought and fire, and also the permanent or long-lasting effects of development and timber harvest that potentially alter the important mature forest structure.

Fourteen national forests comprise approximately 72 percent of the forest types known to be used by fishers in the USNRMs, State forestry lands 6 percent, and private lands including industrial timber lands comprise approximately 22 percent (USDA 2009, entire). Commercial timber harvest, management for timber production or fuels reduction (such as pre-commercial thinning), prescribed burning, recreation and road maintenance and use are ongoing in the region and we expect these activities to continue. Fishers have been observed to use roadless areas of forests, national forest lands managed for multiple purposes, and State forests and industrial forests managed primarily for commercial timber production. It is unclear how fishers are using these environments, or their relative importance to supporting individuals or fisher populations. However, habitats supporting fishers today reflect past and current forest management, silviculture, and natural processes, and we do not expect future changes in the management of forest conditions to significantly vary from current direction.

Based on the limited available survey information, the contemporary distribution of fishers is similar to the historically depicted distribution in Idaho and Montana, despite alterations that have occurred within its range. Current fisher population numbers or trends are unknown. The existing state of the USNRMs landscape is conducive

to supporting fisher, but it is not clear what the capacity of the system is to support, in the long-term, a self-sustaining population or a metapopulation dynamic of subpopulations. Interpreting the impact of past and present forest management, resource extraction, or development is complicated by an incomplete picture of how the animals are using an altered landscape. Given the available information, it does not appear that forest management and timber harvest are threats to the species currently or in the foreseeable future.

Dwellings, roads, and other infrastructure have been on the landscape for decades, and currently developed areas likely will see an increase in the density of development over the next 20 years. It is unknown if fisher habitats that are currently or potentially suitable will be affected directly by future development. The proximity and availability of public lands may moderate a loss of habitat, if it occurs, but more needs to be understood regarding how fishers are using the lands at the interface of public and private ownership. An increase in traffic on roads, and increased human presence and demands for recreation on public lands also, may increase the risk of vehicle collision and displacement from suitable habitats in proximity to areas receiving high levels of human use. Reports of fishers' responses to human activity and the presence of roads are mixed and, therefore, difficult to conclude with certainty. Habitat loss and increased direct mortality resulting from increasing human development are a concern, but, based on the available information, do not rise to a level of threat to the population.

The Northern Rocky Mountain region has a history of local and periodic regional fire and tree disease events. Fire and disease will continue to shape the forest landscape. While most climate predictions through the 21st century include increased temperature and earlier spring snowmelt conducive to longer fire seasons, the uncertainty of moisture patterns makes regional fire patterns difficult to predict. Forests in the USNRMs are vulnerable to an increasing frequency of large fires, which could lead to changes in forest composition and structure, cause direct fisher mortality, diminish the capacity of the landscape to support fisher, and isolate small populations in a matrix of unsuitable habitat. Although the potential for changing fire frequency and intensity exists, these events cannot be predicted with confidence. The current incidence of bark beetle infestation does not appear to represent a significant threat to fishers in the USNRMs. An increase in incidence of forest diseases or novel diseases also could accompany a changing climate, but as with fire, the threat to fisher habitats is difficult to predict. Based on the available information, climate-driven events such as regional fires that may result from projected increases in temperature, earlier spring snowmelt and drought, or the increased susceptibility of trees to disease or insects due to drought, do not rise to the level of a threat to the fisher in the foreseeable future.

We conclude that the best scientific and commercial information available indicates that the fisher in the USNRMs is not now, or in the foreseeable future, threatened by the present or threatened destruction, modification, or curtailment of its habitat or range to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Unregulated overharvest, and the use of strychnine as a trapping and general predator control agent, in addition to habitat loss, eliminated or greatly reduced fisher numbers across the range by the mid-1900s (Douglas and Strickland 1987, p. 512; Powell 1993, p. 77). The closure of trapping seasons in the 1920s and 1930s, reintroductions and augmentations, and land-use changes helped restore the fisher's presence in many parts of its range (Douglas and Strickland 1987, p. 512; Powell 1993, p. 80; Drew *et al.* 2003, 59; Vinkey 2003, p. 61). The role of land use changes with respect to the increase in fisher presence in the USNRMs is less clear (see Factor A section), but the regulation of trapping and end to indiscriminate predator control has likely had a positive influence. Trapping seasons were reopened in many northeastern and Midwestern States, including Montana, between 1949 and 1985, with accompanying regulations intended to prevent overtrapping and population decline (Powell 1993, p. 80).

Unregulated trapping was a significant cause of severe population declines, because fishers are easily trapped (Douglas and Strickland 1987, p. 523), and where trapping occurs, there is a potential for populations to be negatively affected (Powell and Zielinski 1994, p. 64). Fisher populations can also be sensitive to the effects of trapping because of a slow reproductive rate and the sensitivity of population numbers to prey fluctuations (Powell and Zielinski 1994, p. 45). The presence of fishers is closely associated with the availability of their prey. In general, fisher populations tend to be distributed in small or isolated populations where their habitat or prey distribution is fragmented naturally or by human actions. Fishers in the USNRMs have some of the largest home ranges recorded for the species (reviewed by Powell and Zielinski 1994, p. 58; IOSC 2010, p. 4; reviewed by Lofroth *et al.* 2010, p. 68), possibly indicating a fragmented, suboptimal landscape typical of peripheral populations, and consequently small populations. Small or isolated populations may be more intensely affected by the additional mortality from furbearer harvest than are more robust and widespread populations if harvest is not adequately regulated (Powell and Zielinski 1994, pp. 45, 66). There is also the potential for fisher populations to be seriously affected by unintended trapping or incidental trapping for other species, including other furbearers (Powell and Zielinski 1994, p. 45).

Fishers are classified as furbearers under State codes in both Idaho and Montana (IDFG 2010, p. 35; MTFWP 2010, Attachment 10, p. 2). The fisher also is considered a species of greatest conservation need in Idaho. Other furbearer species are legally trapped in the State, but trapping seasons for fishers have been closed for over 60 years in Idaho (IOSC 2010, p. 12). Fishers are legally trapped in Montana. The authority to regulate trapping procedures resides with the States' respective fish and wildlife or game commissions (Idaho Administrative Code 13.01.16; Montana Code Annotated 2009b), which review and revise furbearer trapping regulations every 2 years–most recently for the 2010 to 2012 seasons in Idaho (IDFG 2010, entire) and the 2010 and 2011 seasons in Montana (MTFWP 2010, Attachment 10, p. 2). The 2-year rules review period has been in effect since at least 1986 in Idaho and since 2006 in Montana (MTFWP 2007, p. 2; White 2011c, pers. comm.). Within this 2-year period, game commissions and State wildlife agencies have authority to close seasons, change season lengths, adjust or implement quotas, and apply other means to reduce impacts to intentionally or incidentally trapped populations, if it is considered necessary (White 2011b, pers. comm.; Idaho Administrative Code 2010, 13.01.16; MTFWP 2010, Attachment 10, p. 7). Based on the current trapping regulations, fisher will not be targeted, but legal trapping will occur for other species during the 2-year period in

Idaho, and legal trapping for fishers will be subject to the established regulations and authority in Montana (see Factor D section below).

Most of the population distribution information for Montana is based on specimens from the regulated furbearer trapping program started in 1979 (MTFWP 2010, p. 2, Attachment 4, entire; MTNHP 2010b, entire). There are 305 specimens, from legal harvest or mortality incidental to legal harvest for other species, recorded in MTFWP files since 1968 (Vinkey 2003, p. 51; MTFWP 2010, p. 2). Harvest over the past 27 years has been most productive in Trapping District 2, which includes the 200-km (125–mi) long Bitterroot Divide with Idaho (MTNHP 2010b, entire), and trapping in Montana over the past 8 years has been conducted in this area almost exclusively (MTFWP 2010, Attachment 3, entire). The Bitterroot Divide area in west-central Montana is a strong-hold for fishers of native lineage that form a population with fishers in Idaho (Schwartz 2007, p. 924). Trapping District 2 has a five fisher quota, which is filled most years (MTFWP 2010, Attachment 8, pp. 1, 4). Harvest or other factors may be impacting the fishers in Trapping District 1, including the Cabinet Mountains, in the northwest corner of the State. The trapping quota has been reduced from 10 to 2 between 1993 and 1996, and harvest is low and variable (MTFWP 2010, Attachment 8, p. 1). A low harvest level could reflect low trapper effort, difficult access, variability in prey availability, or a small or difficult to detect population. Six of the eight individuals captured between 2003 and 2008 were adult (MTFWP 2010, Attachment 3, entire), which suggests, but does not conclude, low recruitment. These low harvest numbers are consistent with the scarcity of fisher detections described in the evaluation of the Cabinet Mountain reintroduction effort (Vinkey 2003, p. 33), and possibly indicative of a population that is small or difficult to access.

There is disagreement among researchers as to whether trap mortality is additive (operates in addition to) or compensatory (compensates for) to natural mortality. Trapping is often the main mortality factor for fisher (Krohn *et al.* 1994, pp. 139–140). Harvest directed mainly at juveniles is most likely to be compensatory, as juveniles have higher natural mortality than adults (Krohn *et al.* 1994, p. 144). Numerous models are applied to managing harvest quotas to sustain populations based on demographic rates, estimated fecundity, population density, and spacing patterns (reviewed by Strickland 1994, pp. 153–158; Koen *et al.* 2006, p. 1489). For example, low ratios of juveniles to adult females in a harvest could be indicative of declining populations (Strickland and Douglas 1981 in Koen *et al.* 2006, p. 1484), which could be compensated for by altering harvest quotas in succeeding years. In a single season, harvests take several hundred to over a thousand individuals from many trapped populations across the North American range of the species (Association of Wildlife Agencies 2010, entire), and statistical models can be applied to determine population trends or changes in demographics. The small harvest in Montana (from two to five individuals, depending on the trapping unit) defies statistical analysis (Giddings 2010, pers. comm.), and the evaluation of trapping effects is based strongly on demographics. Juveniles are represented in the harvest over the past 10 years, and the predominant portion of the harvest consisting of younger-aged males is interpreted as an indication of light trapping pressure (MTFWP 2010, Attachment 8, p. 4), which is likely compensatory to natural mortality.

Fishers have been caught incidentally to trapping for other furbearers in Montana and Idaho. Montana records indicate 11 incidental mortalities between 1983 and 2009, in addition to legally harvested animals (MTFWP 2010, p. 4). Since 1970 in Idaho, 242 fishers were trapped incidentally, 37 of those were reported as dead in the trap, 107 were released alive, and there were 98 trapper reports of fishers captured but no indication of their condition (IOSC 2010, p. 12; White 2011b, pers. comm.). Incidental capture of fishers has progressively increased between 2006 and 2010 in Idaho due to unknown reasons, resulting in 22 of the 37 mortalities known to have occurred in the past 40 years (White 2011b, pers. comm.). In addition, in the past 5 years, 42 live releases from traps and 37 captures of unknown status also were reported (White 2011b, pers. comm.). The IDFG considers the ''unknown'' fishers to be live releases because it does not make sense to report a capture and not a mortality due to the following regulations: there is a legal requirement to report all fisher captures, there is no penalty for incidental capture, it is illegal to possess a killed fisher, and there is a small financial incentive to surrender mortalities (White 2011c, pers. comm.). A change in the number of ''unknowns'' reported between 2006 and 2008 to a similar number of live releases in 2009 and 2010 corresponds with the start of a highly publicized fisher habitat ecology project, and is indicative of fur trappers' interest in contributing information for the study (White 2011b, 2011c, pers. comm.).

Possible explanations of this recent rise in fisher captures include, but are not limited to, population expansion or better reporting and awareness, as stated above (IOSC 2010, pp. 12–13; White 2011b, pers. comm.). Over the past 40 years, Idaho incidental captures exhibit a cyclic pattern of distinct highs and lows every 4 to 5 years, which persist for 4 to 5 years. This pattern may reflect similar cyclic changes in fisher population numbers that are unrelated to trapping effects (White 2011b, pers. comm.). The level of incidental captures demonstrated between 2006 and 2010 is the highest during the 40-year reporting period. Combined with the increase in anecdotal sightings, the recent high number of captures may be indicative of an increasing and expanding population (White 2011b, 2011c, pers. comm.).

The number of trapping licenses sold doubled between 2001 and 2008 in Idaho (IDFG 2008, p. 8), which could mean additional trapping pressure and an increased risk of unintended captures. Fishers are most often caught incidentally to trapping for American marten (White 2011b, pers. comm.). Although hundreds of martens are harvested most seasons, the number of trappers targeting marten is comparatively low compared to those targeting other species (IDFG 2007, p. 11; IDFG 2008, pp. 9–11). Marten trapping efforts have remained steady in years with both low and high incidental fisher capture (IDFG 2008, p. 10); therefore, the total number of trapping licenses sold may not be a good indicator of increased trapping pressure on fishers.

Both Montana and Idaho have a mandatory reporting requirement for incidental mortality. Only Idaho requires reporting of animals trapped and released. The fate of released animals is uncertain. Lewis and Zielinski (1996, p. 295 and references therein) report that live fishers are difficult to remove from traps, and suffer broken bones, hemorrhage, self-mutilation, and predation as consequences of capture; estimated survivability after release for incidentally captured fishers is as low as 50 percent in some studies. There are no measures required to avoid or prevent accidental capture of fishers in either Montana or Idaho. Hence, additional mortality from incidental capture and release may not be fully considered in management evaluations.

The known incidental capture mortality is less than one fisher per year over the period of 1970 to 2005 in Idaho, and 1983 to 2009 in Montana (MTFWP 2010, p. 4; White 2011b, pers. comm.). Additional mortality from the trauma of capture and release and unreported captures is likely, but quantification would be speculative. The harvested population in west-central Montana is considered stable, with the existing trapping pressure, including the reported incidental mortality, based on consistent yearly harvest over time and the continual presence of a high proportion of juveniles in the harvest (MTFWP 2010, Appendix 8, p. 5). Relying on harvest statistics to assess the status of the fisher population in the Cabinet Mountain region of northwest Montana is not possible based on the lack of recent incidental mortalities and limited harvest in the area (MTFWP 2010, Appendix 8, p. 4; Appendix 11).

The impact of the reported level of unintentional mortality or capture in Idaho is difficult to conclude based on the available information. As stated above, the increase in captures in Idaho could reflect an increase of trapper effort for other furbearers. Alternatively, increasing captures may result from expanding or increasing fisher populations and density-dependent displacement of juveniles to less suitable habitats that increase their vulnerability to capture. In addition, the number of reported live-released captures could be misleading. Released fishers are not tagged or identified in any way. Because fishers are easily trapped, it is possible that the live-released data represent fewer individuals who are repetitively captured. Individuals previously released could be represented in the mortality data as well—a consequence of a later capture.

The recent increased mortality in Idaho may be compensatory to natural forces, and thus not affecting population persistence. However, without a history of demographic information (sex/age) of the affected individuals, it is difficult to assess additive or compensatory effects. Because demographic patterns are not available, we look to other areas of the range where fisher populations are persisting with sustainable, regulated harvest. Although factors affecting population dynamics differ between the eastern and western U.S. populations, fishers in peripheral populations and small geographic areas in the east persist with regulated harvest far exceeding the targeted and incidental harvest that occurs in both Montana and Idaho. For example: during the 2001–2008 period, 30 to 108 fishers were harvested annually in West Virginia, and the annual harvest in Rhode Island was as high as 97 individuals (Association of Fish and Wildlife Agencies 2010, entire). Fishers have been legally harvested in Montana since 1983, with the current Statewide quota in place since 1996, and are considered stable at levels above the past 5-year mortality occurrence in Idaho (MTFWP 2010, Attachment 8, p. 3). Mortality in Montana and Idaho may be cumulative in areas of shared population, such as the Bitterroot Mountains, but that impact cannot be concluded based on the available information.

Recent incremental increases in incidental capture could be a concern in Idaho if the trend continues and there is no evaluation or consideration of the potential impacts to local and regional populations. The available mortality and incidental capture data lack context and could be interpreted in ways that reach a conclusion of benign or detrimental effects. The IDFG is conducting a habitat ecology study to assist in adjusting management to benefit fishers, with results expected over the next 2 years (White 2011b, pers. comm.). By studying fishers' habitat use, geographic or timing restrictions can be crafted to limit their exposure to trapping for other species. We anticipate that the resulting data will also be helpful in elucidating the incidence and trends of fisher mortality in the USNRMs.

The role of overtrapping in reducing fisher populations is well known. Trapping regulation, in addition to habitat regeneration and population augmentations in some cases, have contributed to recovery and persistence of fishers across the species range. Fishers are legally trapped in Montana, but trapping seasons for fishers have been closed for over 60 years in Idaho. The Montana fisher trapping program began in 1983. After a period of adjustment, the current Statewide quotas have been in place since 1996. Combined with a low level of mortality incidental to trapping for other species, the Montana fisher population is considered stable with the existing trapping pressure. There is no trapping for fishers in Idaho, but a small number of fishers have been captured or killed incidentally to the trapping of other species—primarily the American marten—between 1970 and 2005. The reported incidental capture and mortality increased between 2006 and 2010 for unknown reasons; possible explanations include an increasing and expanding fisher population or greater exposure to trapping or both. These recent incidental captures could be a concern if the trend continues and there is no evaluation and consideration of the potential impacts; however, efforts are ongoing to elucidate the fisher's ecology and devise beneficial management strategies. The potential exists for targeted or incidental trapping to negatively impact fisher populations, but based on the available information, this potential does not rise to the level of threat at this time.

Summary of Factor B

Trapping is considered one of the most important factors influencing fisher populations, and unregulated overharvesting contributed to the fishers' severe population decline in the early 20th century. Targeted legal harvest occurs in Montana, and accidental capture and mortality occur in both Montana and Idaho. If not adequately regulated, low levels of harvest-related mortality, added to natural mortality, have the potential to negatively impact small, local populations. The Montana trapping season is monitored and regulated, and there is no information to conclude that the distribution or population numbers of fisher are being negatively impacted directly by the current trapping regimes. Incremental increases in incidental capture could be a concern in Idaho if the trend continues without some evaluation of the local and regional population impacts, and application of remedial actions, if necessary.

We conclude that the best scientific and commercial information available indicates that the fisher in the USNRMs is not now, or in the foreseeable future, threatened by overutilization for commercial, recreational, scientific, or educational purposes to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

Factor C. Disease or Predation

Mustelids are susceptible to viral-borne diseases, including rabies, canine and feline distemper, and plague contracted through contact with domesticated or wild animals (reviewed by Lofroth *et al.* 2010, pp. 65–66). Antibodies to a number of canine viruses have been isolated from fishers in northwest California (Brown *et al.* 2008, p. 2). Parasitism by intestinal invertebrates (*e.g.,* nematodes, trematodes) is common (reviewed by Powell 1993, p. 72), and evidence of other bacterial, protozoan, and arthropod disease agents also have been identified in fishers (Banci 1989, p. v; Brown *et al.* 2008, p. 21). Individuals weakened by parasitism or other

infectious disease processes may be more vulnerable to other sources of mortality such as predation. However, little is known about the impacts of disease in fishers, and there is no documentation of disease-causing widespread population decline (Powell 1993, p. 71; Brown *et al.* 2008, p. 5). There is no information on the incidence of disease specific to fishers in the USNRMs.

Fox, bear, mountain lion, great-horned owls, and bobcat prey on fishers, although there is little evidence to indicate that healthy adult fishers have many natural enemies except humans (Douglas and Strickland 1987, p. 516; Powell 1993, pp. 72–73). Forest fragmentation that forces fishers to travel long distances without suitable hiding cover may increase their vulnerability to predation by other carnivores (Heinemeyer 1993, p. 26; Powell and Zielinski 1994, p. 62). Predation of fishers newly translocated to Montana was reported (Roy 1991, pp. 29, 35; Heinemeyer 1993, p. 26), but this was attributed to the relocation techniques used and fitness of the individual animals (Powell and Zielinski 1994, p. 62; Vinkey 2003, p. 34). No information is available regarding predation of fisher from established populations in the USNRMs.

Summary of Factor C

There is little known about the impacts of disease in fishers, and there is no information on the incidence of disease specific to fishers in the USNRMs. There is no evidence that healthy adult fishers in suitable habitat are subject to excessive rates of predation or that fisher populations in the USNRMs are impacted by predation. We conclude that the best scientific and commercial information available indicates that the fisher in the USNRMs is not now, or in the foreseeable future, threatened by disease or predation to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

To the extent that we identify possibly significant threats in the other factors, we consider under this factor whether those threats are adequately addressed by existing regulatory mechanisms. If a threat is minor or the effects uncertain, listing may not be warranted even if existing regulatory mechanisms provide little or no protection to counter the threat. Numerous mechanisms affect land and species management in the USNRMs. These mechanisms could include: (1) Local land use laws, processes, and ordinances; (2) State laws and regulations; and (3) Federal laws and regulations. Regulatory mechanisms, if they exist, may preclude listing if such mechanisms are judged to adequately address the threat to the species such that listing is not warranted.

Seventy-two percent of the land area with forests typical of fisher habitat types (fir, spruce, hemlock, Douglas fir (Jones and Garton 1994, p. 377–378)) in the USNRMs is managed by Federal entities within national forest or park boundaries (USDA 2009, entire). Approximately 15,969 km^2 (6,165 mi^2) of wilderness areas are incorporated within national forest boundaries. Private lands, including tribal and commercial timber lands, comprise approximately 22 percent of fisher forest types, and the remaining 6 percent is State or local government forest (USDA 2009, entire). Fourteen national forests form large areas of contiguous forested land area, often sharing boundaries with State forest lands occupying lower elevations of intermountain valleys or transition areas with woodlands or nonforested areas.

Federal Regulatory Mechanisms

National Forest Management Act

Federal activities on national forest lands are subject to the National Forest Management Act of 1976 (NFMA) (16 U.S.C 1601–1614). The NFMA requires the development and implementation of resource management plans for each unit of the National Forest System. Implementation rules for resource planning have undergone numerous revisions and legal challenges. Planning rules amended in 2008 are being reevaluated, and an amended 2000 planning rule is currently in place (74 FR 67059, December 18, 2009). The 2000 planning rule emphasizes maintaining ecological conditions that provide a high likelihood of supporting the viability of native and desired nonnative species well distributed throughout their ranges within a plan area. Ecological conditions need to be maintained to support the natural distribution and abundance of a species and not contribute to its extirpation.

Individual national forests may identify species of concern that are significant to each forest's biodiversity. The fisher is considered a sensitive species in the USFS Region 1 (western Montana and northern Idaho) and Region 4 (central to southern Idaho) (USFS 2005, p. 4; USFS 2008, p. 6). A sensitive species is a species identified by a regional forester for which viability is a concern (USFS Manual (2670.5). The USFS' Sensitive Species Policy (USFS Manual (2670.32)) calls upon national forests to assist and coordinate with States and other Federal agencies in conserving species with viability concerns. Special management emphasis is placed on Sensitive Species to ensure their viability. The USFS is directed to develop and implement management practices to ensure these species do not become endangered or threatened. Management is in place at the individual forest plan level or through regional direction that addresses habitat needs of fishers. The habitat ecology of fishers in the region is not well studied, but current management direction addresses forest characteristics known to be important to fishers such as the protection of riparian areas, retention of elements such as snags and downed woody material, size of forest openings, and the retention of canopy cover (Samson 2006, pp. 15–16; Bush and Lundberg 2008, p. 16).

National Forests have been managing for old-growth forest since the 1990s, guided by regional standardized definitions and descriptors (Green *et al.* 1992 Errata 2008, entire). The USFS planning regulations require that forest plans identify certain species as Management Indicator Species in order to estimate effects of management alternatives on fish and wildlife populations (36 CFR 219.20). In addition to Sensitive Species status, the fisher is considered a Management Indicator Species by the Nez Perce and Flathead National Forests to guide vegetation management of old-growth forest (USFS 1999, p. 11; USFS 2006, p. 14). Vegetation objectives include maintaining or actively restoring landscape composition, structure, and patterns to a condition similar to that expected under natural disturbance and succession regimes, and managing landscapes to develop larger old-growth patch sizes, healthy riparian areas with mosaics of tree age and size classes, and retention of structural elements such as snags and down logs (USFS 1999, Appendix A; USFS 2006, pp. 41–42).

The habitat ecology of fishers in the region is not well studied, but current management direction addresses forest characteristics known to be important to fishers (USFS 1999, p. 24 and Appendix A; USFS 2003a, p. III–7; USFS 2003b, Appendix A; USFS 2006, pp. 41–42; Samson 2006, entire; Bush and Lundberg 2008, entire). Within the NFMA regulatory framework, management direction and requisite monitoring, forest management should be consistent with supporting fisher habitat where natural ecological conditions allow. If each plan area

(national forest) supports a natural distribution and abundance, then the large contiguous area of national forest lands comprising the USNRMs would have the potential to support a regional population.

National Environmental Policy Act

As a sensitive species, the USFS is required to consider effects in documentation completed under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). The NEPA requires Federal agencies to consider the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, Federal agencies conduct environmental reviews, including Environmental Impact Statements and Environmental Assessments. The NEPA does not itself regulate activities that might affect fishers, but it does require full evaluation and disclosure of information regarding the effects of contemplated Federal actions on sensitive species and their habitats.

Healthy Forest Restoration Act

The Healthy Forest Restoration Act of 2003 (Pub. L. 108–148) (HFRA) improves the capacity to conduct hazardous fuels reduction projects on national forest lands to protect communities within or adjacent to USFS boundaries (wildland-urban interface); municipal watersheds at risk from fire; areas where windthrow or the existence or imminent risk of an insect or disease epidemic significantly threatens ecosystem components or resource values; and areas where wildland fire poses a threat to threatened and endangered species or their habitat, or where the natural fire regimes are important for their habitat.

Provisions of the HFRA can be used to expedite vegetation treatment, such as mechanical thinning or prescribed fire, which could be beneficial or detrimental to fishers on national forest lands. The USFS and Department of the Interior revised their internal implementing procedures describing categorical exclusions exempt from NEPA review to expedite hazardous-fuels reduction and vegetation restoration projects meeting certain criteria (68 FR 33813, June 5, 2003; 68 FR 44597, July 29, 2003).

The HFRA requires authorized projects, including categorical exclusions under NEPA, to be planned and conducted consistent with resource management plans and other relevant administrative policies, such as the USFS' Sensitive Species Policy, and prohibits authorized projects in wilderness areas, formal wilderness study areas, and other restricted Federal lands (Section 102(d)). Projects conducted to reduce fuels could provide a benefit to fishers by creating foraging habitat if needed, promoting the growth of larger trees by decreasing competition, and reducing catastrophic fire risk. While the reverse may be true, the application of the Sensitive Species Policy should direct HFRA projects to improve or maintain suitability of habitats for fishers.

The Wilderness Act

The USFS manages lands designated as wilderness areas under the Wilderness Act of 1964 (16 U.S.C. 1131–1136). Within these areas, the Wilderness Act states the following: (1) New or temporary roads cannot be built; (2) there can be no use of motor vehicles, motorized equipment, or motorboats; (3) there can be no landing of aircraft; (4) there can be no other form of mechanical transport; and (5) no structure or installation may be built. Lower-elevation forest in wilderness areas may be important refuges for fishers because of limited human access and less fragmentation than managed forests (Hessburg *et al.* 2000, p. 78). For example: The Selway-Bitterroot Wilderness in Idaho may have functioned as a refugium for native fishers that enabled their survival through the severe population decline in the past, and the area appears to be a stronghold for native fishers today (Vinkey 2003, pp. 90–91).

National Park Service Organic Act

The National Park Service Organic Act of 1916 (16 U.S.C. 1 *et seq.*), as amended, states that the NPS ''shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations to conserve the scenery and the national and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' Fishers or sign of fishers have been reported in Glacier National Park in northern Montana, but recent verified information is lacking. The Park's west side is a mix of conifer forests, with maritime-influenced western hemlock and western red cedar existing in ''ancient stands in places'' (NPS 2010, entire), and likely capable of supporting fishers. The NPS does not manage habitats specifically for fishers, but where fishers occur in Glacier National Park, they and their habitats are protected from large-scale loss or degradation due to the NPS' mandate to ''conserve scenery * * * and wildlife [by leaving] them unimpaired.'' Due to the limited access to exploitive activities such as timber or furbearer harvest, National Parks, as with wilderness areas, may provide refuges for fisher populations that are a source of individuals dispersing to peripheral areas.

State Management

Montana

Regulatory mechanisms related to fisher conservation in Montana apply to State forest and furbearer harvest management. Montana State forests with fisher habitat types are situated in the northwest and north-central part of the State, often sharing boundaries or interspersed with national forest lands in lower elevations of intermountain valleys. Timber harvest for revenue generation is conducted on an annual basis and includes forest types preferred by fishers; forests also are managed to promote a diversity of habitat conditions beneficial to wildlife (MTDNRC 2010, p. 1). Fishers are managed as a sensitive species ''primarily through managing for the range of historically occurring conditions appropriate to the site'' (Administrative Rules of Montana (ARM) 2003, 36.11.436). In 2003, MTDNRC formally codified mitigation measures specific to forest types preferred by fisher for State forest management including: Timber and salvage harvest, thinning, prescribed burning, road maintenance, and other activities (ARM 2003, entire). Project-level evaluation emphasizes large snag and coarse woody debris retention and emulation of natural forest patch size and shape to maintain or contribute to connectivity with crown canopy closure of greater than 39 percent and patch greater than 91 m (300 ft) wide (ARM 2003, 36.11.403). Riparian areas, within 100 ft of class-I (fish bearing) streams and 50 ft of class-II (non-fish bearing) streams, maintain or are allowed to progress to at least 40-percent canopy cover (ARM 2003, 36.11.440). There is no specific direction to retain mature or larger trees for fisher independent of snag retention, but it is stated that the importance of late-successional riparian and upland forest shall be considered in meeting the requirements for fishers (ARM 2003, 36.11.440).

The fisher is classified as a regulated furbearer in Montana (MTFWP 2010, Attachment 10, p. 2). Montana is the only State in the western United States where fisher trapping is still legal. Trapping season is open December 1 to February 15, or within 48 hours of a

quota being reached (MTFWP 2010, Attachment 10, p. 7). There is authorization to close the season if conditions or circumstances indicate a quota will be reached within 48 hours (MTFWP 2010, Attachment 10, p. 7). Two districts are open for trapping—District 1 in the northwest has a quota of two, including the Cabinet Mountains, and District 2 in west-central Montana, including the Bitterroot Mountains, has a quota of five; there is a Statewide sub-quota of two females (MTFWP 2010, Attachment 10, p. 7). Only one fisher may be taken per person per season, and take must be reported within 24 hours to the MTFWP (MTFWP 2010, Attachment 10, p. 7). Reporting and surrender of an accidental mortality (unintended capture or outside legal season) must be done within 24 hours of capture, and only uninjured animals can be released from traps (MTFWP 2010, Attachment 10, p. 7). There are no penalties for surrendering an accidentally killed fisher, but there are penalties and fines for being in possession of an incidentally taken fisher (MTFWP 2010, p. 4). There is no regulatory mechanism or requirement in place to minimize incidental take of fisher.

Harvest quotas and seasons are evaluated and set by the MTFWP Commission every year, with the general regulations established for 2-year periods (Montana Code Annotated 2009b; MTFWP 2010, Attachment 10, p. 2). Trends in harvest success, demographics (age class/sex), and snow track surveys are used to determine the effectiveness of the quota system and assist in the State's objective of maintaining current fisher population size and distribution (MTFWP 2010, Attachment 8, pp. 1–3). A consistent harvest and the presence of juveniles are considered an indication of a stable population (MTFWP 2010, pp. 1–2). Snow track surveys are conducted along fixed routes in some areas of the State that do not receive targeted fisher harvest (MTFWP 2010, Attachment 8, p. 3); however, track surveys are conducted sporadically and are very dependent on snow conditions for usefulness (Giddings 2010, pers. comm.). Quotas have been adjusted downward several times since the establishment of the regulated trapping program in1983 in response to harvest success, demographics of harvested animals, and track survey data. Quotas and harvest have been relatively consistent since 1996 (MTFWP 2010, Attachment 8, pp. 1, 3). We are not aware of any established objectives or direction that indicates action thresholds for adjusting quotas or practices.

Idaho

The fisher is identified as a species of greatest conservation need in the Idaho Comprehensive Wildlife Conservation Strategy, which recommends actions to determine fisher population trends, landscape and regional scale response to habitat disturbance, genetic composition of populations, and the relationship between habitat fragmentation and movement patterns (IDFG 2005, p. 365, Appendix B, p. 8). Species of greatest conservation need are those considered at high risk due to low number, declining numbers, or other factors that make them vulnerable to extirpation (IDFG 2005, Appendix B, pp. 1, 8). There are no identified regulatory mechanisms that apply to habitat management for fisher in the State.

Implementing rules that protect riparian areas from timber harvest actions for the Idaho Forest Practices Act apply to operations on lands under all management types. Management goals for class I streams include the retention of standing conifers, hardwoods and snags within 15 m (50 ft) on each side, leaving 75 percent of existing shade, and within 9 m (30 ft) on each side of class II streams (Idaho Administrative Code 2000, 20.02.01).

The fisher is legally classified as a furbearer in Idaho, but no legal season has been open for over 60 years (Idaho Administrative Code 2010, 13.01.16; IOSC 2010, p. 11). Capture of fishers has occurred, primarily incidentally to legally trapped marten during the open season from November 1 through January 31 (White 2011a, pers. comm.). There are no legislated regulatory mechanisms in place to minimize incidental take of fisher, but voluntary trapper education is provided to help direct trapping towards the intended species (White 2011a, pers. comm.). Marten and other furbearer trapping is conducted under Statewide licensure but management occurs at smaller, regional levels. There is no limit to the number of Statewide licenses sold, and no seasonal quotas for marten are in place (White 2011b, pers. comm.). The IDFG Commission has the authority to set bag or possession limits and seasons (Idaho Administrative Code 2010, 13.01.16). A mandatory furtaker harvest report is required to be submitted to the IDFG by July 31 to assist with setting season limits (IDFG 2010, p. 38). An incidental capture of a fisher that results in mortality requires reporting and surrender of the carcass to IDFG within 72 hours; live animals require immediate release if they appear unharmed or, if animals appear injured, the IDFG is contacted for assistance (IDFG 2010, p. 36). Trappers are reimbursed $10 for the surrendered carcass and are required to report the capture, dead or released alive, on the harvest report. We are not aware of a mechanism in place to adjust a trapping season while in session, such as closing a unit or area early, to accommodate an incidental take of a fisher or fishers. We have no knowledge of how the reports of incidental take of a fisher or fishers are used to adjust subsequent marten seasons or quotas, or those of other target species that fisher could be caught incidentally to, in order to avoid additional mortality.

Management on National Forests and State Forests for Other Species Benefitting Fisher

All national forests in the USNRMs have amended their forest plans with the Northern Rockies Lynx Management Direction to provide protections and conservation for the Canada lynx (USDA 2007, entire). Lynx utilize mesic coniferous forests although their range extends to higher elevation zones than fishers (reviewed by Ruediger *et al.* 2000, p. 1–3). Lynx similarly prefer to move through continuous forest cover, frequently use riparian zones, and target snowshoe hare as a principle prey species (reviewed by Ruediger *et al.* 2000, pp. 1–4, 1–7). Large woody debris within mature or older conifer or mixed-conifer sites are selected by female lynx for denning, and these elements are known to be used by fishers (Jones and Garton 1994, p. 380; reviewed by Ruediger *et al.* 2000, p. 1–4; reviewed by Lofroth *et al.* 2010, p. 106). Direction is in place for national forest lands to provide connectivity for lynx travel throughout the USNRMs (USDA 2007, p. 27). Standards and guidelines for specific habitat protections are applied in the north half of the USNRMs, where habitats are known to be occupied by lynx (USDA 2007, p. 29). Specific measures are applied at the scale of a female lynx's home range, which is similar to home range sizes reported for fisher in the USNRMs and British Columbia (reviewed by Ruediger *et al.* 2000, p. 6–2; reviewed by Lofroth *et al.* 2010, p. 68). These measures include limiting disturbance by timber harvest and other activities, maintaining patches conducive to denning and retention of coarse woody debris, protecting regenerating areas that provide snowshoe hare habitat, and retaining wooded areas (USDA 2007, pp. 8–28).

In 1998, the Service issued a biological opinion on the

implementation of USFS Land and Resource Management Plans as amended by the Interim Strategy for Managing Fish-Producing Watersheds in Eastern Oregon and Washington, Idaho, Western Montana, and Portions of Nevada (INFISH) (Service 1998, entire). The guidelines, developed to protect bull trout and other fish habitat, also may provide benefits to fisher by protecting riparian corridors, establishing large woody debris requirements, and delineating Riparian Habitat Conservation Areas which would prohibit timber harvest in most situations. Conservation Areas would be established within 91 m (300 ft) slope distance of either side of class I streams, to 46 m (150 ft) on both sides of perennial class II streams, and within 15 to 30 m (50 to 100 ft) of seasonal or intermittent streams and small wetlands (Service 1998, p. 9).

The USNRMs covers an area that includes all or part of the Northern Continental Divide, Selway-Bitterroot, Selkirks, and Cabinet-Yaak Grizzly Bear Recovery Zones. Fishers may benefit from the reduction of road densities or reduced motorized use of roads on national forest lands or the large areas of core habitat within 3rd and 4th order watersheds with no motorized travel routes or high use trails within the recovery zones (Interagency Grizzly Bear Committee 1998, entire).

Management direction intended to protect other species listed under the Endangered Species Act could provide benefit to fishers on Montana State forests. Montana State forests located in the Cabinet-Yaak and Northern Continental Divide Recovery Zones for the threatened grizzly bear are managed to limit road density and maintain hiding cover near roads and adjacent to riparian areas (ARM 2003, 36.11.432–433). Retention of coarse woody debris, vegetative cover for landscape connectivity, and habitat for a common prey species—snowshoe hare—are intended to contribute to Canada lynx (Lynx Canadensis) habitat requirements (ARM 2003, 36.11.435). The retention of vegetation and minimization of disturbance in riparian areas to protect bull trout habitat also could benefit fisher on State forest land.

Summary of Factor D

In our review of the factors affecting fishers in the USNRMs, we found no single factor or accumulated effects of factors that, when considered within the foreseeable future, rose to a level significant enough to warrant the protections of the Act. There is a concern regarding the adequate control of mortality due to capture incidental to the trapping of other furbearing animals. The authority exists under States' laws to manage trapping programs, specifically for fisher, as well as other species. However, we are unaware of any policy or management direction that would invoke that authority and apply adaptive management or minimization measures to reduce additional mortality from unintended harvest. Since we did not consider that the threat of incidental mortality, based on the limited information available to us, rose to the level of a threat to the species in the foreseeable future, it is not necessary to consider the effectiveness of the relative regulatory mechanism.

We conclude that the best scientific and commercial information available indicates that the fisher in the USNRMs is not now, or in the foreseeable future, threatened by the inadequacy of existing regulatory mechanisms to the extent that listing under the Act as an endangered or threatened species is warranted at this time. It is unclear that regulatory mechanisms in addition to those described are needed for the species based on the current understanding of threats.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Population Size and Isolation

A principle of conservation biology is that small, isolated populations are subject to an increased risk of extinction from stochastic (random) environmental, genetic, or demographic events (Brewer 1994, p. 616). Environmental changes such as drought, fire or storms have severe consequences if affected populations are small and clumped together (Brewer 1994, p. 616). Loss of genetic diversity can lead to inbreeding depression and an increased risk of extinction (Allendorf and Luikart 2007, pp. 338–343). Demographic changes can reduce the effective population size (number of breeding individuals). Populations with small effective size show reductions in population growth rates, loss of genetic variability, and increases in extinction probabilities (Leberg 1990, p. 194; Jimenez *et al.* 1994, p. 272; Allendorf and Luikart 2007, pp. 338–339).

There is little information to indicate fisher population numbers or population dynamics in the USNRMs. Fishers are vulnerable to the effects of small populations and isolation based on characteristics of their life history. Fishers are known to be solitary and territorial, and require large home ranges where landscapes are less than optimal (Weir and Corbould 2010, p. 405). This results in low population densities, as the population requires a large amount of quality habitat for survival and proliferation. Fishers also are long-lived, have low reproduction rates, and, though capable of long-distance movements, generally have small dispersal distances. Small dispersal distances may be a factor of fishers' reluctance to move through areas with no cover (Buskirk and Powell 1994, p. 286). Thus, where habitat is fragmented it is more difficult to locate and occupy distant yet suitable habitat, and fishers may be aggregated into smaller interrelated groups on the landscape (Carroll *et al.* 2001, p. 974).

Territoriality and habitat specificity compounded by habitat fragmentation may contribute to the strong genetic structuring over intermediate geographic distances seen in fisher populations in other parts of the species' range (Kyle *et al.* 2001, p. 2345; Wisely *et al.* 2004, pp. 644, 646). Higher levels of genetic structuring describe populations that are more genetically distinct and have less intrapopulation variation, a condition occurring in peripheral or more disturbed habitats of a species' range with low effective population sizes and limited genetic exchange (Kyle and Strobeck 2001, p. 343). Where these conditions exist, species face an increased vulnerability to extinction (Wisely *et al.* 2004, p. 646).

Small, isolated populations can be at risk from stochastic factors. Demographic stochasticity (the chance events associated with annual survival and reproduction) and environmental stochasticity (temporal fluctuations in environment conditions) tend to reduce population persistence (Shaffer 1981, p. 131). Combinations of factors can interact to increase the risk of extinction. Trapping pressure, for example, if additive to natural mortality, could act by itself or in combination with environmental conditions to have significant impact on annual survival. Regional fires that have occurred historically in the USNRMs could reduce the suitability of large forest tracts for decades, reducing habitat and further isolating small populations.

As stated above, we have little information to indicate the number of individuals, population dynamics, or evidence of genetic structuring and inbreeding for fishers in the USNRMs. Although we have no information on fisher abundance, their home range sizes are large—an indication that the availability of resources may be limiting population size. Their restricted geographic range, based on isolation from larger populations in Canada or the United States, frequently correlates with

small population size (Purvis *et al.* 2000, p. 1947). Given the restricted distribution, the presumably small population size, and propensity to aggregate on the landscape, fishers in the USNRMs are vulnerable to demographic, environmental, and genetic stochasticity, which could impact long-term persistence. The USNRMs fisher population resurged from near extirpation in the 1920s with possible assistance from augmentations. It is likely that the historical populations were never large. Fishers' response to the impacts of a changing landscape from human development and timber harvest are uncertain. The species appears to have several characteristics related to small population size that increase the species' vulnerability to extinction from stochastic events and other threats on the landscape. Currently, we do not have sufficient information on these environmental or anthropogenic threats to know whether they affect small populations to an extent that threatens the fisher in the USNRMs. We are unable to quantify a foreseeable future for stochastic events that may have disproportionate negative effects on small population sizes. We do not anticipate the effects of these events on small population size to change, but our understanding of these effects may improve over time.

Summary of Factor E

Based on the best available information, we have no indication that other natural or anthropogenic factors are likely to significantly threaten the existence of the fisher in the USNRMs. We recognize the inherent vulnerabilities of small populations and restricted geographic range. The impacts of various potential threats can be more pronounced on small or isolated populations, and we have identified numerous potential threats occurring on the landscape within the range of the fisher in the USNRMs (see Factor A and B section). However, at this time we do not have information to indicate that these activities pose a threat to the fisher. Additionally, we do not consider a small population alone to be a threat to species; rather, it can be a vulnerability that can make it more susceptible to threat factors, if they are present.

We conclude that the best scientific and commercial information available indicates that the fisher in the USNRMs is not now, or in the foreseeable future, threatened by other natural or anthropogenic factors affecting its continued existence, or that these factors act cumulatively with other potential threats, to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

Finding—Determination of Status of Distinct Population Segment

As required by the Act, we considered the five factors in assessing whether the fisher in the USNRMs is endangered or threatened throughout all or a significant portion of its range. We have carefully examined the best scientific and commercial information available regarding the status and the past, present, and future threats faced by the fisher in the USNRMs. We reviewed the petition, information available in our files, and other published and unpublished information submitted to us by the public following our 90-day petition finding. We also consulted with fisher experts and other Federal and State resource agencies. We were able to qualitatively describe a foreseeable future for forest management, development, and climate change and discussed how we anticipate each factor to change over time. We were unable to project specific changes to the species from these foreseeable actions into the future because we do not have sufficient data to know how the analyzed factors will affect the species.

The fisher is a forest-dependent species that evolved in the USNRMs in a complex landscape mosaic shaped by climate driven events such as fire, drought, and forest diseases. Fisher populations were greatly reduced to the point they were believed extirpated in the USNRMs in the early 20th century due to unregulated overharvest and indiscriminate predator control. Although current comprehensive fisher population numbers and trends are not known, fisher populations have resurged from previous lows concurrently with the effects of human development and timber harvest and the regulation of harvest. The USNRMs landscape supports fisher, but it is unknown if the system has the capacity to support a population long term. Interpreting or projecting the impacts of forest management, development, and resource extraction is complicated by a lack of knowledge of fisher habitat ecology in the region, and mixed reports of how fishers respond to human disturbance. Fisher habitats could be vulnerable to the climate change effects of increased temperature and earlier spring snowmelt predicted to produce longer fire seasons. An increase in incidence of forest diseases or novel diseases also could accompany a changing climate. Although the potential for changing fire and disease regimes exists, these events are dependent on complex patterns of moisture availability and cannot be predicted with confidence.

Targeted legal harvest of fishers occurs in Montana and accidental capture and mortality occurs in both Montana and Idaho. Low levels of additional mortality from harvest to natural mortality have the potential to negatively impact small, local populations if not adequately regulated. There is no indication that the distribution or population numbers of fisher are being negatively impacted directly by the current trapping regimes in Montana. Recent increases in incidental capture and associated mortality could be a concern in Idaho if the trend continues without some evaluation of the local and regional population impacts and remedial actions applied, if necessary.

A restricted geographic range like the fisher's in the USNRMs frequently correlates with small population size, and it is likely that the historical populations were never large. Given the restricted distribution, the presumably small population size, and propensity to aggregate on the landscape, fishers in the USNRMs are vulnerable to extinction from stochastic events and other threats on the landscape which could impact long-term persistence. Fishers' response to the impacts of a changing landscape from human development, timber harvest and climate change are uncertain. As stated above, trapping pressure, if additive to natural mortality, could act by itself or in combination with environmental conditions to have significant impact on annual survival. Currently, we do not have information on these threats to an extent that allows us to know whether small population size allows for other environmental or anthropogenic factors to create a threat to the fisher in the USNRMs.

Our review of the best available scientific and commercial information pertaining to the five factors does not support the assertion that there are threats of sufficient imminence, intensity, or magnitude to indicate that the fisher in the USNRMs is in danger of extinction (endangered) within the foreseeable future (threatened), throughout all or significant portion of its range. Therefore, we find that listing the fisher in USNRMs throughout its range as an endangered or threatened species is not warranted at this time.

In making this finding, we recognize that the fisher in the USNRMs, despite not being warranted for listing as endangered or threatened, may benefit from increased management emphasis

due to its need for forest cover and susceptibility to capture and mortality from furbearer harvest. We recommend precautionary measures to protect the species be continued where they are in place and expanded where they are not. We recommend and encourage additional research to improve the understanding of the species, so that our responses to future potential threats can be better understood.

Significant Portion of the Range

Having determined that the fisher in the USNRMs is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range, we must next consider whether there are any significant portions of the range where the fisher in the USNRMs is in danger of extinction or is likely to become endangered in the foreseeable future.

The Act defines an endangered species as one ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as one ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''significant portion of its range'' is not defined by the statute. For the purposes of this finding, a portion of a species' range (fisher in the USNRMs) is ''significant'' if it is part of the current range of the species, and it provides a crucial contribution to the representation, resiliency, or redundancy of the species. For the contribution to be crucial it must be at a level such that, without that portion, the species would be in danger of extinction.

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that clearly would not meet the biologically based definition of ''significant'' (*i.e.,* the loss of that portion clearly would not reasonably be expected to increase the vulnerability to extinction of the entire species to the point that the species would then be in danger of extinction), such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine their status (*i.e.,* whether in fact the species is endangered or threatened in a significant portion of its range). Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address either the ''significant'' question first, or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.''

Applying the process described above for determining whether a species is threatened in a significant portion of its range, we considered status first to determine if any threats or potential threats acting individually or collectively threaten or endanger the species in a portion of its range. We have analyzed the threats to the degree possible, and determined they are essentially uniform throughout the species' range. The limited information available for the fisher, such as the lack of population numbers and dynamics, and an incomplete knowledge of tolerances to disturbance and habitat needs, does not allow us to determine what portion of the range if any, would be impacted to a significant degree more than any other.

Conclusion of 12-Month Finding

We do not find that the fisher in the USNRMs is in danger of extinction now, nor is it likely to become endangered within the foreseeable future, throughout all or a significant portion of its range. Therefore, listing the species as endangered or threatened under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the fisher in the USNRMs to our Montana Ecological Services Field Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor this species and encourage its conservation. If an emergency situation develops for the fisher in the USNRMs or any other species, we will act to provide immediate protection.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Montana Ecological Services Field Office (see **ADDRESSES** section above).

Author

The primary author of this document is staff of the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

June 14, 2011.

Gabriela Chavarria,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–16349 Filed 6–29–11; 8:45 am]

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Part IV

Department of the Treasury

Office of Foreign Assets Control

31 CFR Chapter V

Alphabetical Listings: Specially Designated Nationals and Blocked Persons; Blocked Vessels; Persons Determined To Be the Government of Iran; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Alphabetical Listings: Specially Designated Nationals and Blocked Persons; Blocked Vessels; Persons Determined To Be the Government of Iran

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is amending 31 CFR chapter V to replace the list of persons (which includes individuals and entities) with whom transactions and dealings are prohibited by the various economic sanctions programs administered by OFAC that appears at Appendix A to 31 CFR chapter V with information on how to obtain up-to-date lists of such persons on OFAC's Web site or by other means. OFAC also is removing Appendix B to 31 CFR chapter V, which includes the names of certain blocked vessels. In addition, OFAC is amending its regulations for a number of the sanctions programs it administers to revise references to Appendix A and to remove references to Appendix B. Finally, OFAC is amending the Iranian Transactions Regulations, by republishing in alphabetical order the entire list of persons identified in Appendix A to 31 CFR Part 560, to reflect changes to the list since that appendix was last published.

DATES: *Effective Date:* June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Office of Foreign Assets Control, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') maintains a list of blocked persons, blocked vessels, specially designated nationals, specially designated terrorists, specially designated global terrorists, foreign terrorist organizations, and specially designated narcotics traffickers whose property and interests in property are blocked pursuant to the various economic sanctions programs administered by OFAC. OFAC previously has published that list as Appendix A to 31 CFR chapter V. OFAC is hereby amending Appendix A to replace this list with information on how to obtain up-to-date lists of such persons and vessels on OFAC's Web site or by other means, as well as with additional information pertaining to the lists. OFAC also is removing Appendix B to 31 CFR chapter V, which includes the names of certain blocked vessels, because more up-to-date information on such blocked vessels may be obtained on OFAC's Web site or by other means. Finally, OFAC is amending its regulations for a number of the sanctions programs it administers to revise references to Appendix A and remove references to Appendix B.

Blocking, designation, identification, or delisting actions pursuant to the sanctions programs administered by OFAC are effective upon the earlier of actual or constructive notice. Notices of blocking, designation, identification, and delisting actions are published in the **Federal Register** frequently and at irregular intervals. Because new or updated information may be published in the **Federal Register** and added to OFAC's Web site at any time, the list of persons that previously appeared at Appendix A could be out-of-date at the time of its annual publication in the **Federal Register**. Frequently updated information on OFAC designations and other actions resulting in blocking is provided for examination on, or downloading from, OFAC's Web site (*http://www.treasury.gov/ofac*). Among other information, OFAC provides on its Web site the Specially Designated Nationals and Blocked Persons List (''SDN List''). OFAC updates the SDN List on an ongoing basis to reflect the inclusion or deletion of names as a result of new blocking, designation, identification, or delisting actions, as well as changes in identifying information, including alternative spellings and aliases. These updates also are published in notices in the **Federal Register.** Because the SDN List is updated on an ongoing basis to reflect additions and deletions of names, as well as changes in identifying information, it provides more up-to-date information than the list of persons previously published on an annual basis at Appendix A.

Persons engaging in regulated activities are advised to check the **Federal Register** and the most recent version of the SDN List posted on OFAC's Web site for updated information on blocking, designation, identification, and delisting actions before engaging in transactions that may be prohibited by the economic sanctions programs administered by OFAC.

This final rule replaces the list of persons previously published at Appendix A with the URL address for the Web page on which OFAC publishes the SDN List. Because certain persons engaging in regulated activities may not have access to OFAC's Web site, this final rule also provides information on alternate means by which the public may access the information contained on the SDN List. This final rule also includes in Appendix A additional information pertaining to the SDN List.

OFAC previously has published, as Appendix B, an alphabetical listing of certain vessels that are the property of blocked persons or specially designated nationals. OFAC also has included such vessels in the list of names published at Appendix A and on the SDN List with the notation ''(vessel).'' OFAC segregates the names of these blocked vessels into a special sub-section of the SDN List that includes only blocked vessels. OFAC has determined that, because the list of blocked vessels is now provided in a segregated sub-section of the SDN List that may be updated more readily than Appendix B, continued publication of Appendix B is unnecessary. Notwithstanding this discontinuation of Appendix B, persons engaging in regulated transactions are reminded of the unique rules that apply with respect to blocked vessels. These rules are briefly covered in note 7 to Appendix A. Please also review OFAC's regulations for the program pursuant to which a vessel is blocked prior to engaging in a transaction involving that vessel.

The regulations for many of the sanctions programs administered by OFAC contain references to Appendix A and Appendix B. This final rule revises the relevant parts of 31 CFR chapter V to remove those references and replace them with information on how to obtain up-to-date lists of such persons and vessels on OFAC's Web site or by other means. Please note that for sanctions program regulations that are being amended to make technical, conforming changes to remove or revise references

to Appendix A and Appendix B, the authority sections have not been revised to include Executive orders or statutes relevant to these programs that have not yet been implemented in the regulations. Such Executive orders or statutes will be incorporated into the authority section for the relevant program at such time as the regulations are amended to implement these authorities.

Specific licenses previously issued by OFAC may include references to Appendix A or Appendix B. In newly amended Appendix A, OFAC notifies persons who have been issued specific licenses by OFAC that any reference to Appendix A or Appendix B in an outstanding specific license shall be read to refer to the SDN List.

In this final rule, OFAC also is amending the Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), by republishing in alphabetical order the entire list of persons identified in Appendix A to Part 560, to reflect changes to the list since Appendix A to Part 560 was last published (75 FR 34630, June 18, 2010). The republished list, ''Appendix A to Part 560—Persons Determined to be the Government of Iran, as Defined in § 560.304 of This Part,'' includes information regarding identification or delisting actions under 31 CFR part 560, as well as changes to existing listings. Please note that OFAC will continue to publish lists of names contained within appendices to various parts of 31 CFR chapter V; for example, OFAC will continue to publish Appendix I to Part 539 and Appendix A to Part 560. Moreover, information regarding identification or delisting actions under 31 CFR part 560 will continue to be reflected in the SDN List as well.

Please note that most OFAC sanctions programs prohibit transactions involving persons and vessels not identified on the SDN List or other lists provided by OFAC. For example, certain sanctions programs prohibit transactions with persons meeting a particular definition, whether or not that person is identified on the SDN List (see, *e.g.,* 31 CFR part 515). Additionally, a person whose property and interests in property are blocked has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked, regardless of whether the entity itself is on the SDN List.

Public Participation

Because the amendment of 31 CFR chapter V involves a foreign affairs function, Executive Order 12866 of September 30, 1993 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

List of Subjects in 31 CFR Parts 501, 510, 515, 536, 537, 538, 541, 542, 543, 544, 546, 547, 548, 549, 551, 560, 561, 562, 576, 588, 593, 594, 595, 597, and 598

Administrative practice and procedure, Banks, Banking, Blocking of assets.

For the reasons set forth in the preamble and under the authority of 3 U.S.C. 301; 8 U.S.C. 1182, 1189; 18 U.S.C. 2339B; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 50 U.S.C. App. 1–44; Pub. L. 110–286, 122 Stat. 2632; Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551), chapter V of 31 CFR is amended as set forth below:

PART 501—REPORTING, PROCEDURES, AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 22 U.S.C. 2370(a), 6009, 6032, 7205; 28 U.S.C. 2461 note; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

Subpart E—Procedures

■ 2. Revise the heading of § 501.807 to read as follows:

§ 501.807 Procedures governing delisting from the Specially Designated Nationals and Blocked Persons List.

* * * * *

PART 510—NORTH KOREA SANCTIONS REGULATIONS

■ 3. The authority citation for part 510 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13466, 73 FR 36787, June 27, 2008, 3 CFR, 2008 Comp., p. 195; E.O. 13551, 75 FR 53837, September 1, 2010; E.O. 13570, 76 FR 22291, April 20, 2011.

Subpart B—Prohibitions

■ 4. Revise Notes 1 and 2 to § 510.201(b) to read as follows:

§ 510.201 Prohibited transactions.

* * * * *

(b) * * *

Note 1 to § 510.201(b): The names of persons listed in or designated pursuant to Executive Order 13551, whose property and interests in property therefore are blocked pursuant to paragraph (b) of this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[DPRK].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 510.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (b) of this section.

Note 2 to § 510.201(b): The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (b) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–DPRK].''

* * * * *

PART 515—CUBAN ASSETS CONTROL REGULATIONS

■ 5. The authority citation for part 515 continues to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. App 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–114, 110 Stat. 785 (22 U.S.C. 6021–6091); Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart C—General Definitions

■ 6. Revise the Note to § 515.306 to read as follows:

§ 515.306 Specially designated national.

* * * * *

Note to § 515.306: Please refer to the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') for a non-exhaustive listing

of persons determined to fall within this definition, whose property and interests in property therefore are blocked pursuant to this part. The SDN List entries for such persons include the identifier ''[CUBA].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or that of a vessel as blocked, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

■ 7. The authority citation for part 536 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart C—General Definitions

■ 8. Revise the Note to § 536.312 to read as follows:

§ 536.312 Specially designated narcotics trafficker.

* * * * *

Note to § 536.312: The names of persons determined to fall within this definition, whose property and interests in property therefore are blocked pursuant to this part, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SDNT].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this part.

Subpart D—Interpretations

■ 9. Revise paragraph (a) of § 536.408 to read as follows:

§ 536.408 Alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker.

(a) A change or alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker shall not be the basis for removal of that entity from the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List unless, upon investigation by the Office of Foreign Assets Control and submission of evidence by the entity, it is demonstrated to the satisfaction of the Director of the Office of Foreign Assets Control that the transfer to a bona fide purchaser at arm's length is legitimate and that the entity no longer meets the criteria for designation under § 536.312. Evidence submitted must conclusively demonstrate that all ties with other specially designated narcotics traffickers have been completely severed, and may include, but is not limited to, articles of incorporation; identification of new directors, officers, shareholders, and sources of capital; and contracts evidencing the sale of the entity to its new owners.

* * * * *

PART 537—BURMESE SANCTIONS REGULATIONS

■ 10. The authority citation for part 537 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Sec. 570, Pub. L. 104–208, 110 Stat. 3009; Pub. L. 108–61, 117 Stat. 864; Pub. L. 110–96, 121 Stat. 1011; E.O. 13047, 62 FR 28301, 3 CFR, 1997 Comp., p. 202; E.O. 13310, 68 FR 44853, 3 CFR, 2003 Comp., p. 241.

Subpart B—Prohibitions

■ 11. Remove the Note to paragraph (a) of § 537.201 and add new Notes 1, 2, and 3 to paragraph (a) of § 537.201 to read as follows:

§ 537.201 Prohibited transactions involving certain blocked property.

(a) * * *

Note 1 to paragraph (a) of § 537.201: The names of persons whose property and interests in property are blocked pursuant to paragraph (a) of this section are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[BURMA].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter.

Note 2 to paragraph (a) of § 537.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–BURMA].''

Note 3 to paragraph (a) of § 537.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

* * * * *

PART 538—SUDANESE SANCTIONS REGULATIONS

■ 12. The authority citation for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 7201–7211; Pub. L. 109–344, 120 Stat. 1869; Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13412, 71 FR 61369, 3 CFR, 2006 Comp., p. 244.

Subpart C—General Definitions

■ 13. Revise the Note to § 538.305 to read as follows:

§ 538.305 Government of Sudan.

* * * * *

Note to § 538.305: Please refer to the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') for a non-exhaustive listing of persons determined to fall within this definition, whose property and interests in property therefore are blocked pursuant to this part. The SDN List entries for such persons include the identifier ''[SUDAN].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this part.

PART 541—ZIMBABWE SANCTIONS REGULATIONS

■ 14. The authority citation for part 541 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13288, 68 FR 11457, 3 CFR, 2003 Comp., p. 186.

Subpart B—Prohibitions

■ 15. Remove the Note to paragraph (a) of § 541.201 and add new Notes 1, 2, and 3 to paragraph (a) of § 541.201 to read as follows:

§ 541.201 Prohibited transactions involving blocked property.

(a) * * *

Note 1 to paragraph (a) of § 541.201: The names of persons whose property and interests in property are blocked pursuant to paragraph (a) of this section are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[ZIMBABWE].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter.

Note 2 to paragraph (a) of § 541.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–ZIMBABWE].''

Note 3 to paragraph (a) of § 541.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

* * * * *

PART 542—SYRIAN SANCTIONS REGULATIONS

■ 16. The authority citation for part 542 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168.

Subpart B—Prohibitions

■ 17. Remove the Note to paragraph (a) of § 542.201 and add new Notes 1, 2, and 3 to paragraph (a) of § 542.201 to read as follows:

§ 542.201 Prohibited transactions involving blocked property.

(a) * * *

Note 1 to paragraph (a) of § 542.201: The names of persons whose property and interests in property are blocked pursuant to paragraph (a) of this section are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SYRIA].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter.

Note 2 to paragraph (a) of § 542.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–SYRIA].''

Note 3 to paragraph (a) of § 542.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

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PART 543—COTE D'IVOIRE SANCTIONS REGULATIONS

■ 18. The authority citation for part 543 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13396, 71 FR 7389, 3 CFR, 2006 Comp., p. 209.

Subpart B—Prohibitions

■ 19. Remove the Note to paragraph (a) of § 543.201 and add new Notes 1, 2, and 3 to paragraph (a) of § 543.201 to read as follows:

§ 543.201 Prohibited transactions involving blocked property.

(a) * * *

Note 1 to paragraph (a) of § 543.201: The names of persons listed in or designated pursuant to Executive Order 13396, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[COTED].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 543.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 543.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–COTED].''

Note 3 to paragraph (a) of § 543.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

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PART 544—WEAPONS OF MASS DESTRUCTION PROLIFERATORS SANCTIONS REGULATIONS

■ 20. The authority citation for part 544 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Public Law 110–96, 121 Stat. 1011; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13382, 70 FR 38567, 3 CFR, 2005 Comp., p. 170.

Subpart B—Prohibitions

■ 21. Remove the Note to paragraph (a) of § 544.201 and add new Notes 1, 2, and 3 to paragraph (a) of § 544.201 to read as follows:

§ 544.201 Prohibited transactions involving blocked property.

(a) * * *

Note 1 to paragraph (a) of § 544.201: The names of persons listed in or designated pursuant to Executive Order 13382, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[NPWMD].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 544.411 concerning entities that may not be listed on the SDN List but

whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 544.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–NPWMD].''

Note 3 to paragraph (a) of § 544.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

* * * * *

PART 546—DARFUR SANCTIONS REGULATIONS

■ 22. The authority citation for part 546 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13400, 71 FR 25483, 3 CFR, 2006 Comp., p. 220.

Subpart B—Prohibitions

■ 23. Revise Notes 1 and 2 to paragraph (a) of § 546.201 to read as follows:

§ 546.201 Prohibited transactions involving blocked property.

(a) * * *

Note 1 to paragraph (a) of § 546.201: The names of persons listed in or designated pursuant to Executive Order 13400, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[DARFUR].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 546.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 546.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–DARFUR].''

* * * * *

PART 547—DEMOCRATIC REPUBLIC OF THE CONGO SANCTIONS REGULATIONS

■ 24. The authority citation for part 547 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13413, 71 FR 64105, 3 CFR, 2006 Comp., p. 247.

Subpart B—Prohibitions

■ 25. Revise Notes 1 and 2 to paragraph (a) of § 547.201 to read as follows:

§ 547.201 Prohibited transactions involving blocked property.

(a) * * *

Note 1 to paragraph (a) of § 547.201: The names of persons listed in or designated pursuant to Executive Order 13413, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[DRCONGO].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 547.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 547.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–DRCONGO].''

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PART 548—BELARUS SANCTIONS REGULATIONS

■ 26. The authority citation for part 548 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13405, 71 FR 35485; 3 CFR, 2007 Comp., p. 231.

Subpart B—Prohibitions

■ 27. Revise Notes 1 and 2 to paragraph (a) of § 548.201 to read as follows:

§ 548.201 Prohibited transactions involving blocked property.

(a) * * *

Note 1 to paragraph (a) of § 548.201: The names of persons listed in or designated pursuant to Executive Order 13405, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[BELARUS].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 548.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 548.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–BELARUS].''

* * * * *

PART 549—LEBANON SANCTIONS REGULATIONS

■ 28. The authority citation for part 549 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13441, 72 FR 43499, 3 CFR, 2008 Comp., p. 232.

Subpart B—Prohibitions

■ 29. Revise Notes 1 and 2 to paragraph (a) of § 549.201 to read as follows:

§ 549.201 Prohibited transactions involving blocked property.

(a) * * *

Note 1 to paragraph (a) of § 549.201: The names of persons designated pursuant to Executive Order 13441, whose property and interests in property therefore are blocked

pursuant to paragraph (a) of this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[LEBANON].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 549.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 549.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–LEBANON].''

* * * * *

PART 551—SOMALIA SANCTIONS REGULATIONS

■ 30. The authority citation for part 551 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13536, 75 FR 19869, April 15, 2010.

Subpart B—Prohibitions

■ 31. Revise Notes 1 and 2 to § 551.201 to read as follows:

§ 551.201 Prohibited transactions.

* * * * *

Note 1 to § 551.201: The names of persons listed in or designated pursuant to Executive Order 13536, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SOMALIA].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 551.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

Note 2 to § 551.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–SOMALIA].''

* * * * *

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 32. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 22 U.S.C. 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

■ 33. Revise Appendix A to part 560 to read as follows:

Appendix A to Part 560—Persons Determined To Be the Government of Iran, as Defined in § 560.304 of This Part

This non-exhaustive appendix lists persons determined by the Office of Foreign Assets Control (''OFAC'') to be the *Government of Iran,* as defined in § 560.304 of this part. The persons listed below are considered to be the *Government of Iran* not only when they operate from the locations listed below, but also when they operate from any other location. The names and addresses are subject to change. This part 560 contains prohibitions against engaging in most transactions with persons that meet the definition of the *Government of Iran,* whether such persons are located or incorporated inside or outside of Iran. Moreover, regardless of whether a person is listed below, if the person comes within the definition of *Government of Iran* in § 560.304, the prohibitions on engaging in transactions with the person, wherever located worldwide, apply to the same extent they would apply if the person were listed in this appendix. Note that the prohibitions in this part 560 also apply to most transactions with persons located in Iran that are not the Government of Iran.

The names of persons listed in this appendix also are included on OFAC's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[IRAN].'' Although there is no requirement to block the property and interests of property of persons listed in this appendix, U.S. persons are cautioned that entities identified as owned or controlled by the Government of Iran also may be designated or blocked pursuant to additional sanctions programs administered by OFAC. The entry for a person's name in this appendix and on the SDN List may include—in addition to the identifier ''[IRAN]''—identifier(s) for the other sanctions program(s) pursuant to which the person is listed on the SDN List (*e.g.,* ''[IRAN] [NPWMD]'' or ''[IRAN] [SDGT]'').

Notes to Appendix A to Part 560: 1.The alphabetical list below provides the following information concerning persons determined by OFAC to be the Government of Iran: The name (including known former or alternate names), address, the identifier ''[IRAN]'', and, if applicable, the identifier(s) denoting other sanctions program(s) pursuant to which the person is blocked.

2. The abbreviations used in this appendix are ''a.k.a.'' (also known as) and ''f.k.a.'' (formerly known as).

3. The references to sanctions programs in 31 CFR chapter V include: [IRAN] (Iranian Transactions Regulations, part 560); [IFSR] (Iranian Financial Sanctions Regulations, part 561); [ISA] (Executive Order 13574, 76 FR 30505, May 25, 2011; Iran Sanctions Act of 1996 (Pub. L. 104–172) (50 U.S.C. 1701 note), as amended by, *inter alia,* the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195)); [NPWMD] (Weapons of Mass Destruction Proliferators Sanctions Regulations, part 544); and [SDGT] (Global Terrorism Sanctions Regulations, part 594).

4. The names of persons listed in Appendix A to part 560 are published in the **Federal Register** and included on the SDN List. The SDN List is accessible through the following page on OFAC's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. New names of persons determined to be the Government of Iran and changes to existing listings also are published in the **Federal Register.**

This document and additional information concerning OFAC are available from OFAC's Web site: *http://www.treasury.gov/ofac*. Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077. Please consult OFAC's Web site prior to engaging in transactions that may be subject to the prohibitions contained in part 560. If you have further questions, please contact OFAC's Sanctions Compliance & Evaluation Division at 202/622–2490 or 800/540–6322 (toll-free).

ASCOTEC HOLDING GMBH (f.k.a. AHWAZ STEEL COMMERCIAL & TECHNICAL SERVICE GMBH ASCOTEC; f.k.a. AHWAZ STEEL COMMERCIAL AND TECHNICAL SERVICE GMBH ASCOTEC; a.k.a. ASCOTEC GMBH), Tersteegen Strasse 10, Dusseldorf 40474, Germany; Registration ID HRB 26136 (Germany); all offices worldwide [IRAN]

ASCOTEC JAPAN K.K., 8th Floor, Shiba East Building, 2–3–9 Shiba, Minato-ku, Tokyo 105–0014, Japan; all offices worldwide [IRAN]

ASCOTEC MINERAL & MACHINERY GMBH (a.k.a. ASCOTEC MINERAL AND MACHINERY GMBH; f.k.a. BREYELLER KALTBAND GMBH), Tersteegenstr. 10, Dusseldorf 40474, Germany; Registration ID HRB 55668 (Germany); all offices worldwide [IRAN]

ASCOTEC SCIENCE & TECHNOLOGY GMBH (a.k.a. ASCOTEC SCIENCE AND TECHNOLOGY GMBH), Tersteegenstrasse 10, Dusseldorf D 40474, Germany; Registration ID HRB 58745 (Germany); all offices worldwide [IRAN]

ASCOTEC STEEL TRADING GMBH (a.k.a. ASCOTEC STEEL), Tersteegenstr. 10, Dusseldorf 40474, Germany; Georg-Glock-Str. 3, Dusseldorf 40474, Germany; Registration ID HRB 48319 (Germany); all offices worldwide [IRAN]

BANK KESHAVARZI IRAN (a.k.a. AGRICULTURAL BANK OF IRAN; a.k.a. BANK KESHAVARZI), PO Box 14155–6395, 129 Patrice Lumumba St, Jalal-al-Ahmad Expressway, Tehran 14454, Iran; all offices worldwide [IRAN]

BANK MARKAZI JOMHOURI ISLAMI IRAN (a.k.a. BANK MARKAZI IRAN; a.k.a. CENTRAL BANK OF IRAN; a.k.a. CENTRAL BANK OF THE ISLAMIC REPUBLIC OF IRAN), 213 Ferdowsi Avenue, Tehran 11365, Iran; PO Box 15875/7177, 144 Mirdamad Blvd, Tehran, Iran [IRAN]

BANK MASKAN (a.k.a. HOUSING BANK (OF IRAN)), PO Box 11365/5699, No 247 3rd Floor Fedowsi Ave, Cross Sarhang Sakhaei St, Tehran, Iran; all offices worldwide [IRAN]

BANK MELLAT, Cumhuriyet Bulvari No 88/A, PK 7103521, Konak, Izmir, Turkey; PO Box 375010, Amiryan Str #6, P/N–24, Yerevan, Armenia; PO Box 79106425, Ziya Gokalp Bulvari No 12, Kizilay, Ankara, Ankara, Turkey; 327 Forsat and Taleghani Avenue, Tehran 15817, Iran; Buyukdere Cad, Cicek Sokak No 1—1 Levent, Levent, Istanbul, Turkey; Keumkang Tower—13th & 14th Floor, 889–13 Daechi-Dong, Gangnam-Ku, Seoul 135–280, Korea, South; Head Office Bldg, 327 Taleghani Ave, Tehran 15817, Iran; all offices worldwide [IRAN] [NPWMD] [IFSR]

BANK MELLI IRAN (a.k.a. BANK MELLI; a.k.a. NATIONAL BANK OF IRAN), PO Box 2656, Liva Street, Abu Dhabi, United Arab Emirates; PO Box 459, Al Borj St, Sharjah, United Arab Emirates; Room 704–6, Wheelock Hse, 20 Pedder St, Central, Hong Kong; PO Box 1894, Baniyas St, Deira, Dubai City, United Arab Emirates; PO Box 1894, Al Wasl Rd, Jumeirah, Dubai, United Arab Emirates; 43 Avenue Montaigne, Paris 75008, France; PO Box 1888, Clock Tower, Industrial Rd, Al Ain Club Bldg, Al Ain, Abu Dhabi, United Arab Emirates; Postfach 112 129, Holzbruecke 2, D–20459, Hamburg, Germany; PO Box 2643, Ruwi, Muscat 112, Oman; Unit 1703–4, 17th Floor, Hong Kong Club Building, 3 A Chater Road Central, Hong Kong; PO Box 11365–171, Ferdowsi Avenue, Tehran, Iran; Bank Melli Iran Bldg, 111 St 24, 929 Arasat, Baghdad, Iraq; PO Box 248, Hamad Bin Abdulla St, Fujairah, United Arab Emirates; PO Box 5270, Oman Street Al Nakheel, Ras Al-Khaimah, United Arab Emirates; PO Box 3093, Ahmed Seddiqui Bldg, Khalid Bin El-Walid St, Bur-Dubai, Dubai City 3093, United Arab Emirates; Nobel Ave. 14, Baku, Azerbaijan; all offices worldwide [IRAN] [NPWMD] [IFSR]

BANK OF INDUSTRY AND MINE (OF IRAN) (a.k.a. BANK SANAD VA MADAN; a.k.a. ''BIM''), No 1655, Firouzeh Building, Mahmoudiye Street, Valiasr Ave, Tehran, Iran; PO Box 15875–4456, Firouzeh Tower, No 1655 Vali-Asr Ave after Chamran Crossroads, Tehran 1965643511, Iran; all offices worldwide [IRAN] [NPWMD] [IFSR]

BANK REFAH KARGARAN (a.k.a. BANK REFAH; a.k.a. WORKERS' WELFARE BANK (OF IRAN)), No. 40 North Shiraz Street, Mollasadra Ave, Vanak Sq, Tehran 19917, Iran; all offices worldwide [IRAN] [NPWMD] [IFSR]

BANK SADERAT IRAN (a.k.a. IRAN EXPORT BANK), PO Box 4308, 25–29 Venizelou St, Athens, Attica GR 105 64, Greece; 1st Floor, Alrose Bldg, Verdun—Rashid Karame St, Beirut, Lebanon; PO Box 700, Abu Dhabi, United Arab Emirates; Bur Dubai, Khaled Bin Al Walid St, Dubai City, United Arab Emirates; Sheikh Zayed Rd, Dubai City, United Arab Emirates; PO Box 316, Bank Saderat Bldg, Alaroda St, Borj Ave, Sharjah, United Arab Emirates; 16 rue de la Paix, Paris 75002, France; Alghobeiri Branch—Aljawhara Bldg, Ghobeiry Blvd, Beirut, Lebanon; PO Box 4425, Salwa Rd, Doha, Qatar; PO Box 1140, Al-Am Road, Al-Ein, Al Ain, Abu Dhabi, United Arab Emirates; Postfach 112227, Deichstrasse 11, 20459, Hamburg, Germany; PO Box 5126, Beirut, Lebanon; PO Box 1269, Muscat 112, Oman; PO Box 4182, Murshid Bazar Branch, Dubai City, United Arab Emirates; 5 Lothbury, London EC2R 7HD, United Kingdom; Postfach 160151, Friedenstr 4, D–60311, Frankfurt am Main, Germany; 3rd Floor, Aliktisad Bldg, Ras El Ein Street Baalbak, Baalbak, Lebanon; Saida Branch, Sida Riad Elsoleh St, Martyrs Sq, Saida, Lebanon; Borj Albarajneh Branch—20 Alholom Bldg, Sahat Mreijeh, Kafaat St, Beirut, Lebanon; PO Box 16, Liwara Street, Ajman, United Arab Emirates; Ground Floor Business Room, Building Banke Khoon Road, Harat, Afghanistan; No. 56, Opposite of Security Department, Toraboz Khan Str., Kabul, Afghanistan; 3rd Floor, Mteco Centre, Mar Elias, Facing Al Hellow Barrak, POB 5126, Beirut, Lebanon; 2nd Floor, No 181 Makhtoomgholi Ave, Ashgabat, Turkmenistan; PO Box 4182, Almaktoum Rd, Dubai City, United Arab Emirates; PO Box 15745–631, Bank Saderat Tower, 43 Somayeh Avenue, Tehran, Iran; PO Box 2256, Doha, Qatar; all offices worldwide [SDGT] [IRAN] [IFSR]

BANK SADERAT PLC (f.k.a. IRAN OVERSEAS INVESTMENT BANK LIMITED; f.k.a. IRAN OVERSEAS INVESTMENT BANK PLC; f.k.a. IRAN OVERSEAS INVESTMENT CORPORATION LIMITED), 5 Lothbury, London EC2R 7HD, United Kingdom; PO Box 15175/584, 6th Floor, Sadaf Bldg, 1137 Vali Asr Ave, Tehran 15119–43885, Iran; UK Company Number 01126618 (United Kingdom); all offices worldwide [SDGT] [IRAN] [IFSR]

BANK SEPAH, Imam Khomeini Square, Tehran 1136953412, Iran; Hafenstrasse 54, D–60327, Frankfurt am Main, Germany; 64 Rue de Miromesnil, Paris 75008, France; Via Barberini 50, Rome, RM 00187, Italy; 17 Place Vendome, Paris 75008, France; all offices worldwide [IRAN] [NPWMD] [IFSR]

BANK TEJARAT, PO Box 734001, Rudaki Ave 88, Dushanbe 734001, Tajikistan; c/o Persia International Bank, 6 Lothbury, London EC2R 7HH, United Kingdom; c/o Europaisch-Iranische Handelsbank AG, Depenau 2, D–20095, Hamburg, Germany; PO Box 119871, 4th Floor, c/o Persia International Bank PLC, The Gate Bldg, Dubai City, United Arab Emirates; PO Box 11365–5416, 152 Taleghani Avenue, Tehran 15994, Iran; 124–126 Rue de Provence, Angle 76 bd Haussman, Paris 75008, France; 130, Zandi Alley, Taleghani Avenue, No 152, Ostad Nejat Ollahi Cross, Tehran 14567, Iran; Office C208, Beijing Lufthansa Center No 50, Liangmaqiao Rd, Chaoyang District, Beijing 100016, China; all offices worldwide [IRAN]

BANK TORGOVOY KAPITAL ZAO (a.k.a. TC BANK; a.k.a. TK BANK; a.k.a. TK BANK ZAO; a.k.a. TORGOVY KAPITAL (TK BANK); a.k.a. TRADE CAPITAL BANK; a.k.a. TRADE CAPITAL BANK (TC BANK); a.k.a. ZAO BANK TORGOVY KAPITAL), 3 Kozlova Street, Minsk 220005, Belarus; Registration ID 30 (Belarus); all offices worldwide [IRAN]

BIMEH IRAN INSURANCE COMPANY (U.K.) LIMITED (a.k.a. BIUK), 4/5 Fenchurch Buildings, London EC3M 5HN, United Kingdom; UK Company Number 01223433 (United Kingdom); all offices worldwide [IRAN]

BREYELLER STAHL TECHNOLOGY GMBH & CO. KG (a.k.a. BREYELLER STAHL TECHNOLOGY GMBH AND CO. KG; f.k.a. ROETZEL-STAHL GMBH & CO. KG; f.k.a. ROETZEL-STAHL GMBH AND CO. KG), Josefstrasse 82, Nettetal 41334, Germany; Registration ID HRA 4528 (Germany); all offices worldwide [IRAN]

EUROPAISCH-IRANISCHE HANDELSBANK AG (f.k.a. DEUTSCH-IRANISCHE HANDELSBANK AG; a.k.a. EUROPAEISCH–IRANISCHE HANDELSBANK; a.k.a. EUROPAESCH-IRANISCHE HANDELSBANK AKTIENGESELLSCHAFT; a.k.a. GERMAN-IRANIAN TRADE BANK), Tehran Branch, No. 1655/1, Valiasr Avenue, PO Box 19656 43 511, Tehran, Iran; Kish Branch, Sanaee Avenue, PO Box 79415/148, Kish Island 79415, Iran; Hamburg Head Office, Depenau 2, D–20095 Hamburg, P.O. Box 101304, D–20008 Hamburg, Hamburg, Germany; all offices worldwide [IRAN] [NPWMD] [IFSR]

EXPORT DEVELOPMENT BANK OF IRAN (a.k.a. BANK TOSEH SADERAT IRAN; a.k.a. BANK TOWSEEH SADERAT IRAN; a.k.a. BANK TOWSEH SADERAT IRAN; a.k.a. EDBI), No. 129, 21's Khaled Eslamboli, No. 1 Building, Tehran, Iran; Export Development Building, Next to the 15th Alley, Bokharest Street, Argentina Square, Tehran, Iran; No. 26, Tosee Tower, Arzhantine Square, P.O. Box 15875–5964, Tehran 15139, Iran; No. 4, Gandi Ave., Tehran 1516747913, Iran; Tose'e Tower, Corner of 15th St., Ahmed Qasir Ave., Argentine Square, Tehran, Iran; Registration ID 86936 (Iran) issued 10 Jul 1991; all offices worldwide [IRAN] [NPWMD] [IFSR]

IFIC HOLDING AG (a.k.a. IHAG), Koenigsallee 60 D, Dusseldorf 40212,

Germany; Registration ID HRB 48032 (Germany); all offices worldwide [IRAN]

IHAG TRADING GMBH, Koenigsallee 60 D, Dusseldorf 40212, Germany; Registration ID HRB 37918 (Germany); all offices worldwide [IRAN]

INDUSTRIAL DEVELOPMENT AND RENOVATION ORGANIZATION OF IRAN (a.k.a. IDRO; a.k.a. IRAN DEVELOPMENT & RENOVATION ORGANIZATION COMPANY; a.k.a. IRAN DEVELOPMENT AND RENOVATION ORGANIZATION COMPANY; a.k.a. SAWZEMANE GOSTARESH VA NOWSAZI SANAYE IRAN), Vali Asr Building, Jam e Jam Street, Vali Asr Avenue, Tehran 15815–3377, Iran; all offices worldwide [IRAN]

INTRA CHEM TRADING GMBH (a.k.a. INTRA-CHEM TRADING CO. (GMBH)), Schottweg 3, Hamburg 22087, Germany; Registration ID HRB48416 (Germany); all offices worldwide [IRAN]

IRAN FOREIGN INVESTMENT COMPANY (a.k.a. IFIC), No. 4, Saba Blvd., Africa Blvd., Tehran 19177, Iran; P.O. Box 19395–6947, Tehran, Iran; all offices worldwide [IRAN]

IRAN INSURANCE COMPANY (a.k.a. BIMEH IRAN), P.O. Box 1867, Al Ain, Abu Dhabi, United Arab Emirates; P.O. Box 3281, Abu Dhabi, United Arab Emirates; P.O. Box 849, Ras-Al-Khaimah, United Arab Emirates; P.O. Box 417, Muscat 113, Oman; Al Alia Center, Salaheddine Rd., Al Malaz, P.O. Box 21944, Riyadh 11485, Saudi Arabia; Al-Lami Center, Ali-Bin-Abi Taleb St. Sharafia, P.O. Box 11210, Jeddah 21453, Saudi Arabia; Abdolaziz-Al-Masaeed Building, Sheikh Maktoom St., Deira, P.O. Box 2004, Dubai, United Arab Emirates; 107 Dr Fatemi Avenue, Tehran 14155/6363, Iran; P.O. Box 995, Manama, Bahrain; P.O. Box 1666, Sharjah, United Arab Emirates; P.O. Box 676, Salalah 211, Oman; Al Rajhi Bldg., 3rd Floor, Suite 23, Dhahran St., P.O. Box 1305, Dammam 31431, Saudi Arabia; all offices worldwide [IRAN]

IRAN PETROCHEMICAL COMMERCIAL COMPANY (a.k.a. PETROCHEMICAL COMMERCIAL COMPANY; a.k.a. SHERKATE BASARGANI PETROCHEMIE (SAHAMI KHASS); a.k.a. SHERKATE BAZARGANI PETRCHEMIE; a.k.a. ''IPCC''; a.k.a. ''PCC''), Topcu Ibrahim Sokak No: 13 D: 7 Icerenkoy-Kadikoy, Istanbul, Turkey; No. 1014, Doosan We've Pavilion, 58, Soosong-Dong, Jongno-Gu, Seoul, Korea, South; 99–A, Maker Tower F, 9th Floor, Cuffe Parade, Colabe, Mumbai 400 005, India; No. 1339, Vali Nejad Alley, Vali-e-Asr St., Vanak Sq., Tehran, Iran; Office No. 707, No. 10, Chao Waidajie, Chao Tang District, Beijing 100020, China; INONU CAD. SUMER Sok., Zitas Bloklari C.2 Bloc D.H, Kozyatagi, Kadikoy, Istanbul, Turkey; all offices worldwide [IRAN]

IRANIAN MINES AND MINING INDUSTRIES DEVELOPMENT AND RENOVATION ORGANIZATION (a.k.a. IMIDRO; a.k.a. IRAN MINING INDUSTRIES DEVELOPMENT AND RENOVATION ORGANIZATION; a.k.a. IRANIAN MINES AND MINERAL INDUSTRIES DEVELOPMENT AND RENOVATION), No. 39, Sepahbod Gharani Avenue, Ferdousi Square, Tehran, Iran; all offices worldwide [IRAN]

IRANIAN OIL COMPANY (U.K.) LIMITED (a.k.a. IOC UK LTD), Riverside House, Riverside Drive, Aberdeen AB11 7LH, United Kingdom; UK Company Number 01019769 (United Kingdom); all offices worldwide [IRAN]

IRASCO S.R.L. (a.k.a. IRASCO ITALY), Via Di Francia 3, Genoa 16149, Italy; Registration ID GE 348075 (Italy); all offices worldwide [IRAN]

KALA LIMITED (a.k.a. KALA NAFT LONDON LTD), NIOC House, 4 Victoria Street, Westminster, London SW1H 0NE, United Kingdom; UK Company Number 01517853 (United Kingdom); all offices worldwide [IRAN]

KALA PENSION TRUST LIMITED, C/O Kala Limited, N.I.O.C. House, 4 Victoria Street, London SW1H 0NE, United Kingdom; UK Company Number 01573317 (United Kingdom); all offices worldwide [IRAN]

MACHINE SAZI ARAK CO. LTD. (a.k.a. MACHINE SAZI ARAK COMPANY P J S C; a.k.a. MACHINE SAZI ARAK SSA; a.k.a. MASHIN SAZI ARAK; a.k.a. ''MSA''), P.O. Box 148, Arak 351138, Iran; Arak, Km 4 Tehran Road, Arak, Markazi Province, Iran; No. 1, Northern Kargar Street, Tehran 14136, Iran; all offices worldwide [IRAN]

MAHAB GHODSS CONSULTING ENGINEERING COMPANY (a.k.a. MAHAB GHODSS CONSULTING ENGINEERING CO.; a.k.a. MAHAB GHODSS CONSULTING ENGINEERS SSK; a.k.a. MAHAB QODS ENGINEERING CONSULTING CO.), 16 Takharestan Alley, Dastgerdy Avenue, P.O. Box 19395–6875, Tehran 19187 81185, Iran; No. 17, Dastgerdy Avenue, Takharestan Alley, 19395–6875, Tehran 1918781185, Iran; Registration ID 48962 (Iran) issued 1983; all offices worldwide [IRAN]

METAL & MINERAL TRADE S.A.R.L. (a.k.a. METAL & MINERAL TRADE (MMT); a.k.a. METAL AND MINERAL TRADE (MMT); a.k.a. METAL AND MINERAL TRADE S.A.R.L.; a.k.a. MMT LUXEMBURG; a.k.a. MMT SARL), 11b, Boulevard Joseph II L–1840, Luxembourg; Registration ID B 59411 (Luxembourg); all offices worldwide [IRAN]

MINES AND METALS ENGINEERING GMBH (M.M.E.), Georg-Glock-Str. 3, Dusseldorf 40474, Germany; Registration ID HRB 34095 (Germany); all offices worldwide [IRAN]

MSP KALA NAFT CO. TEHRAN (a.k.a. KALA NAFT CO SSK; a.k.a. KALA NAFT COMPANY LTD; a.k.a. KALA NAFT TEHRAN; a.k.a. KALA NAFT TEHRAN COMPANY; a.k.a. KALAYEH NAFT CO; a.k.a. M.S.P.-KALA; a.k.a. MANUFACTURING SUPPORT & PROCUREMENT CO.-KALA NAFT; a.k.a. MANUFACTURING SUPPORT AND PROCUREMENT (M.S.P.) KALA NAFT CO. TEHRAN; a.k.a. MANUFACTURING, SUPPORT AND PROCUREMENT KALA NAFT COMPANY; a.k.a. MSP KALA NAFT TEHRAN COMPANY; a.k.a. MSP KALANAFT; a.k.a. MSP-KALANAFT COMPANY; a.k.a. SHERKAT SAHAMI KHASS KALA NAFT; a.k.a. SHERKAT SAHAMI KHASS POSHTIBANI VA TEHIYEH KALAYE NAFT TEHRAN; a.k.a. SHERKATE POSHTIBANI SAKHT VA TAHEIH KALAIE NAFTE TEHRAN), Head Office Tehran, Sepahbod Gharani Ave., P.O. Box 15815/1775 15815/3446, Tehran, Iran; Chekhov St., 24.2, AP 57, Moscow, Russia; Sanaee Ave., P.O. Box 79417–76349, N.I.O.C., Kish, Iran; 10th Floor, Sadaf Tower, Kish Island, Iran; 242 Sepahbod Gharani Street, Karim Khan Zand Bridge, Corner Kalantari Street, 8th Floor, P.O. Box 15815–1775/15815–3446, Tehran 15988, Iran; Building No. 226, Corner of Shahid Kalantari Street, Sepahbod Gharani Avenue, Karimkhan Avenue, Tehran 1598844815, Iran; No. 242, Shahid Kalantari St., Near Karimkhan Bridge, Sepahbod Gharani Avenue, Tehran, Iran; 333 7th Ave SW #1102, Calgary, AB T2P 2Z1, Canada; Room No. 704—No. 10 Chao Waidajie Chao Yang District, Beijing 10020, China; P.O. Box 2965, Sharjah, United Arab Emirates; all offices worldwide [IRAN]

NAFTIRAN INTERTRADE CO. (NICO) LIMITED (a.k.a. NAFT IRAN INTERTRADE COMPANY LTD; a.k.a. NAFTIRAN INTERTRADE COMPANY (NICO); a.k.a. NAFTIRAN INTERTRADE COMPANY LTD; a.k.a. NICO), Petro Pars Building, Saadat Abad Ave, No. 35, Farhang Blvd, Tehran, Iran; 41, 1st Floor, International House, The Parade, St Helier JE2 3QQ, Jersey; all offices worldwide [IRAN]

NAFTIRAN INTERTRADE CO. (NICO) SARL (a.k.a. NICO), 6, Avenue de la Tour-Haldimand, Pully, VD 1009, Switzerland; all offices worldwide [IRAN]

NAFTIRAN TRADING SERVICES CO. (NTS) LIMITED, 47 Queen Anne Street, London W1G 9JG, United Kingdom; 6th Floor NIOC Ho, 4 Victoria St, London SW1H 0NE, United Kingdom; UK Company Number 02600121 (United Kingdom); all offices worldwide [IRAN]

NATIONAL IRANIAN OIL COMPANY (a.k.a. NIOC), Hafez Crossing, Taleghani Avenue, P.O. Box 1863 and 2501, Tehran, Iran; all offices worldwide [IRAN]

NATIONAL IRANIAN OIL COMPANY PTE LTD, 7 Temasek Boulevard #07–02, Suntec Tower One 038987, Singapore; Registration ID 199004388C (Singapore); all offices worldwide [IRAN]

NATIONAL PETROCHEMICAL COMPANY (a.k.a. ''NPC''), No. 104, North Sheikh Bahaei Blvd., Molla Sadra Ave., Tehran, Iran; all offices worldwide [IRAN]

NICO ENGINEERING LIMITED, 41, 1st Floor, International House, The Parade, St. Helier JE2 3QQ, Jersey; Registration ID 75797 (Jersey); all offices worldwide [IRAN]

NIOC INTERNATIONAL AFFAIRS (LONDON) LIMITED, NIOC House, 4 Victoria Street, London SW1H ONE, United Kingdom; UK Company Number 02772297 (United Kingdom); all offices worldwide [IRAN]

NPC INTERNATIONAL LIMITED (a.k.a. N P C INTERNATIONAL LTD; a.k.a. NPC INTERNATIONAL COMPANY), 5th Floor NIOC House, 4 Victoria Street, London SW1H ONE, United Kingdom; UK Company Number 02696754 (United Kingdom); all offices worldwide [IRAN]

ONERBANK ZAO (a.k.a. EFTEKHAR BANK; a.k.a. HONOR BANK; a.k.a. HONORBANK;

a.k.a. HONORBANK ZAO; a.k.a. ONER BANK; a.k.a. ONERBANK; a.k.a. ONER–BANK), Ulitsa Klary Tsetkin 51, Minsk 220004, Belarus; Registration ID 807000227 (Belarus) issued 16 Oct 2009; SWIFT/BIC HNRBBY2X (Belarus); all offices worldwide [IRAN]

P.C.C. (SINGAPORE) PRIVATE LIMITED (a.k.a. P.C.C. SINGAPORE BRANCH; a.k.a. PCC SINGAPORE PTE LTD), 78 Shenton Way, #08–02 079120, Singapore; 78 Shenton Way, 26–02A Lippo Centre 079120, Singapore; Registration ID 199708410K (Singapore); all offices worldwide [IRAN]

PARS OIL AND GAS COMPANY (a.k.a. POGC), No. 1 Parvin Etesami Street, Fatemi Avenue, Tehran, Iran; No. 133, Side of Parvin Etesami Alley, opposite Sazman Ab—Dr. Fatemi Avenue, Tehran, Iran [IRAN]

PETROCHEMICAL COMMERCIAL COMPANY (U.K.) LIMITED (a.k.a. PCC (UK); a.k.a. PCC UK; a.k.a. PCC UK LTD), 4 Victoria Street, London SW1H ONE, United Kingdom; UK Company Number 02647333 (United Kingdom); all offices worldwide [IRAN]

PETROCHEMICAL COMMERCIAL COMPANY FZE (a.k.a. PCC FZE), 1703, 17th Floor, Dubai World Trade Center Tower, Sheikh Zayed Road, Dubai, United Arab Emirates; Office No. 99–A, Maker Tower ''F'' 9th Floor Cutte Pavade, Colabe, Bumbai 700005, India; all offices worldwide [IRAN]

PETROCHEMICAL COMMERCIAL COMPANY INTERNATIONAL (a.k.a. PETROCHEMICAL COMMERCIAL COMPANY INTERNATIONAL LIMITED; a.k.a. PETROCHEMICAL COMMERCIAL COMPANY INTERNATIONAL LTD; a.k.a. PETROCHEMICAL TRADING COMPANY LIMITED; a.k.a. ''PCCI''), P.O. Box 261539, Jebel Ali, Dubai, United Arab Emirates; 41, 1st Floor, International House, The Parade, St. Helier JE2 3QQ, Jersey; Ave. 54, Yimpash Business Center, No. 506, 507, Ashkhabad 744036, Turkmenistan; No. 21 End of 9th St, Gandi Ave, Tehran, Iran; 21, Africa Boulevard, Tehran, Iran; Registration ID 77283 (Jersey); all offices worldwide [ISA] [IRAN]

PETROIRAN DEVELOPMENT COMPANY (PEDCO) LIMITED (a.k.a. PETRO IRAN DEVELOPMENT COMPANY; a.k.a. ''PEDCO''), 41, 1st Floor, International House, The Parade, St. Helier JE2 3QQ, Jersey; No. 102, Next to Shahid Amir Soheil Tabrizian Alley, Shahid Dastgerdi (Ex Zafar) Street, Shariati Street, Tehran 19199/45111, Iran; Kish Harbour, Bazargan Ferdos Warehouses, Kish Island, Iran; No. 22, 7th Lane, Khalid Eslamboli Street, Shahid Beheshti Avenue, Tehran, Iran; National Iranian Oil Company—PEDCO, P.O. Box 2965, Al Bathaa Tower, 9th Floor, Apt. 905, Al Buhaira Corniche, Sharjah, United Arab Emirates; P.O. Box 15875–6731, Tehran, Iran; Registration ID 67493 (Jersey); all offices worldwide [IRAN]

PETROPARS INTERNATIONAL FZE (a.k.a. PPI FZE), P.O. Box 72146, Dubai, United Arab Emirates; all offices worldwide [IRAN]

PETROPARS LTD. (a.k.a. PETROPARS LIMITED; a.k.a. ''PPL''), No. 35, Farhang Blvd., Saadat Abad, Tehran, Iran; Calle La Guairita, Centro Profesional Eurobuilding, Piso 8, Oficina 8E, Chuao, Caracas 1060, Venezuela; P.O. Box 3136, Road Town, Tortola, Virgin Islands, British; all offices worldwide [IRAN]

PETROPARS UK LIMITED, 47 Queen Anne Street, London W1G 9JG, United Kingdom; UK Company Number 03503060 (United Kingdom); all offices worldwide [IRAN]

SINA BANK (f.k.a. BFCC; f.k.a. BONYAD FINANCE AND CREDIT COMPANY; f.k.a. SINA FINANCE AND CREDIT COMPANY), 187 Motahhari Avenue, P.O. Box 1587998411, Tehran, Iran; Kish Financial Center, Sahel, Kish Island, Iran; SWIFT/BIC SINAIRTH418 (Iran); alt. SWIFT/BIC SINAIRTH (Iran); all offices worldwide [IRAN]

WEST SUN TRADE GMBH (a.k.a. WEST SUN TRADE), Mundsburger Damm 16, Hamburg 22087, Germany; Arak Machine Mfg. Bldg., 2nd Floor, opp. of College Economy, Northern Kargar Ave., Tehran 14136, Iran; Winterhuder Weg 8, Hamburg 22085, Germany; Registration ID HRB 45757 (Germany); all offices worldwide [IRAN]

PART 561—IRANIAN FINANCIAL SANCTIONS REGULATIONS

■ 34. The authority citation for part 561 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 111–195, 124 Stat. 1312.

Subpart B—Prohibitions

■ 35. Revise the Note to paragraph (a)(5) of § 561.201 to read as follows:

§ 561.201 Prohibitions or strict conditions with respect to correspondent accounts or payable-through accounts of certain foreign financial institutions identified by the Secretary of the Treasury.

* * * * *

(a) * * *

(5) * * *

Note to paragraph (a)(5) of § 561.201: The names of persons whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA'') are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List''). The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. Agents or affiliates of Iran's Islamic Revolutionary Guard Corps (''IRGC'') whose property and interests in property are blocked pursuant to IEEPA are identified by a special reference to the ''[IRGC]'' at the end of their entries on the SDN List, in addition to the reference to the regulatory part of this chapter pursuant to which their property and interests in property are blocked. For example, an affiliate of the IRGC whose property and interests in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 CFR part 544, will have the identifier ''[NPWMD][IRGC]'' at the end of its entry on the SDN List. SDN List entries for financial institutions whose property and interests in property are blocked pursuant to parts 544 or 594 of this chapter in connection with Iran's proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction or Iran's support for international terrorism also include identifiers which reference this part in addition to part 544 or part 594, as the case may be, located at the end of their entries on the SDN List (*e.g.,* [NPWMD][IFSR] or [SDGT][IFSR]). In addition, *see* § 561.405 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked.

* * * * *

■ 36. Revise Note 1 to § 561.202 to read as follows:

§ 561.202 Prohibitions on persons owned or controlled by U.S. financial institutions.

* * * * *

Note 1 to § 561.202: The names of persons whose property and interests in property are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA'') are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (the ''SDN List''). The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. Agents or affiliates of Iran's Islamic Revolutionary Guard Corps (''IRGC'') whose property and interests in property are blocked pursuant to IEEPA are identified by a special reference to the ''[IRGC]'' at the end of their entries on the SDN List, in addition to the reference to the regulatory part of this chapter pursuant to which their property and interests in property are blocked. For example, an affiliate of the IRGC whose property and interests in property are blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 CFR part 544, will have the identifier ''[NPWMD][IRGC]'' at the end of its entry on the SDN List. In addition, *see* § 561.405 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked.

* * * * *

Subpart D—Interpretations

■ 37. Revise § 561.405 to read as follows:

§ 561.405 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked

pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (''IEEPA'') has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to IEEPA, regardless of whether the entity itself is listed on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List.

PART 562—IRANIAN HUMAN RIGHTS ABUSES SANCTIONS REGULATIONS

■ 38. The authority citation for part 562 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 13553, 75 FR 60567, October 1, 2010.

Subpart B—Prohibitions

■ 39. Revise Notes 1 and 2 to § 562.201 to read as follows:

§ 562.201 Prohibited transactions.

* * * * *

Note 1 to § 562.201: The names of persons listed in or designated pursuant to Executive Order 13553, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[IRAN–HR].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 562.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

Note 2 to § 562.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–IRAN–HR].''

* * * * *

PART 576—IRAQ STABILIZATION AND INSURGENCY SANCTIONS REGULATIONS

■ 40. The authority citation for part 576 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 110–96, 121 Stat. 1011; E.O. 13303, 68 FR 31931, 3 CFR, 2003 Comp., p. 227; E.O. 13315, 68 FR 52315, 3 CFR, 2003 Comp., p. 252; E.O. 13350, 69 FR 46055, 3 CFR, 2004 Comp., p. 196; E.O. 13364, 69 FR 70177, 3 CFR, 2004 Comp., p. 236; E.O. 13438, 72 FR 39719, 3 CFR, 2007 Comp., p. 224.

Subpart B—Prohibitions

■ 41. Revise Notes 1 and 2 to paragraph (a) of § 576.201 to read as follows:

§ 576.201 Prohibited transactions involving blocked property.

(a) * * *

Note 1 to paragraph (a) of § 576.201: The names of persons listed in or designated pursuant to Executive Order 13315, as amended by Executive Order 13350, or designated pursuant to Executive Order 13438, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[IRAQ2]'' (for persons designated pursuant to paragraphs (a)(1) and (a)(2) of this section) or ''[IRAQ3]'' (for persons designated pursuant to paragraph (a)(3) of this section). The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 576.412 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 576.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–IRAQ2]'' or ''[BPI–IRAQ3].''

* * * * *

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 42. Revise paragraph (b) of § 576.512 to read as follows:

§ 576.512 Transactions with certain blocked persons authorized.

* * * * *

(b) The authorization in paragraph (a) of this section does not apply to any transactions with state bodies, corporations, or agencies of the former Iraqi regime listed on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List.

PART 588—WESTERN BALKANS STABILIZATION REGULATIONS

■ 43. The authority citation for part 588 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13219, 66 FR 34777, 3 CFR, 2001 Comp., p. 778; E.O. 13304, 68 FR 32315, 3 CFR, 2004 Comp. p. 229.

Subpart B—Prohibitions

■ 44. Revise Notes 1 and 2 to paragraph (a) of § 588.201 to read as follows:

§ 588.201 Prohibited transactions involving blocked property.

(a) * * *

Note 1 to paragraph (a) of § 588.201: The names of persons listed in or designated pursuant to Executive Order 13219, as amended by Executive Order 13304, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[BALKANS].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 588.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 2 to paragraph (a) of § 588.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–BALKANS].''

* * * * *

PART 593—FORMER LIBERIAN REGIME OF CHARLES TAYLOR SANCTIONS REGULATIONS

■ 45. The authority citation for part 593 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13348, 69 FR 44885, 3 CFR, 2004 Comp., p. 189.

Subpart B—Prohibitions

■ 46. Remove the Note to paragraph (a) of § 593.201 and add new Notes 1, 2, and 3 to paragraph (a) of § 593.201 to read as follows:

§ 593.201 Prohibited transactions involving blocked property.

(a) * * *

Note 1 to paragraph (a) of § 593.201: The names of persons listed in or designated pursuant to Executive Order 13348, whose property and interests in property therefore are blocked pursuant to paragraph (a) of this section, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[LIBERIA].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter.

Note 2 to paragraph (a) of § 593.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–LIBERIA].''

Note 3 to paragraph (a) of § 593.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

* * * * *

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 47. The authority citation for part 594 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR, 2002 Comp., p. 240; E.O. 13284, 68 FR 4075, 3 CFR, 2003 Comp., p. 161.

Subpart B—Prohibitions

■ 48. Revise Notes 2 and 3 to paragraph (a) of § 594.201 and Note 1 to § 594.201 to read as follows:

§ 594.201 Prohibited transactions involving blocked property.

(a) * * *

Note 2 to paragraph (a) of § 594.201: The names of persons whose property and interests in property are blocked pursuant to § 594.201(a) are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SDGT].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter.

Note 3 to paragraph (a) of § 594.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to paragraph (a) of this section.

* * * * *

Note 1 to § 594.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–PA]'' or ''[BPI–SDGT].'' The scope of the property or interests in property blocked during the pendency of an investigation may be more limited than the scope of the blocking set forth in § 594.201(a). Inquiries regarding the scope of any such blocking should be directed to OFAC's Sanctions Compliance & Evaluation Division at 202/622–2490.

* * * * *

PART 595—TERRORISM SANCTIONS REGULATIONS

■ 49. The authority citation for part 595 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 319; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208.

Subpart C—General Definitions

■ 50. Revise the Note to § 595.311 to read as follows:

§ 595.311 Specially designated terrorist.

* * * * *

Note to § 595.311: The names of persons determined to fall within this definition, whose property and interests in property therefore are blocked pursuant to this part, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SDT].'' The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this part also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–SDT].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in Appendix A to this chapter. Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

PART 597—FOREIGN TERRORIST ORGANIZATIONS SANCTIONS REGULATIONS

■ 51. The authority citation for part 597 continues to read as follows:

Authority: 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–132, 110 Stat. 1214, 1248–53 (8 U.S.C. 1189, 18 U.S.C. 2339B).

Subpart C—General Definitions

■ 52. Revise the Note to § 597.301 to read as follows:

§ 597.301 Agent.

* * * * *

Note to § 597.301: The names of persons designated as foreign terrorist organizations or determined to fall within this definition, whose property and interests in property therefore are blocked pursuant to this part, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[FTO].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be

found in Appendix A to this chapter. Section 501.807 of this chapter sets forth the procedures to be followed by a person seeking administrative reconsideration of a designation as an agent, or who wishes to assert that the circumstances resulting in the designation as an agent are no longer applicable.

PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

■ 53. The authority citation for part 598 continues to read as follows:

Authority: 3 U.S.C. 301; 21 U.S.C. 1901–1908; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note).

Subpart C—General Definitions

■ 54. Remove the Note to § 598.314 and add new Notes 1, 2, and 3 to § 598.314 to read as follows:

§ 598.314 Specially designated narcotics trafficker.

* * * * *

Note 1 to § 598.314: The names of persons determined to fall within this definition, whose property and interests in property therefore are blocked pursuant to this part, are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SDNTK].'' The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: *http://www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter.

Note 2 to § 598.314: The Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908, 8 U.S.C. 1182), in Section 806 (21 U.S.C. 1905), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this part also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–SDNTK].''

Note 3 to § 598.314: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this part.

Subpart D—Interpretations

■ 55. Revise paragraph (a) of § 598.408 to read as follows:

§ 598.408 Alleged change in ownership or control of an entity designated as a specially designated narcotics.

(a) A change or alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker shall not be the basis for removal of that entity from the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List (''SDN List'') unless, upon investigation by the Office of Foreign Control and submission of evidence by the entity, it is demonstrated to the satisfaction of the Director of the Office of Foreign Assets Control that the transfer to a bona fide purchaser at arm's length, or other means of changing ownership or control, is legitimate and that the entity no longer meets the criteria for designation under § 598.314. Evidence submitted must conclusively demonstrate that all ties with other specially designated narcotics traffickers have been completely severed, and may include, but is not limited to, articles of incorporation; identification of new directors, officers, shareholders, and sources of capital; and contracts evidencing the sale of the entity to its new owners.

* * * * *

Appendixes to Chapter V—Note—[Removed]

■ 56. Remove the Appendixes to Chapter V—Note.

■ 57. Revise Appendix A to chapter V of 31 CFR to read as follows:

Appendix A to Chapter V—Information Pertaining to the Specially Designated Nationals and Blocked Persons List

Authority: 3 U.S.C. 301; 8 U.S.C. 1182, 1189; 18 U.S.C. 2339B; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 50 U.S.C. App. 1–44; Pub. L. 110–286, 122 Stat. 2632; Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551).

The Office of Foreign Assets Control (''OFAC'') maintains on its Web site a list of blocked persons, blocked vessels, specially designated nationals, specially designated terrorists, specially designated global terrorists, foreign terrorist organizations, and specially designated narcotics traffickers whose property and interests in property are blocked pursuant to the various economic sanctions programs administered by OFAC. This Specially Designated Nationals and Blocked Persons List (''SDN List'') is updated frequently and at irregular intervals to incorporate changes reflected in notices of blocking, designation, identification, and delisting actions, all of which are published in the **Federal Register**. The SDN List is available in a variety of formats for review on, or download from, the following location on OFAC's Web site: *http://www.treasury.gov/sdn.* Members of the public may also sign up through OFAC's Web site to receive e-mail notifications of changes to the SDN List.

In addition to accessing information through OFAC's Web site, the public may contact OFAC's Sanctions Compliance & Evaluation Division, at 202/622–2490 or 800/540–6322 (toll-free), for information on blocking, designation, identification, and delisting actions. The public also may contact OFAC in writing at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Finally, the public may obtain information on blocking, designation, identification, and delisting actions through OFAC's fax-on-demand service, at 202/622–0077.

Notes: The SDN List provides the following information (to the extent known) concerning blocked persons, specially designated nationals, specially designated terrorists, specially designated global terrorists, foreign terrorist organizations, specially designated narcotics traffickers and blocked vessels:

1. For blocked individuals: Name and title (known aliases); address(es); other identifying information, such as date of birth, place of birth, nationality, and passport or national identification number; the notation ''(individual)''; and [sanctions program under which the individual is blocked].

2. For blocked entities: Name (known former or alternate names); address(es); other identifying information, such as national tax identification number(s); and [sanctions program under which the entity is blocked].

3. For blocked vessels: Name (known former or alternate names); other identifying information, such as International Maritime Organization number, country of registration or flag, vessel type, size in dead weight and/or gross tons, call sign, vessel owner; the notation ''(vessel)''; and [sanctions program under which the vessel is blocked].

4. Abbreviations. ''a.k.a.'' means ''also known as''; ''d.b.a.'' means ''doing business as''; ''f.k.a.'' means ''formerly known as''; ''IMO'' means ''International Maritime Organization''; ''n.k.a.'' means ''now known as''; ''DOB'' means ''date of birth''; ''DWT'' means ''deadweight''; ''GRT'' means ''Gross Registered Tonnage''; ''POB'' means ''place of birth''.

5. Notices of blocking, designation, identification, and delisting actions are published in the **Federal Register** frequently and at irregular intervals. Updated information on OFAC blocking, designation, identification, and delisting actions is provided on OFAC's Web site (*http://www.treasury.gov/ofac*). In addition, such information is incorporated on an ongoing basis into OFAC's SDN List, which is available for review on, or download from, the following location on OFAC's Web site: *http://www.treasury.gov/sdn.* Please call OFAC's Sanctions Compliance & Evaluation Division with questions about OFAC-administered sanctions programs, including

current electronic sources of OFAC information: 202/622–2490 or 800/540–6322 (toll-free). Information also is available by fax through OFAC's fax-on-demand service, at 202/622–0077. Updated information on OFAC designations and other OFAC actions should be consulted before engaging in transactions that may be prohibited by the economic sanctions programs in chapter V.

6. Specific licenses previously issued by OFAC may include references to Appendix A or Appendix B to 31 CFR chapter V. OFAC hereby notifies persons who have been issued specific licenses by OFAC that any reference to Appendix A to 31 CFR chapter V or Appendix B to 31 CFR chapter V in an outstanding specific license shall be read to refer to the SDN List. The SDN List is available for review on or download from the following location on OFAC's Web site: *http://www.treasury.gov/sdn.*

7. The SDN List incorporates the names of vessels owned by blocked persons, which are themselves blocked. SDN List entries for blocked vessels, which include the notation ''(vessel),'' are incorporated in alphabetical order into the SDN List. In addition, these entries are segregated into a separate sub-section of the SDN List under the heading ''(vessels).'' Except in limited circumstances, financial institutions are instructed to reject any funds transfer referencing a blocked vessel and must notify OFAC, preferably via facsimile at 202/622–2426 with a copy of the payment instructions, that funds have been returned to remitter due to the possible involvement of a blocked vessel in the underlying transaction. *See* § 501.604(b)(1) of this chapter. Financial institutions should contact OFAC's Sanctions Compliance & Evaluation Division, at 202/622–2490 or 800/540–6322 (toll-free), for further instructions should the name of a blocked vessel appear in shipping documents presented under a letter of credit or if noticed in a documentary collection. Blocked vessels must themselves be physically blocked should they enter U.S. jurisdiction. Freight forwarders and shippers may not charter, book cargo on, or otherwise deal with blocked vessels.

8. The SDN List includes the names of persons identified in Appendix A to Part 560 as persons determined to be the Government of Iran. The SDN List entries for such persons include the identifier ''[IRAN].'' U.S. persons are advised to review 31 CFR part 560 prior to engaging in transactions involving the persons included on the SDN List with the identifier ''[IRAN].'' U.S. persons are further cautioned that persons identified as persons determined to be the Government of Iran also may be designated or blocked pursuant to other sanctions programs administered by OFAC. The SDN List entry for a person listed in Appendix A to Part 560 may include—in addition to the identifier ''[IRAN]''—identifier(s) for the other sanctions program(s) pursuant to which the person is listed on the SDN List. Moreover, the compliance obligations with respect to persons who fall within the definition of the Government of Iran in § 560.304 of the Iranian Transactions Regulations, 31 CFR part 560, apply regardless of whether such persons are identified in Appendix A to Part 560 or the SDN List.

9. Unless otherwise specifically provided, any amendment, modification, or revocation of any entry on the SDN List does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation.

Appendix B—[Removed]

■ 58. Remove Appendix B to chapter V of 31 CFR.

Dated: June 27, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

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S.J. Res. 7/P.L. 112–19
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S.J. Res. 9/P.L. 112–20
Providing for the reappointment of Robert P. Kogod as a citizen regent of the Board of Regents of the Smithsonian Institution. (June 24, 2011; 125 Stat. 232)

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